

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 3555/Del/2024
(Assessment Year: 2015-16)

DCIT(Exemption), Circle-1(1), Delhi	Vs.	Ishan Educational Research Society, 2418, 24 th Floor, E2 Block Civil Centre, Delhi
(Appellant)		(Respondent)
		PAN: AAAAI3077L

CO No. 99/Del/2024
(In ITA No. 3555/Del/2024)
(Assessment Year: 2015-16)

Ishan Educational Research Society, 2418, 24 th Floor, E2 Block Civil Centre, Delhi	Vs.	DCIT(Exemption), Circle-1(1), Delhi
(Appellant)		(Respondent)
PAN: AAAAI3077L		

Assessee by :	Dr. Rakesh Gupta, Adv Shri Saksham Agarwal, CA
Revenue by:	Shri Om Prakash, Sr. DR
Date of Hearing	05/01/2026
Date of pronouncement	09/01/2026

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3555/Del/2024 filed by the revenue and CO 99/Del/2024 filed by the assessee for AY 2015-16, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] in ITBA/NFAC/S/250/2024-25/1064670325(1) dated 06.05.2024 against the order of assessment passed u/s 147 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated

18.12.2017 by the Assessing Officer, ITO(Exemption), Ward-1(2), New Delhi (hereinafter referred to as 'Id. AO').

2. At the outset, we find that there is a delay in filing of appeal by the revenue by 31 days. Considering the reason adduced in the condonation petition, in the interest of substantial justice, we are inclined to condone the delay and admit the appeal of the revenue for adjudication.

3. The only effective issue in the grounds raised by the revenue is as to whether the Id CIT(A) was justified in holding that the assessee would be liable to tax on the unspent accumulated fund pertaining to AY 2009-10 in AY 2015-16 i.e. the year under consideration. The assessee has also preferred cross objection challenging the validity of assumption of jurisdiction u/s 147 of the Act for AY 2015-16.

4. We have heard the rival submissions and perused the material available on record. It would be relevant to address the background of the case so as to adjudicate the grounds raised by the assessee and by the revenue. The assessee is a charitable society within the meaning of Section 2(15) of the Act. The assessee is duly registered u/s 12A of the Act and enjoying exemption u/s 80G of the Act. The assessee is also duly approved as a registered society u/s 10(23C) of the Act. The return of income for AY 2015-16 was filed by the assessee on 30.09.2015 declaring Nil income. The assessee while filing the return of income for AY 2009-10 had set aside the sum of Rs. 3.55 crores for the purposes of extension of building for providing hostel facilities to the students. The assessee had utilized the amount of Rs. 1,45,61,317/- during AY 2013-14 out of such accumulated fund. The remaining sum of Rs. 2,09,38,683/- could not be utilized by the assessee within the time span of 5 years due to injunction order passed by the Hon'ble Delhi High Court. This unspent accumulated fund was sought to

be brought to tax by the Id AO. Accordingly, the case of the assessee was sought to be reopened by the Id AO for AY 2015-16 vide issuance of notice u/s 148 of the Act on 27.02.2017. The case of the revenue is that the accumulated fund for AY 2009-10 which remained unutilized for the purpose of objects of the society would have to be taxed in the year immediately succeeding the 5th year from the year of accumulation. According to the revenue, as per the Act, the accumulated fund for AY 2009-10 should be utilized before AY 2014-15, failing which, the unutilized portion would become taxable as income of the assessee in the immediately succeeding year after the expiry of 5 years i.e. in AY 2015-16, being the year under consideration. Accordingly, the Id AO framed the assessment u/s 147 r.w.s. 143(3) of the Act on 18.12.2017 bringing to tax a sum of Rs. 2,09,38,683/- being the unutilized accumulation amount of AY 2009-10 as per Clause (a) to 3rd Proviso to Section 10(23C) of the Act.

5. The case of the assessee was that the accumulated fund could not be utilized fully for the purpose of objects of the society and in view of the conflict that arose due to an agreement entered into by the appellant to buy a new building for hostel facility and for this, the assessee paid an advance of Rs. 51,00,000/- to the vendor and the sum of Rs. 4,64,84,500/- was paid/deposited towards stamp duty, court fee and deposit with the Court during the financial years relevant to A.Y. 2010-11 and 2011-12 for the same, but the acquisition could not be completed as some dispute, arose with the vendor and the assessee approached the Hon'ble High Court of Delhi. As per the Court orders, the amount remained deposited with it and could not be utilised otherwise.

6. The assessee challenged the validity of assumption of jurisdiction u/s 147 of the Act before the Id CIT(A) on various facets, which stood rejected

by the Id CIT(A). The assessee also pleaded on, without prejudice basis, that there was excess application of fund for charitable purposes in earlier years which had already been carried forward to the subsequent years and the same would have to be set off with the income determined for the year under consideration. The assessee in this regard placed reliance on the decision on the Hon'ble Jurisdictional High Court in the case of CIT(E) Vs. Subros Educational Society which stood confirmed by the Hon'ble Supreme Court.

7. The Id CIT(A) agreed to the alternative plea of the assessee that the assessee would be entitled to set off the earlier years' excess of expenditure over income with the income determined for the year under consideration by holding that the ratio decidendi of Hon'ble Delhi High Court in the case of Subros (supra) shall apply to the facts of the instant case. The Id CIT(A) also noted that the said decision of the Hon'ble Delhi High Court has been subsequently approved by the Hon'ble Supreme Court. Further, the Id CIT(A) duly appreciated the fact of the assessee that it was not able to utilize the funds set aside for the building construction due to conflicts between buyer and seller and on-going court cases. The Id CIT(A) duly appreciated the injunction order passed by the Hon'ble Delhi High Court in this regard on the assessee. The Id CIT(A) also noted that the Id AO in assessee's own case for AY 2016-17 had accepted the said fact of injunction order passed by the Hon'ble Delhi High Court following the direction of Additional Commissioner of Income Tax u/s 144A of the Act. These court documents and assessment order of AY 2016-17 were submitted by the assessee before the Id CIT(A) as additional evidence and the same were duly admitted by the Id CIT(A) after receiving the comments of the Id AO. The Id CIT(A) observed that assessee could not utilize the accumulated fund on or before 31.03.2014 due to injunction order passed by the Hon'ble Delhi

High Court and accordingly deleted the addition made in the sum of Rs. 2,09,38,683/- made in the hands of the assessee for AY 2015-16.

8. We find that the Id CIT(A) had appreciated the contentions of the assessee that it was beyond the control of the assessee to have utilized the accumulated funds. Further, once the excess of expenditure over income of earlier years is allowed to set off with the unutilized accumulated fund in AY 2015-16 in view of the decision of the Hon'ble Delhi High Court in the case of Subros Educational Society referred to in the order of the Id CIT(A) which stood confirmed by the Hon'ble Supreme Court in 166 DTR 257 (SC), there cannot be any income of the assessee for AY 2015-16 that could have escaped assessment warranting reopening u/s 147 of the Act. Hence, the very assumption of jurisdiction u/s 147 of the Act by the Id AO is flawed on this count itself.

9. We do not find any infirmity in the order of the Id CIT(A) as the Id CIT(A) had duly considered the provisions of the Act with regard to non utilization of the accumulated fund by the assessee due to injunction order passed by the Hon'ble Delhi High Court and had granted relief to the assessee on that count.

10. In view of the aforesaid observations, we do not find any infirmity in the order of the Id CIT(A) in granting relief to the assessee on merits and accordingly, the grounds raised by the revenue are dismissed. We have also held that the very basis of formation of belief for reopening the assessment by the Id AO stand on a weaker footing in view of the discussions hereinabove. Hence, the cross objection of the assessee is allowed on this legal facet alone leaving other arguments advanced by the Id AR open on assumption of jurisdiction u/s 147 of the Act.

11. In the result, the appeal of the revenue is dismissed and the Cross Objection of the assessee is allowed.

Order pronounced in the open court on 09/01/2026.

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

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 09/01/2026
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi