

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.1798/Del/2025
निर्धारणवर्ष/Assessment Year:2023-24**

FOUNDATION FOR UNIVERSAL RESPONSIBILITY OF HIS HOLINESS THE DALAI LAMA, Core-4A, UGF, India, Habitat Centre, Upper Ground Floor, Lodhi Road, New Delhi. PAN No.AAATF0174E	बनाम Vs.	INCOME TAX OFFICER (EXEMPTION), Ward 1(1), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Ved Jain, Advocate, Shri Aayush Garg, CA & Ms. Upadhyay, CA
Revenue by	Shri Sahil Kumar Bansal, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	26.08.2025
उद्घोषणाकीतारीख/ Pronouncement on	12.11.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld. Addl./JCIT (Appeals), Chandigarh dated 27.02.2025 for the AY 2023-24 in sustaining the addition made by the Assessing Officer/CPC in

respect of adjustment on account of non utilization of accumulated funds.

2. Ld. Counsel for the assessee submitted that this appeal is filed against the order of the Ld. CIT(A) in confirming the addition of Rs.1,38,45,266/- made by AO/CPC u/s 115BBI of the Act. Ld. Counsel for the assessee submits that assessee is a charitable trust registered u/s 12A of the Act and claiming exemption u/s 11(2)(13) of the Act. During the assessment year under consideration, the assessee filed its return of income on 30.10.2023 declaring Nil income and the AO/CPC processed the intimation u/s 143(1) of the Act on 30.10.2023 making an adjustment of Rs.1,38,45,266/- on account of non-utilization of accumulated funds. It is submitted that aggrieved by the intimation passed u/s 143(1) the assessee preferred an appeal before the Ld. CIT(A) who upheld the addition made by the AO/CPC. The Ld. Counsel submitted the following table summarizing the addition confirmed by the CIT(Appeals):

FY	Amount Accumulated pending for utilization as on 01.04.2022	Due date for utilization (before amendment in law)	Amount utilized in FY 2022-23 (AY 2023-24)	Amount utilized in FY 2023-24 (AY 2024-25) (next year)	Amount utilized Before Due Date	CIT(A) remarks
2016-17	1,23,50,000	31.03.23 (5+1 years from 31.03.2017)	1,23,50,000	Nil	1,23,50,000	The AO (CPC) and CIT(A) alleged that amount of accumulation should be utilized by 31.03.2022 (i.e. 5 th year) and

						brought to tax Rs.1,23,50,000/- in AY 2023-24.
2017-18	48,04,734	31.03.24 (5+1 years from 31.03.2018)	33,09,468	14,95,266	48,04,734	The AO(CPC) and CIT(A) erred in applying the amendments in Finance Act 2022 retrospectively to the accumulation in FY 2017-18 and alleged that the same should be utilized by 31.03.2023 (i.e. 5 th year) and brought to tax Rs.14,95,266/- being the unutilized accumulation by 31.03.2023.

2.1 Ld. Counsel for the assessee referring to the above table submitted that the due date for utilization of the accumulated funds before the amendment in law was 5 years + 1 year and the amendment which was brought in by the Finance Act, 2022 restricting the accumulation of funds to 5 years is prospective in nature and is applicable from the AY 2023-24.

3. Ld. Counsel further submitted that the issue is squarely covered by the decision of the Mumbai Bench in the case of Dadar Digamber Jain Mumukshu Mandal Vs. CIT (Exemptions) (2025) (176 taxmann.com 661) dated 15.07.2025. Ld. Counsel for the assessee submitted that since the assessee has made the utilization of accumulated funds within the permissible time i.e. sixth year (5+1)

there cannot be any adjustment while processing the return u/s 143(1) by denying the accumulation.

4. Ld. Counsel further submitted that no addition can be made u/s 143(1) of the Act when the issue is debatable in nature.

5. On the other hand, the Ld. DR supported the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below. We find that the issue in the present appeal is squarely covered by the decision of the Mumbai Bench of the Tribunal in the case of Dadar Digamber Jain Mumukshu Mandal (supra), wherein the Tribunal held that the amendment to section 11(3)(c) by Finance Act, 2022 w.e.f. 01.04.2023 which omitted extra period of 1 years following expiry of initial period of accumulation of 5 years is prospective in nature and thus, the same would be applicable only to fresh accumulations from AY 2023-24 onwards. While holding so the Tribunal held as under:

“13. In the instant case, the matter under consideration relates to accumulation of income done by the assessee pertaining to the FY. 2016-17 and FY. 2017-18 and as such, there is no amendment or change in law and the assessee continues to remain eligible insofar as the period for which the income can be accumulated or set apart which remains at five years and there has been no change which has been brought in by the Finance Act, 2022.

14. *Moving further, in terms of sub-section (3) of section 11, it talks about the situations where the income so accumulated and referred to in subsection (2) can be brought to tax in the hands of the trust or the institution.*

There has been an amendment to sub-section (3) by the Finance Act, 2022, w.e.f. 1st April, 2023 and it is therefore relevant to look at the un-amended provisions and the amendment which has been brought in by the Finance Act, 2022.

15. *The provisions of sub-section (3) to section 11, prior to its amendment by the Finance Act, 2022 read as under:*

“(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 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,

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 (23C) of section 10.

It 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.”

16. *The provisions of sub-section (3) to section 11, as amended by the Finance Act, 2022 read as under:*

“(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,*

(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 (23C) of section 10 shall be deemed to be the income of such person of the previous year,-*

(i) *in which it is so applied or ceases to be so accumulated or set apart under clause (a); or*

(ii) *in which it ceases to remain so invested or deposited under clause (b); or*

(iii) *being the last previous year of the period, for which the income is accumulated or set apart but not utilised for the purpose for which it is so accumulated or set apart under clause (c); or*

(iv) *in which it is credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution under clause (d).*

17. We, therefore, find that under the un-amended law where the accumulated income is not utilized for the specific purposes during the period of five years or in the year immediately following the expiry of that period, then the accumulation to the extent not so utilized will be chargeable to tax as income of the previous year immediately following the expiry of that period. In other words, the assessee gets an extended period of one more year, in total, six years for utilization of accumulated income and on expiry of the said period, by virtue of the deeming fiction, the unutilised

accumulated income shall be brought to tax in the previous year following the expiry of period of six years.

18. *The Finance Act, 2022 has amended and omitted the extra period of one year following the expiry of the initial period of accumulation of five years. Therefore, unlike under the un-amended provisions wherein the income which is not utilized for the purposes it was accumulated can be brought to tax on the expiry of the sixth year, under the amended law, that income can be brought to tax on the expiry of five years itself.*

19. *Therefore, on a combined reading of sub-section (2) to Section 11 and sub-section (3) to Section 11 of the Act, we find that there is no change as such which has been brought about by the Finance Act, 2022 in terms of the initial period of accumulation which remains at five years, however, the extended period of accumulation of one year is no more is available to the trust or the institution. The said amendment has been brought in by the Finance Act, 2022 w.e.f. 1st April, 2023 and to apply in relation to AY. 2023-24 and subsequent assessment years.*

20. *The question that arises for consideration is whether the said amendment relates to existing accumulations which already stood for prior years or relates to fresh accumulations for the financial year 2022-23 onwards. In this regard, we have gone through the Finance Bill, 2022 and the Memorandum explaining the provisions in the Finance Bill, 2022 and find that the amendment has been brought in the provisions of section 11 as well as section 10(23C) of the Act with a view to bring consistency in the two exemption regimes which have been provided under the Act and as part of that, the instant amendment has also been carried out. There is nothing which has been specified as to limiting the extended period of accumulation already available to the trust institution in respect of income already accumulated for earlier years. The said amendment has been clearly stated to take effect from 1st April, 2023 and to apply in relation to AY. 2023-24 and subsequent assessment years.*

21. *Therefore, both in terms of language as well as the intent, we find that the amendment which has been brought in by the Finance Act, 2022 relates to accumulation of income pertaining to previous year starting from 1st April, 2022 onwards relevant to AY. 2023-24 and subsequent*

assessment years and in that sense, has to be applied prospectively in respect of fresh accumulations and not in respect of existing accumulations which continue to remain guided by the erstwhile provisions at the relevant point in time when the t accumulations were made in the respective financial years.

22. *We find that similar view has been taken by the Co-ordinate Pune Benches in case of Yashwantrao Chavan Maharashtra Open University v. Commissioner of Income-tax (Exemption) [2025] 175 taxmann.com 988 (Pune - Trib.)/ITA No. 505/Pune/2025) pertaining to AY.2023-24, wherein the Co-ordinate Bench referring to the provisions of the Finance Act, 2022, the memorandum explaining the Financial Bill, 2022 and drawing support from the decision of the Hon'ble Supreme Court in case of Vatika Township has held that where in terms of provisions at the time of accumulation, the assessee has utilized the amount in the year immediately following the prescribed period of 5 years and the amendment to the provisions of section 11(3) are held to be prospective in nature, no adjustment is warranted and the action of the AO/CPC was set- aside. We can gainfully refer to the findings of the Co-ordinate Bench which reads as under:*

"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 waive only if such accumulated amount was not applied within 6 years from the year of accumulation 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 [or in the year immediately following the expiry thereof], [or section 12AB

(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 (23C) 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 i.e. 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:

(1) 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 regime.

(ii) However, the accumulation of income, as per the provisions of sub-section (2) of section 11 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 sub section (2) of section 11, but not utilized 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 (in) 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 (23C) 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 v. Vatika Township Pvt. Ltd. (2014) 36/ ml 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-a-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 retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. 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 Cheriffien 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 conferred 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 v. 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, colleges, 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 subsection (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 (23C) 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 200809 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.) 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 assessee 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.AO has concluded the assessment after considering the bona fide 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(l)(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.”

23. Further, our reference was drawn to the decision of the Ld.Addl/JCIT(A)-4, Chennai in case of Shri Dahanukarwadi Mahavir Nagar Shwetamber Murtipujak Jain Sangh for AY. 2023-24 wherein it was held that though the amendment to section 11(3)(c) was introduced from A.Y 2023-24, the same can't be applied for accumulations made in the earlier years as the Finance Act 2022 has not enacted this amendment retrospectively and is prospective in nature and the omission of words "or in the year immediately following the expiry thereof" in section 11(3)(c) is applicable for the accumulations made from A.Y 2023-24 and not for the earlier years. Nothing has been brought on record as to whether the Revenue has challenged the said decision and thus, the same also supports the case of the assessee.

24. In light of the aforesaid discussion, we find merit in the contentions advanced by the Ld.AR that as far as the

accumulation relating to the period of FYs. 2016-17 and 2017-18 are concerned, the assessee had the time window till 31-03-2023 and 31-03-2024 respectively by which it has to utilize accumulated income and in that view of the matter, the amendment brought in by the Finance Act, 2022 does not debar the assessee from availing the said time window in respect of existing accumulations and the amendment have to be read prospectively in respect of fresh accumulations for the period pertaining to previous year starting from 1st April, 2022 onwards.”

7. Applying the decision of the Mumbai Bench of Tribunal to the assessee's case before us, the accumulations made by the assessee for the FYs 2016-17 & 2017-18 which have been utilized before 31.03.2023 and 31.03.2024 respectively cannot be disallowed while processing the return u/s 143(1) of the Act. Thus, following the decision of the Mumbai Bench of the Tribunal we delete the adjustment made in the intimation passed u/s 143(1) of the Act.

8. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on 12.11.2025

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 12.11.2025

*Kavita Arora, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI