

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.4573/Mum/2025
(Assessment Year: 2017-18)**

Income-tax Officer (Exemption)-2(3), Mumbai Room No.617, 6 th Floor, MTNL Building, Cumballa Hill, Dr. D.G. Deshmuka Marg, Peddar Road, Mumbai-400 026	vs	Seth Damji Laxmichand Jain Dharma Sthanak, 64, Dr. Ambedkar Road, Opp. Kalachowki Post Office, Chinchpokali, Mumbai-400 012 PAN: AACTS2218L
APPELLANT		RESPONDENT

Assessee by : Shri Ravi Ganatra
Respondent by : Shri Virabhadra Mahajan (SR. DR)

Date of hearing : 14/10/2025
Date of pronouncement : 17/10/2025

ORDER

Per Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in short, "the Act") for the Assessment Year 2017-18, date of order 28/05/2025. The impugned order emanated from the order of the Ld. Income-tax Officer (Exemption), Ward 2(3), Mumbai (in short, the "Ld. AO"), the order passed U/s 143(3) of the Act, date of order 25/12/2019.

2. The brief facts of the case are that the assessee is a trust registered as a charitable organization under Sections 12A and 80G of the Act. For the impugned assessment year, the assessee filed its return of income on 31.03.2018, which was subsequently revised on 03.04.2018. On the same date, the assessee also filed its audit report in Form No. 10B, declaring a total income of Rs.5,050 and claiming exemption under Section 11 of the Act. The return of income filed by the assessee was selected for complete scrutiny under CASS. The Ld. AO completed the assessment under Section 143(3) of the Act by disallowing the deduction of Rs.3,56,00,000/- claimed under Section 11(2) and further made an addition of Rs.1,97,60,600 under Section 11(3) on the ground that the amount accumulated during AY 2012–13 for utilization within the subsequent five years was not utilized for the purpose for which it was accumulated. Instead, said amount was donated to other trusts, which, according to the Ld. AO, constituted a violation of the provisions of Section 11(3) of the Act. During the course of assessment proceedings, the Ld. AO issued a show cause notice stating that the assessee had claimed deduction of Rs.3,56,00,000 under Section 11(2) for accumulation of income to be utilized within the next five years. However, Forms No. 10 and 10B were filed on 03.04.2018, i.e., after the due date for filing, which was 07.11.2017. The Ld. AO, therefore, called upon the assessee to show cause as to why the deduction claimed under Section 11(2) should not be disallowed, as the filing of Forms No. 10 and 10B before the due date was mandatory for claiming exemption under Section 11. In response, the assessee explained that the delay in filing the said forms was due to an inadvertent oversight. It was submitted that the trust and its activities were genuine and aimed at benefiting society at large. The assessee further stated that the Board of Trustees, in its meeting held on 31.10.2017, had

resolved to accumulate Rs.3,56,00,000 for the purpose of establishing a diagnostic centre for the benefit of economically weaker sections, where services such as ECG, pathology, X-rays, CT scans, and sonography could be made available at nominal rates. The assessee also contended that, although Rule 17 requires the filing of Form No. 10 before the due date under Section 139(1), various judicial pronouncements have held that the requirement is satisfied as long as the form is filed before the completion of assessment. However, the Ld. AO rejected the assessee's explanation and disallowed the claim of deduction amounting to Rs.4,66,74,510 under Section 11 due to the delay in filing Form 10B. Additionally, the Ld. AO disallowed Rs.1,97,60,600 accumulated during A.Y. 2012-13, alleging non-utilization for the specified purpose.

Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who partly allowed the appeal by (i) granting exemption under Section 11(2) of the Act, and (ii) upholding the addition of Rs.1,97,60,600 under Section 11(3)(d) of the Act. The revenue, being dissatisfied with the relief granted, has preferred the present appeal before us.

3. The Ld. DR argued that the Ld. AO had rightly disallowed the exemption claimed under Section 11(2) due to the belated filing of Form No. 10 and supported the order of the Ld. AO.

4. The Ld. AR, on the other hand, contended that the issue is squarely covered by various decisions of the ITAT, Mumbai Bench, as well as the Hon'ble Bombay High Court. He submitted that although Form No. 10 was filed belatedly, it was available before the Ld. AO during the assessment proceedings. However, the Ld.

AO failed to consider the same and wrongly denied the deduction under Section 11(2) of the Act, thereby adding the amount back to the total income. The Ld. AR relied on the findings of the Ld. CIT(A). The relevant paragraph 5.1 of the impugned appellate order is reproduced below: –

“5.1. Ground 1 Vide this ground, the Appellant has objected to the disallowance of deduction of Rs. 4,66,74,510/- claimed u/s. 11(2) of the Act on the ground that there has been delay in furnishing Form 10. In this regard, the Appellant has submitted that, although, there has been delay in furnishing Form No.10, the same has been furnished before the AO during assessment proceedings. The Appellant, therefore, submits that it is entitled to claim of deduction u/s 11(2). In support the same, the Appellant has placed reliance on various case laws.

5.1.1. I have considered the submissions made by the Appellant. I have also perused the assessment order. I find that the AO has denied exemption u/s 11(2) on the grounds of non-compliance to the provision u/s 11(2)(c).

In this regard, I find that, although, there has been delay in furnishing Form No.10, the same has been furnished before the AO during assessment proceedings. This is an undisputed fact. I find that various courts have held that exemption u/s 11(2) cannot be denied merely on the ground that Form 10 has not been submitted within the due date in terms of section 139(1) of the Act, provided the same has been furnished before completion of assessment proceedings. Hon’ble Madras High Court in the case of Shri Chandrabhujji Maharaj Jain Vs DCIT (Exemptions) (Madras High Court), Appeal Number : Tax Case (Appeal) No. 517 of 2019, Date of Judgement/Order : 26/07/2019 has, thus, held;

“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 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 be 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 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 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 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.

Hon'ble ITAT Chandigarh in the case of Infrastructure Development Fund Vs DCIT (ITAT Chandigarh) Appeal Number: ITA No. 220/CHD /2020 Date of Judgement/Order 4/08/2020 has held as under

Under:-

"23. We have heard both the parties. One of the reasons for denying benefit of accumulation of income to the assessee u/s 11(2) of the Act, we find, is the non-filing of notice of accumulation in prescribed Form No.10, before the due date of filing of return of income. Clearly the section does not mandate such a limitation, but it is the Rules which prescribe so. That the assessee had filed the prescribed form during assessment proceedings is not denied. In identical facts and circumstances, the coordinate Bench of the ITAT has held in a number of decisions that the assessee can file Form No.10 at any time during assessment proceedings and which has to be considered for granting benefit u/s 11(2) of the Act and the non filing of the same is a mere irregularity and technical lapse which needs to be condoned. The ITAT has categorically held so in the following case laws aptly relied upon by the Ld. Counsel for the assessee.

- ADDITIONAL DIRECTOR OF INCOME TAX (EXEMPTION) vs. MANAV (2008) 20 SOT 0517 (Del) MOTI RAM GOPI CHAND CHARITABLE TRUST vs. ADDITIONAL COMMISSIONER OF INCOME TAX (2013) 59 SOT 0197 (Delhi) JOINT COMMISSIONER OF INCOME TAX vs. SEWA EDUCATION TRUST 27 ITR (Trib) 0292 (Agra) V. RAMAKRISHNA CHARITABLE TRUST vs. DEPUTY DIRECTOR OF IINCOME TAX (EXEMPTIONS)-II (2015) 155 ITD 0727 (Chennai).*

In view of the same, we hold, that the denial of benefit of accumulation for delayed filing of Form No.10 is not as per law."

4. At this stage, the Ld. DR has submitted that the case laws relied upon by the Tribunal in respect of ground Nos. 4 & 5 regarding the late filing of the form No.10 are not applicable because these case laws relates to the amendment carried out prior to 2016, whereas, as per the Rule 17 of the Income tax Rules, 1962 read with section 11(2) of the Income Tax Act w.e.f. 1.4.2016, the assessee to claim benefit of accumulation is required to file the form No.10 on or before the due date as specified u/s 139(1) of the Act for furnishing of return of income.

5. However, the Ld. Authorised Representative of the assessee has invited our attention to the relevant para Nos. 22 & 23 of the order dated 31.7.2020 (supra) to submit that the aforesaid contention has already been considered by the Tribunal and the issue has been decided in favour of the assessee in the light of various case laws. We find force in the above contention of the Ld. AR. In view of this, all the issues are covered by the order of the Tribunal in the own case of the assessee for assessment year 2014-15. Respectfully following the said decision and for the sake of consistency, ground Nos. 4 & 5 of the appeal

are decided in favour of the assessee, whereas, ground Nos. 1 to 3 are decided in favour of the Revenue.

6. In the result, the appeal of the assessee stands partly allowed. Order pronounced on 24.08.2020.

In view of the above discussions and relying on the case laws cited supra, I hold that the Appellant is entitled to claim of exemption u/a 11(2) of the Act. Ground is, thus, allowed.”

5. We have carefully considered the rival submissions, the findings of the revenue authorities and the judicial precedents relied upon by both sides. The undisputed fact remains that although Form No. 10 was filed belatedly, it was duly submitted before the completion of the assessment proceedings. Consistent with the ratio laid down by various High Courts and coordinate benches of the Tribunal, a delay in filing Form No. 10 is a procedural irregularity and not a fatal defect, provided the form is available before the Ld. AO at the time of assessment. In view of the above, we find no infirmity in the order of the Ld. CIT(A) in allowing exemption under Section 11(2) of the Act.

However, in respect of the addition of Rs.1,97,60,600 made under Section 11(3)(d) of the Act, we find that the Ld. CIT(A) has given a well-reasoned finding that the accumulated amount was not utilized for the specified purpose within the permissible period and was instead donated to other trusts, which constitutes a violation of the provisions of Section 11(3).

In the present case, during the assessment proceeding, the said form was already available on record, and the Assessing Officer could have easily verified the applicability of the provisions of section 11 of the Act. The delay in filing Form 10B is merely procedural in nature, and the assessee has otherwise fulfilled the substantive conditions. In view of the above, and respectfully following the decision of the Co-ordinate Bench of the ITAT, Mumbai, **Archana Foundation v. ADIT [2025]**

174 taxmann.com 490 (Mumbai - Trib.), order dated **06.05.2025** we see no reason to interfere with the finding of the Ld. CIT(A). Accordingly, the order of the Ld. CIT(A) is upheld. The appeal filed by the revenue is dismissed.

6. In the result, the appeal of the revenue bearing **ITA No.4573/Mum/2025** is dismissed.

Order pronounced in the open court on 17th October 2025

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 17/10/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
JODHPUR
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, MUMBAI**