IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 5038/MUM/2025
Assessment Year: 2023-24

Shri Chintamani Parshwanath Shwetambar Murtipujak Jain Sangh Jain Mandir, Aarey Road West, Beside Rajasthan Hall, Goregaon, Mumbai – 400062. (PAN: AAATS2128R)	Vs.	Income-tax Officer, Exemption, Ward 2(3), Mumbai
(Appellant)		**(Respondent)**

Present for:
Assessee : Shri J. Kala, CA
Revenue : Shri Virbhadra Mahajan, Sr. DR

Date of Hearing : 06.10.2025
Date of Pronouncement : 31.10.2025

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), ADDL/JCIT (A) RANCHI, vide order no. ITBA/APL/S/250/2025-26/1077270269(1), dated 20.06.2025 passed against the intimation order by Dy. Commissioner of Income Tax, u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 02.12.2024 for Assessment Year 2023-24.

2. Grounds taken by the assessee are reproduced as under:

1. On the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) [Ld. CIT(A)) erred in passing the order without providing sufficient opportunity to the Appellant and

without assigning the reasons for doing so, which is against the principles of natural justice and is wrong and contrary to the provisions of the Income-tax Act, 1961 and the Rules made thereunder.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in not considering the detailed written submissions submitted by the Appellant during the course of appellate proceedings without assigning any reasons for doing so, which is against the principles of natural justice and is wrong and contrary to the provisions of the Income-tax Act, 1961 and the Rules made thereunder.

3. On the facts and circumstances of the case and in law, the Learned CPC [Ld. CPC] erred in making a prima facie adjustment under section 143(1) of the Act vide intimation dated 02.12.2024, and in making an addition of Rs.19,15,520/- as deemed income under section 11(3) of the Act, without considering the Appellant's objections submitted on 13.08.2024 without assigning the reasons for doing so, which is against the principles of natural justice and is wrong and contrary to the provisions of the Income-tax Act, 1961 and the Rules made thereunder.

4. Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. CPC erred in taxing the income @30% under section 115BBI of the Act in respect of the addition made under section 11(3) of the Act and in raising a demand of 24,38,000/- without assigning the reasons for doing so, which is against the principles of natural justice and is wrong and contrary to the provisions of the Income-tax Act, 1961 and the Rules made thereunder.

2.1. The sole issue raised by the assessee in this appeal is in respect of addition of Rs.19,15,520/- u/s. 115BBI.

3. Brief facts of the case are that assessee is a registered charitable trust u/s. 12A of the Act. Assessee filed its return of income on 29.10.2023, reporting total income at nil after claiming exemptions, u/s.11 and 12. For the financial year 2016-17, assessee had accumulated funds of Rs.19,15,523/- u/s.11(2) which were intended to be utilised within the prescribed period. Assessee had already applied Rs.12,34,477/- in the years prior to the year under consideration out of total accumulation of Rs.31,50,000/-. These remainder accumulated funds of Rs.19,15,523/- were subsequently utilised during financial

year 2022-23 for the purposes in accordance with the objectives of the trust. Utilisation of these accumulated funds is not in dispute. Assessee filed Form 10 to this effect which allowed the utilisation of Rs.19,15,520/-. Details regarding accumulation or setting a part of an amount as required u/s.11(2)(a) was furnished in Form 10 placed on record.

3.1. Assessee filed its return which allowed it to enter the utilisation of Rs. 19,15,520/-. It was part of the accumulation made in the financial year 2016-17. Subsequently, return of the assessee was processed u/s.143(1) for which intimation was issued, dated 02.12.2024, whereby this utilisation was denied, raising a demand of Rs.4,38,000/-. The reason for this disallowance was that the prescribed period for its utilisation had expired. According to the assessee, this utilisation was made in the time frame allowed u/s.11(2) and 11(3) which was for bonafide charitable purposes fulfilling the conditions as prescribed.

3.2. Assessee moved an appeal before the ld. CIT(A) and claimed that at the time of accumulation in financial year 2016-17, the law was that if any amount is accumulated u/s.11(2) and if the same is not utilised within the period of five years, then it shall be deemed to be the '*income of the previous year immediately following the expiry of the period of five years*'.

4. The issue raised in the present appeal is squarely covered by the decision of the Coordinate Bench of ITAT, Mumbai in the case of Roman Catholic Church of St. Paul in ITA No. 3396/MUM/2025, dated 28.08.2025 [undersigned Accountant Member is the author], wherein on identical fact pattern for the same Assessment Year, Coordinate

Bench had held in favour of the assessee allowing the exemption claim u/s.11. Taking into account facts of the present case, relevant portion of the said decision of the Coordinate Bench in the case of Roman Catholic Church of St. Paul (supra) is reproduced below for ready reference.

4. Factual position on the issue involved in the present appeal is that total accumulated income of Rs. 37,00,000/- had remained unutilised at the end of 5th financial year i.e., 2021-22. However, the same was utilised in financial year 2022-23 being the 6th financial year from the financial year of accumulation as per the condition of section 11(1)(c) which existed prior to the amendment. Though the accumulated unutilised income of Rs. 37,00,000/- as at the end of 5th financial year was spent in the 6th financial year i.e., FY 2022-23, the dispute raised is in the context of doctrine of fairness in relation to the amendment introduced by the Finance Bill, 2022 which received the ascent of Hon'ble President of India on 30.03.2022. As per section 1(2)(a) of the Finance Act 2022, the sections of the Act from section 2 to 85 came into force on the 1st day of April 2022. Thus, according to the assessee, the law was made effective from Assessment Year 2023-24 and as the law at the time of accumulation was for 5+1 years, the assessee claims that said accumulation cannot be disallowed, retrospectively. Assessee placed on record the difference in the position of law before the amendment and after the amendment, brought in by the Finance Act, 2022 which is reproduced below.

Provision before amendment, i.e., provision applicable up to the Asst. Year 2022-23	*Provision after amendment applicable from the Asst. Year 2023-24*
Any income referred to in sub section (2) which is not utilized for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub- section or in the year immediately following the expiry thereof shall be deemed to be the income of such person of the year the previous being last previous year of of the period, for which the income is accumulated or set apart but not utilised for the purpose for which it accumulated or set apart under clause (c)	*Any income referred to in sub -section (2) which is not utilized for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof (Deleted) shall be deemed to be the income of such person of year being the last previous year of the period, for which the period income is accumulated or set apart but not utilised for the purpose for which it is so accumulated or set apart under clause (c)*

4.1 From the above, assessee submitted that Finance Act, 2022 amended section 11(3) to bring to tax by effectively removing the one extra year available to spend and the same section came in force from 01.04.2023 i.e., Assessment Year 2023-24. There were two amendments in Finance Act, 2022 which restricted the utilization up to 5 years. Section 11(3)(c) specifically allowed one more year.

The words "or in the year immediately following the expiry thereof" were deleted. Thus, section 11(3)(c) along with the text at the end of the section allowed the utilization of the accumulated funds for 6 years before the amendment. According to the assessee, this is a prospective amendment made with regard to use of accumulated funds and thus making the additions of 2 years in 1 year is not the intent of the legislature. Assessee claims that it acted in accordance with the law as it stood at the time of accumulation with a legitimate expectation of being permitted to utilize the accumulation within 5+1 years i.e. by 31.03.2023. Any retrospective interpretation adversely affects this illegitimate expectation and violates the principles of natural justice. This amendment puts the assessee in an impossible situation wherein the amendment is made in Finance Act 2022, because of which assessee is required to utilize the funds before 31.03.2022, which is against the principles of natural justice.

4.2. In the alternate, assessee also submitted that even if the amendment is deemed as retrospective, the unutilized amount has to be taxed in the 5th year itself, i.e. Assessment Year 2022-23 and accordingly the addition made in the impugned assessment year i.e. Assessment Year 2023-24 is bad in law and is therefore, ought to be deleted.

4.3. Thus, submissions of the assessee are twofold. First, that it acted based on the conditions which existed in the year of accumulation and the amended law is to be applied prospectively for the accumulation which are made post amendment and secondly, the issue being a debatable one, CPC has no power to make such an adjustment while processing the return u/s.143(1).

5. Per Contra, ld. CIT DR supported the first appellate order. According to him, assessee had applied the accumulated amount which was accumulated during the Assessment Year 2017-18. This utilization has been claimed in the return for Assessment Year 2023.24 on the premise that it has been utilized in the financial year 2022-23, being application out of accumulated income of earlier years. He, thus submitted that the accumulated funds utilized in the financial year 2022-23 is after the expiration of 5 years permissible under the Act. Since the income was required to be utilized by 31.03.2022, the failure to use the funds within the prescribed time renders the utilization invalid for claiming exemption u/s.11. According to him, the accumulated funds were not utilized within the prescribed 5 years period, the income will be subject to tax as deemed income in the assessment year 2023-24 even though the assessee used the funds in financial year 2022-23.

4.1. According to ld. CIT DR, in the year relevant to Assessment Year 2017-18, assessee could not utilize 85% of its receipts for charitable activities and therefore accumulated the funds falling short by 85% as per the provisions of section 11(2) of the Act to be utilized in future years. As per the provisions of section 11(2)(a) of the Act, assessee was required to utilize the funds so accumulated within the next five years i.e. till the year relevant to Assessment Year 2023-24 or the present year. But the assessee failed to utilize it in the present year and therefore it was deemed to be income as per the provisions of section 11(3) of the Act in the present year. Moreover, tax was charged as per the provisions of section 115BBI of the Act on such deemed income.

5. We have heard the rival contentions and perused the material placed on record. We have also given our thoughtful consideration to the provisions of law, including the amendments brought in by Finance Act, 2022. Provisions of Section 11(2) and Section 11(3) as stood at the relevant time read as under:

"11(1)……

(2) where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied or Hot deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in Nos, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with.

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five Wars

(d) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);

(C) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded

Explanation. Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA [or section 12AB] or to any fund or institution or wust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (V) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

(3) Any income referred to in sub-section (2) which-

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (3), or

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section for in the year immediately following the expiry thereof].

(d) is credited or paid to any trust or institution registered under section 12AA for section 12AB] or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (230) of section 10

[shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid or, as the case may be, of the previous year immediately following the expiry of the period aforesaid]"

5.1. From the above, it is noted that the words "or in the year immediately following the expiry thereof" was omitted by the Finance Act 2022 with effect from 01.04.2023, applicable for assessment year 2023-24 and onwards. It is an admitted fact that when the assessee accumulated an amount of Rs. 37,00,000/- during the financial year 2016-17, it was required to utilize the same within a period of 5 years from the end of the relevant assessment year or in the year immediately following the expiry thereof. In other words, assessee was required to utilize the same before the end of the 6th year i.e., financial year 2022-23. Assessee in the instant case, undisputedly has utilized the amount of Rs. 37,00,000/- before 31.03.2023. In the given set of facts and the provisions of the Act including the amendment brought into section 11(3), it is noted that the amendment so brought is held to be prospective in nature. It is also a factual position that when the provisions at the relevant time prescribed the utilization of the amount within a period of 5 years or in the year immediately following the prescribed period of 5 years, the assessee has in fact applied the accumulated surplus funds to the extent of Rs.37,00,000/- which is not in dispute before 31.03.2023. Even otherwise, it is worth noting a fact that 5-year period ended on 31.03.2022 and therefore, the unutilized amount could have been brought to tax in the Assessment Year 2022-23 and not in Assessment Year 2023-24. Thus, in our considered view, the addition made by the ld. Assessing Officer in the course of processing of return u/s. 143(1) and sustained in the first appellate stage is deleted.

5.2. This issue had come up before the Coordinate Bench of ITAT, Pune in the case of Yashwantrao Chawan Maharashtra Open University vs. CIT(Exemption) in ITA No.505/PUN/2025 for Assessment Year 2023-24, while order pronounced on 23.06.2025 and has elaborately dealt with the issue holding in favour of the assessee. Relevant observations including the provisions of the law and various judicial precedents as well as findings from the said order are reproduced for ready reference:

"15. We have heard the rival arguments made by both the sides, perused the order passed by the CPC and the Ld. Addl/JCIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case filed its return of income on 30.11.2023 declaring total income as Nil. Since the assessee has accumulated an amount of Rs.90,70,20,511/- during the financial year 2016-17 and has utilized the same by 31.03.2023 i.e. in the 6th year of accumulation, the CPC taxed it in the 6th year i.e. financial year 2022-23. We find in appeal the Ld. Addl/JCIT(A) upheld the addition made by the CPC, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the provisions of the Income Tax Act, 1961 as applicable to assessment year 2023-

24 provides for taxation in the 5th year only and not in 6th year, therefore, taxing it in the 6th year ought to be deleted. It is his submission that for the amounts which are accumulated in assessment year 2017-18, the amount was taxable only if such accumulated amount was not applied within 6 years from the year of accumulation i.e. 5 years plus one year. Since the assessee has applied such accumulated amount within 6 years therefore, it is not taxable in that year also. It is also his alternate submission that since the issue is a debatable one, therefore, no adjustment can be made by the CPC. Further, it is his submission that the amendment to section 11(3) of the Act is to be applicable prospectively i.e. applicable for the amounts accumulated from assessment year 2023-24 and onwards and not for the amounts which were accumulated earlier.

16. We find some force in the arguments of the Ld. Counsel for the assessee on this issue. The provisions of section 11(2) and 11(3) of the Act as stood at the relevant time read as under:

> *"11(1).....*
> *(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-*
>
> *(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years,*
>
> *(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);*
>
> *(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:*
>
> *Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.*
>
> *Explanation. Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA (or section 12AB] or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.*
>
> *(3) Any income referred to in sub-section (2) which-*
>
> *(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or*

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or
(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section for in the year immediately following the expiry thereof).

(d) is credited or paid to any trust or institution registered under section 12A4 (or section 12AB) or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (230) of section 10.

[shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid or, as the case may be, of the previous year immediately following the expiry of the period aforesaid]"

17. A perusal of the above shows that the words "or in the year immediately following the expiry thereof was omitted by the Finance Act, 2022 w.e.f. 01.04.2023 which is applicable for assessment year 2023-24 onwards. It is an admitted fact that when the trust accumulated an amount of Rs.90,70,20,511/- during the financial year 2016-17 it was required to utilize the same within a period of 5 years from the end of the relevant assessment year or in the year immediately following the expiry thereof. In other words, the assessee was required to utilize the same before the end of the 6th year ie. financial year 2022-23. The assessee in the instant case undisputedly has utilized the amount before 31.03.2023.

18. We find the relevant provisions of Memorandum explaining provisions of the Finance Bill, 2022 read as under:

"4. Bringing consistency in the provisions of two exemption regimes

As mentioned earlier, there is a requirement for alignment of certain provisions of the two regimes as they both intend to grant similar benefit.
4.1 Accumulation provisions

i) Under the existing provisions of the Act. a trust or institution is required to apply 85% of its income during any previous year. However, if it is not able to apply 85% of its income during the previous year, it is allowed to accumulate such income for a period not exceeding 5 years as per the following provisions, namely:

(I) sub-section (2) of section 11 of the Act for the trusts or institution under the second regime; and

(II) third proviso to clause (23C) of section 10 of the Act for trusts or institution under the first regime.

ii) However, the accumulation of income, as per the provisions of sub-section (2) of section 11 of the Act is allowed subject to the fulfilment of certain conditions while there are no such conditions specifically provided under the third proviso to clause (23C) of section 10 of the Act;

iii) Similarly, sub-section (3) of section 11 of the Act provides for the specific previous year in which the accumulated income will be subjected to tax in case

of different types of violations. It, inter alia, provides that if the accumulated income is not applied within 5 years, it shall be taxed in the 6th year. While, on the other hand, there are no such specific provisions under clause (23C) of section 10 of the Act and therefore, if the accumulated income is not applied within 5 years, the same shall be taxed in the 5th year itself.

iv) In order to bring consistency in the two regimes, the following are proposed:-

A) It is proposed to amend the provisions of sub-section (3) of section 11 of the Act to provide that any income referred to in sub-section (2) which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart under clause (a) of subsection (2) of section 11, but not utilised for the purpose for which it is so accumulated or set apart.

B) It is proposed to insert Explanation 3 to the third proviso to clause (23C) of section 10 of the Act to provide that for the purposes of determining the amount of application under this proviso, where eighty-five per cent of the income referred to in clause (a) of the third proviso, is not applied, wholly and exclusively to the objects for which the trust or institution under the first regime is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 11; and

(c) the statement referred to in clause (a) of Explanation 3 is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

C) It is proposed to insert a proviso to the proposed Explanation 3 to the third proviso to clause (23C) of section 10 of the Act to provide that in computing the period of five years referred to in sub-clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

D) It is also proposed to insert an Explanation (Explanation 4) to third proviso to clause (23C) of section 10 to provide that any income referred to in the proposed Explanation 3 shall be deemed to be the income of the previous year in which the following takes place-

(a) the income is applied for purposes other than wholly and exclusively to the objects for which the trust or institution under the first regime is established or ceases to be accumulated or set apart for application thereto, or (b) the income ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5) of section 11, or (c) the income is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a)

of the proposed Explanation 3. (d) the income is credited or paid to any trust or institution under the first or second regime.

For the circumstances referred to in clause (c), it is proposed that the income shall be deemed to be the income of previous year which is the last previous year of the period, for which the income is accumulated or set apart under sub-clause (a) of clause (iii) of the proposed Explanation 3, but not utilised for the purpose for which it is so accumulated or set apart.

E) It is proposed to insert an Explanation (Explanation 5) to third proviso to clause (23C) of section 10 of the Act to enable the Assessing Officer to allow trusts or institutions under the first regime in circumstances beyond their control to apply such accumulated income for such other purpose in India as is specified in the application by such person subsequent to fulfilment of specified conditions. These other purposes are required to be in conformity with the objects for which the trust or institution under the first regime is established. If it is done, the provisions of Explanation 4 to third proviso to clause (23C) of section 10 shall apply as if the purpose specified by such person in the application under this Explanation were a purpose specified in the notice given to the Assessing Officer under clause (a) of the proposed Explanation 3 of the third proviso to clause (23C) of section 10.

F) It is proposed to insert a proviso to proposed Explanation 5 to third proviso to clause (23C) of section 10 of the Act to provide that the Assessing Officer shall not allow the application of any accumulated income, as referred to in the proposed Explanation 3, to be credited or paid to any trust or institution under the first or second regime, as referred to in clause (d) of proposed Explanation 4 to the third proviso to clause (230) of section 10

v) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years,

[Clauses 4 and 5]"

19. We find the Hon'ble Supreme Court in the case of CIT vs. Vatika Township Pvt. Ltd. (2014) 367 ITR 466 (SC) on the issue of interpretation of taxing statutes about retrospective amendment and prospective amendment, has held as under:

"30. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/ non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment

of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit law looks forward not backward. As was observed in Phillips vs. Eyre[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

32. The obvious basis of the principle against retrospectivity is the principle of fairness', which must be the basis of every legal rule as was observed in the decision reported in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd[4]. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Government of India & Ors. v. Indian Tobacco Association[5], the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra & Ors. [6] It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

34. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors."

20. We find the Bangalore 'C' Bench of the Tribunal in the case of M/s.Phulchand Gulabchand Charitable Trust vs. ITO (supra) has observed as under:

"3. The facts are that assessee had surplus income of Rs. 1,93,64,000 in FY 2007-08 relevant to AY 2008-09 on account of sale of immovable property of the

assessee trust. The objects of the trust, we may notice, was to run schools, collegex, dispensaries, Dharmashalas, etc. The assessee could not apply the aforesaid surplus for charitable purposes in AY 2008-09 and had applied for accumulation of such surplus in terms of section 11(2) of the Act. As per the provisions of section 11(2), accumulation is allowed for a period of 5 years. It is not in dispute that such accumulation was allowed by the AO for the AY 2008-09.

4. In AY 2013-14 which is the Assessment year in appeal, the AO held that since the five years period expires in AY 2013-14, and since the assessee did not utilize the sum accumulated for charitable purpose in terms of section 11(3)(c) of the Act, the sum accumulated and which remains unspent for charitable purposes, shall be deemed to be income of the person, of the previous year, immediately following the expiry of the period aforesaid. The relevant provisions of Sec.11(3) read as follows:

"(3) Any Income referred to in sub-section (2) which-

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that subsection or in the year immediately following the expiry thereof,

(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (230) of section 10,

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid or), as the case may be, of the previous year immediately following the expiry of the period aforesaid."
5. A reading of Clause (c) of Sec.11(3) of the Act would show that the time allowed for applying accumulation for charitable purpose is 5 year and one year following the expiry of 5 years. This is clear from the expression used "or in the year immediately following the expiry thereof. The previous year following the expiry of period of 5 years from AY 2008-09 will be AY 2014-15 and not AY 2013-14. This appeal relates to AY 2013-14 in which the AO sought to apply the provisions of section 11(3)(c). The Assessee did not raise such a plea regarding the applicability of the aforesaid provisions in AY 2014-15 only.

6. There is a reference to section 11(3)(d) in the order of AO, which in our opinion, is not the correct provision of law. Since the assessee did not give any explanation in not utilising the surplus funds accumulated, the AO brought to tax a sum of Rs. 1,93,54,000.

7. Before the CIT(Appeals), the plea of assessee was that it had utilised the accumulated surplus for construction of a hostel building and products accounts evidencing income & expenditure towards the same. This plea of the assessee was rejected for the following reasons:-

"5.0) I have gone through the facts of the case and the submissions of the appellant. The provisions of section 11(2)(a) is as under:

"If the accumulated amount or any part thereof is not utilised for the specified purposes during the period of accumulation or during the year immediately following the expiry thereof, the amount which has not been so utilised will be liable to tax as income of the previous year immediately following the expiry of the accumulation period."

In course of appellate proceedings the appellant has not furnished any details before me with regard to the said claim of expenditure pertaining to construction of hostel building and the advances given for the construction of building over the periods, which it claimed. A simple claim of maintenance of book of account is not sufficient. Further no details whatsoever were furnished before me regarding the claim that advance for purchase of property was made, with any corroborative evidence, that it incurred expenditure out of the above surplus amount. In absence of the above, I do not hesitate in concluding that the action of the AO was correct and the addition was made rightly. The grounds 1 to 4 and 6 are hereby dismissed.

8. The Assessee did not raise plea regarding the applicability of the aforesaid provisions of Sec.11(3)(c) of the Act only in AY 2014-15 only. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal.

9. As we have already noticed, the period of 5 years for spending the accumulated surplus for AY 2008-09 "or in the year immediately following the expiry thereof" is only AY 2014-15. This aspect has been highlighted by the assessee in ground Nos.2 to 4 in its appeal before the Tribunal, which reads as follows:-

"2. That the learned CIT(A) ought to have appreciated that u/s 11(3)(c) of the Income Tax Act, 1961 provides that accumulated income should be utilized during the 5 years period of accumulation or in the year immediately following the expiry thereof. That means, in the facts & circumstances of this case, the assesee at liberty to utilize the accumulated surplus up to 31-03-2014. Now in this case, the assessee has utilized of Rs.1.67,47,400/- as investment in poor student hostel in the year 2013-14. Therefore, there is no contravention of section 11(3) and the accumulated surplus up to 31-3-2013 cannot become deemed income of the assessee for the assessment year 2013-14.

3. That the learned CIT(A) has failed to take note of the AO assessment order u/s.143(3) of the Act, dated 26..12,2016 for the A Y 2014-15, Wherein the learned 40 has concluded the assessment after considering the bonafide explanation offered by the assessee and allowed the claim of Rs.1,67,47,400/-out of total surplus of Rs. 1,93,54,529/- and the remaining balance of Rs:26 07,129 was treated as income u/s. 13(1)(c) of the Act.

4. That the learned CIT(A) has failed to appreciate the fact that the appellant has furnished all the details with regard to claim of expenditure pertaining to construction of hostel building and other advances given for building over the periods have been produced before the AO during the course of assessment proceedings for the A Y 2014-15 and the same was considered and accepted by the AO."

10. The Id. counsel for the assessee has also filed before us a copy of the order of assessment for AY 2014-15 wherein the AO has accepted the utilization of accumulated surplus in AY 2008-09 for charitable purpose in AY 2014-15. The Id. Counsel for the assessee drew our attention to the fact that the assessee had spent a sum of Rs. 1,67,47,400 and to this extent, the application of income for charitable purposes has been accepted by the AO in AY 2014-15 in the order of assessment dated 26.12.2016 passed u/s. 143(3) of the Act.

11. The Id. DR while relying on the order of CIT(Appeals) submitted that this aspect has not been examined either by the AO or the CIT(Appeals) and therefore the issue should be sent back to the AO for fresh consideration in the light of order of assessment for AY 2014-15.

12. We have considered the rival submissions and are of the view that the issue raised now before the Tribunal in the form of grounds of appeal which we have extracted in the earlier part of the order should be considered by the AO. If AY 2013-14 is not the period within which the accumulated surplus has to be applied, then the addition made should be deleted. We therefore set aside the order of CIT(Appeals) and remand this issue for fresh consideration by the AO, after affording opportunity of being heard to the assessee.

13. In the result, the appeal by the assessee is treated as allowed for statistical purposes."

21. In light of the above discussion, we are of the considered opinion that since the assessee in the instant case has utilized the accumulated surplus funds in the year immediately following the prescribed period of 5 years i.e. before 31.03.2023 and the amendment to the provisions of section 11(3) are held to be prospective in nature, therefore, the Ld. Addl/JCIT(A) in our opinion is not justified in upholding the intimation of the CPC making adjustment of Rs.90,70,20,511/- u/s 11(3) as deemed income of the assessee which was accumulated in the financial year 2016-17 and when the provisions at the relevant time prescribed the utilization of the amount within a period of 5 years or in the year immediately following the prescribed period of 5 years. Even otherwise also we find merit in the argument of the Ld. Counsel for the assessee that the 5 year period ends on 31.03.2022 and therefore the unutilized amount could have been brought to tax in assessment year 2022-23 and not in assessment year 2023-24. In the light of the above discussion, we set aside the order of the Ld. Addl/JCIT(A) on this issue and direct the Assessing Officer/CPC to delete the adjustment. The grounds raised by the assessee are accordingly allowed."

6. Considering the above detailed narration, grounds raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed."

5. Considering the detailed findings arrived at by the Coordinate Bench in the above case and facts being identical except for variation in

the quantum of exemption claimed u/s.11, the grounds raised by the assessee in the present appeal are allowed.

6. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 31st October, 2025

Sd/-	Sd/-
(Pawan Singh)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 31st October, 2025

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai