

**आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA No. **312/SRT/2025** (AY 2023-24)

(Physical hearing)

Shree Rander Road Jain Sangh Near Rushabh Tower, Rander Road, Surat-395 009 [PAN : AAATR 2335 M]	बनाम Vs	CPC, Bangaluru Current jurisdiction Income Tax Officer, Exemption Ward, Surat, Aaykar Bhawan, Anvil Business Center, Adajan, Surat-395 007
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, Advocate
राजस्व की ओर से /Revenue by	Shri Ajay Uke– Sr-DR
सुनवाई की तारीख/Date of hearing	15.09.2025
उद्घोषणा की तारीख/Date of pronouncement	28.11.2025

**Order under section 254(1) of Income Tax Act**

**PER DINESH MOHAN SINHA, JUDICIAL MEMBER:**

This appeal by assessee is directed against the order of Ld. Commissioner of Income-tax, Appeal, Addl/JCIT(A)-2, Mumbai [for short, "Ld. CIT(A)"] dated 18.02.2025 for the assessment year 2023-24, which in turn arises out of an assessment order passed by the Centralized Processing Center/Assessing Officer (in short, "AO") under section 143(1) of Income-tax Act, 1961 ('the Act') on 30.11.2023.

The assessee has raised the following grounds of appeal:-

*"1. On the facts and the circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.*

*2. On the facts and the circumstances of the case as well on the law of the subject, the ld. CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs.15,09,000/- u/s 115BBI by way of adjustment u/s 143(1)(a).*

*3. It is therefore prayed that above additions/disallowances made by the Assessing Officer and confirmed by learned CIT(a) may please be deleted or the matter may please be set aside to the file of CIT(A) for fresh adjudication.*

*4. Appellant craves leave to add alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Brief facts of the case that assessee is a charitable trust and filed its return of income on 12.10.2023 declaring Rs.nil income. The assessee-trust filed Form-10 on 16.09.2017 for AY 2016-17 accumulation of income of Rs.43,60,000/- to be applied in future. Out of Rs.43,60,000/- assessee applied Rs.28,51,000/- upto end of previous year relevant to AY 2022-23 and remaining amount of Rs.15,09,000/- could not be applied till 31.03.2022 and same was applied in succeeding year ending on 31.03.2023. The AO processed the return and made adjustment of Rs.15,09,000/- as income chargeable u/s 115BBI vide intimation dated 23.12.2023. Further AO issued intimation for proposed adjustment on 29.11.2024 and assessee filed reply on 26.12.2024 but was not considered by the AO.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). The Ld. CIT(A) confirmed the action of CPC that more than 5 years has lapsed after the amount was set apart in AY 2016-17 and as per the provisions of 11(3)(c), such amount shall be deemed to be the income of such person of the previous year in which it ceases and CPC has rightly taxed it u/s.115BBI as deemed income referred to Sec.11(3) of the Act, who dismissed the case vide order dated 18.02.2025. That the assessee filed an appeal against the impugned order of the Ld. CIT(A) dated 18.02.2025 before us.

4. During the course of argument, the Ld. AR of the assessee submitted case law, Form-10 for AYs 2017-18, 2022-23 and 2023-24 pages 10 to 15 of the paper book, provisions of S.11(3) as amended by Finance Act 2021 and 2022 pages 16 and 17 of

the paper book. The Ld. AR contended that law is changed by Finance Act, 2022 and same is reproduced:

*"Section-11(3) of The Income Tax Act amended by Finance Act, 2022  
(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 [or section 12AB] or to any found 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]*

*\*words "or in the year immediately following the expiry thereof" shall be omitted by the Act No.6 of 2022 w.e.f. 1-4-2023."*

The Ld. AR prayed before the Bench that matter may be restored back to the file of AO for fresh adjudication.

5. On the other hand, Ld. Sr-DR for the revenue, relied upon the order of the Ld. CIT(A) and not objected to the prayer of the Ld. AR.

6. We have heard both the parties and perused the material available on record and also perused the order of Ld. CIT(A). We find that Ld. AR relied on the judgment of (i) Meshri Mahajan Vanda vs. ITO [2025] 178 taxmann.com 93 (Ahmedabad-Trib.)(02-09-2025), (ii) Dadar Digamber Jain Mmkshu Manda vs. CIT(E) (2025) 176 taxmann.com 661 (Mumbai-Trib.) and (iii) Yashwantrao Chavan Maharashtra Open

University vs. CIT(E) (2025) 175 taxmann.com 988 (Pune-Trib.). We note that the appellant has contended that the assessee filed Form-10 for AY 2016-17 on 16.09.2017 for accumulation of income of Rs.43,60,000/- to be applied in future. Out of this amount of Rs.43,60,000/-, assessee applied Rs.28,51,000/- upto end of previous year relevant to AY 2022-23 remaining amount of Rs.15,09,000/- could not be applied till 31.03.2022 and the same was applied in succeeding year ending on 31.03.2023. these particulars were projected in Form-10 for AY 2022-23 and AY 2023-24. On perusal of the Forms filed by the appellant, it is seen that the appellant has filed a Form-10 on 07.09.2016. There is no Form-10 available on system as claimed by the appellant to have been filed for AY 2016-17 on 16.09.2017 for accumulation of income of Rs.43,60,000/- to be applied in future. When the Form-10 filed for AY 2016-17, it is seen that the amount set apart is only Rs.19,60,000/- with period for accumulation ending on 31.03.2021 as seen below. Where assessee-trust accumulated income pertaining to financial years 2016-17, assessee had time window till 31.03.2023 by which it could utilize accumulated income; amendment brought in by Finance Act, 2022, did not debar assessee from availing said time window in respect of existing accumulations and amendment had to be read prospectively in respect of fresh accumulations for period pertaining to previous year starting from 1-4-2022 onwards.

6.1 In the light of the aforesaid discussion, it is viewed that there is merit in the contentions advanced by the assessee that as far as the accumulation relating to the period of financial year 2016-17 is concerned, the assessee had the time window till 31.03.2023 by which it could utilize accumulated income and in 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 would have to be read prospectively in respect of fresh accumulations for the period pertaining to previous year starting from 1-4-2022 onwards. Further, as far as the impugned assessment year is concerned, no addition can be made for accumulation of income pertaining to financial year 2017-18 as the assessee continues to be guided by the provisions as existed at the relevant point in time and the time window of six years as provide. The amendment made by the Finance Act, 2022 cannot curtail the said time window and has to be applied prospectively in respect of fresh accumulations. We note that amendment to section 1(3(c) by Finance Act, 2022 with effect from 1-4-2023 which omitted extra period of one year following expiry of initial period of accumulation of five years is prospective in nature and, thus, same would be applicable only to fresh accumulations from assessment year 2023-24 onwards. After considering the facts and circumstances of the case we are inclined to set aside the order of Ld.CIT(A) and remand this matter back to the file of AO for a fresh adjudication after giving opportunity of hearing to the assessee. The assessee is also directed to ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law.

7. In the result, the appeal of the is allowed for statistical purposes.

Order pronounced in the open court on 28/11/2025.

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/Accountant Member

Sd/-  
(DINESH MOHAN SINHA)  
न्यायिक सदस्य/Judicial Member

सूत / Surat Dated: 28/11/2025

Dkp Outsourcing Sr.P.S\*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत