

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष

BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No. 177/Chd/2021

निर्धारण वर्ष / Assessment Year : 2015-16

Himalayan Buddhist Cultural Association, Vill: Batahar Vihar, P.O. Haripur Dist. Kulu Manali-175136 Himachal Pradesh	बनाम	ACIT, Circle Mandi, Himachal Pradesh
स्थायी लेखा सं./PAN NO: AAATH4732L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri R.S. Singhvi, CA

राजस्व की ओर से/ Revenue by : Shri Manveet Singh Sehgal, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 21/10/2021

उद्घोषणा की तारीख/Date of Pronouncement : 04/01/2022

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 07/04/2021 of Ld. CIT(A) National Faceless Appeal Centre(NFAC), Delhi.

2. Following grounds have been raised in this appeal:

1(i) That on the facts and circumstances of the case, the CIT(A) was not justified in upholding the addition of Rs. 15,70,071/- made by the CPC, Bangalore on the ground that the Appellant Trust has failed to furnish Form 10 within the limitation specified u/s 11(2) of the Income Tax Act,

1961.

(ii) That having made the claim of accumulation of funds in the return of income filed in accordance with provisions of section 139(1), there is no justification in disregarding the same and treating the Form 10 as delayed.

(iii) That the Appellant having claimed the accumulation of funds in the return of income and there being no dispute with regard to charitable activities of the Trust, the addition made by lower authorities is merely on the technical ground of limitation.

(iv) That in any case, the delay in filling of Form 10 before due date of filling of Income Tax Return was on bonafide grounds, the CIT(A) has erred in not condoning the delay.

2(i) That on the facts and circumstances of the case, the CIT(A) was unjustified in not accepting the claim of accumulated profits amounting to Rs. 15,70,071/- made u/s 11(2) of the Act on the alleged ground that the Form 10 filed by the Appellant Trust did not specify the explicit purpose for accumulating the fund.

(ii) That having specified that accumulation of funds is for the purposes of objects of the Trust, the same is in conformity with the provisions of section 11(2) of the Income Tax Act, 1961.

(iii) That there being no discrepancy with respect to the amount accumulated by the Trust for charitable purposes and the same being duly deposited as per provisions of section 11(5) of the Act, the addition made is against the scope of section 11 and is un-sustainable under law.

3. That the orders of the lower authorities are not justified on facts and the same are bad in law.

4. That the assessee craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.

From the aforesaid grounds it is gathered that only grievance of the assessee relates to the sustenance of addition of Rs. 15,70,071/- made by the A.O. on the ground that the assessee failed to furnish Form No. 10 within the limitation of period specified under section 11(2) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. Facts of the case in brief are that the assessee was engaged in various social and religious activities and was registered under section 12A of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). The assessee filed the return of income online on 23/09/2015 declaring NIL income. The assessee claimed the following deductions:

Sl. No.	Particulars	Amount(in Rs.)
1	Amount applied to charitable purposes in India during the previous year	86,13,730/-
2	Amount accumulated or set apart for specified purpose [s e c 11(2) and sec 11(5)]	15,70,071/-
3	Income Accumulated or Set Apart Upto 15%	17,97,141/-
	Total Deductions	1,19,80,942/-

A sum of Rs. 15,70,071/- was accumulated or set apart for specified purposes. However the said amount was not allowed as a deduction.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

13.1 Non-filing of Form No 10 cannot be made matter of section 143(1):

In this regard, provisions of section 143(1) of the Act are important to note & consider. The relevant extracts are reproduced herein below:-

"Assessment

143. (1) *Where a return has been made under section 139, or in response to a notice under sub-section*

(1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(b)

*There was **neither any arithmetical error nor any incorrect claim which is apparent in the return** of income filed u/s 139. The claim of amount accumulated or set apart for specified purpose in terms of sec 11(2) and sec 11(5) of the IT Act amounting Rs 15,70,071 was correctly shown in Return of Income against item no 9vi in 'Part B-TI - Statement of Income For The Period Ended On 31st March, 2015'. This fact also gets support from the Audit Report dated 01.06.2015, filed along with Return of Income in Form No. 10 B, wherein the amount of Rs 15,70,071 was reflected against point no 5 of 'Annexure - Statement of Particulars - 1. Application of Income For Charitable Or Religious Purposes'.*

*The inadvertent omission in Non filing of Form 10 cannot be made the basis for computing the total income of an assessee. The above submission & argument of the Appellant are well supported by the ruling or underlying ruling(s) of Hon'ble Supreme Court in the case of **Commissioner of Income Tax vs. The Nagpur Hotel Owners' Association (2001) 247ITR 0201**.*

14. Prayer:

In view of above, your Ld. Office is prayed to provide due relief to the assessee.

In case your Ld. Office, is not in concurrence with the above prayer for relief of the Appellant, kindly grant another opportunity of hearing for further written submissions to secure due relief.

4.1 The Ld. CIT(A) after considering the submissions of the assessee sustained the addition made by the A.O. by observing in para 4 to 4.7.2 as under:

4.4 The provision of section 11 (2) of the Income-tax Act, 1961 as produced above, states that, in the case 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.

4.5 It is fact that Form-10 has not been submitted by the appellant to the Assessing Officer in the prescribed manner, 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, on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year. The appellant submitted Form-10 on 24.05.2018 i.e. after 32 months of due date and as well after the order u/s 143(1) of Act.

4.6.1 Therefore it is clear that where 85% of the income is not applied to charitable or religious purposes, the charitable trust or institution may accumulate or set apart either the whole or part of its income for future application for such purposes. Such income so accumulated, or set apart, is not included in the total income of the trust in the year of receipt of income.

- For this purpose, such trust has to inform the concerned Assessing Officer the purpose and period (which in no case can exceed 5 years) for which the income is accumulated or set apart. This information has to be given electronically in Form No. 10. The benefit of accumulation is not available if Form No. 10 is not uploaded before the due date of filing return of income specified under section 139(1) for the fund or institution.
- Further, the money so set apart or accumulated should be in the modes specified in section 11(5).
- The benefit of accumulation is not available if return of income is not furnished before the due date of filing return of income under section 139(1).

4.6.2 If in any year, the income which is accumulated for the specified purpose (or purposes) of the trust, is applied to purposes other than charitable or religious purposes or ceases to be accumulated for application for such purposes, it will become chargeable to tax as the income of that year.

- If in any year, the accumulations cease to remain invested in securities specified in section 11(5) then also the income so accumulated will become chargeable to tax as the income of that year.
- If the accumulations are not utilised for the specified purposes during the period of accumulation or in the year immediately following the expiry of that

period, then the accumulations to the extent they are not so utilised, will become chargeable to tax as income of the previous year immediately following the expiry of that period.

- Payment to other trusts and institutions out of income from property held under trust in the year of receipt of such income is treated as application of income. However, any payment out of accumulated income to other trust/institution (not being payment in the year in which trust claiming exemption is dissolved) shall not be treated as application of income and will be taxed in the year in which such payment or credit is made out of accumulated income.

Sometimes failure to apply the income so accumulated or set apart in the specified manner may arise due to circumstances beyond the control of trustees. In such a case, the Assessing Officer may, on the receipt of an application from the person in receipt of the income, allow such income to be applied for such other charitable/ religious purposes in India as are in conformity with the objects of the trust/institution.

4.6.3 The assessee is allowed to accumulate up to 15% of the income earned during the year for application for charitable or religious purposes in India in future. If the assessee wants to accumulate or set apart the income in addition to 15% of the income, he can do so if certain conditions are satisfied. In this case, the amount accumulated in excess of 15% shall be deemed to have been applied for charitable or religious purposes in India during the previous year itself. Exemption under section 11(2) shall be allowed subject to the following conditions being satisfied:

1. such person furnishes a statement in Form No. 10 electronically either under digital signature or electronic verification code 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;

2. the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5);

3. the statement referred to in clause (a) is furnished on or before the due date specified under section 139(1) 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.

4.7.1 During the appellate proceedings Form-10 which has been uploaded on 24-05-2018 has been submitted. On perusal of Form-10 it has been noted that against the "Purpose for which amount is being accumulated or set apart" it has been mentioned that- Society Object . During the appellate proceedings extract of minutes of meeting has been submitted, produced here under:

"EXTRACTS FROM THE MINUTES OF THE MEETING OF THE GOVERNING BODY OF THE SOCIETY HELD ON 01-06-2015 AT REGISTERED OFFICE AT 3.00 PM

Resolved that out of the income of the society for the previous year, relevant to the assessment year 2015-16 an additional amount of Rs 15,70,071 over and above 15% of the income of the society should be accumulated or set apart till

the previous year ending 31-03-2020 in order to enable the governing body to accumulate sufficient funds for carrying out the following purposes of the society:-

(a) To promote various objects of the Society"

Thus it is fact that no specific purpose has been stated only general statement that to promote various objects of the Society has been mentioned in belated filed Form-10. As per the accumulation statement , the appellant trust has claiming accumulation of income u/s 11(2) of the I.T. Act, by stating the purpose as "Society Object" in Form-10 as well as Resolution for accumulation of income without mentioning any specific purposes for accumulation or set apart. As already discussed income should be applied for charitable purposes in India, where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section. The provision of section 11 (2) is a concession provision to enable a charitable trust to meet the contingency where the fulfillment of any project within its object needs heavy outlay calling for accumulation to amass sufficient money to implement it. However, as discussed no specific purposes has been mentioned in the Form-10.

The reliance was placed on the judgment of Hon'ble Calcutta High Court in the case of DIT(E) Vs. Trustee of Singhania Charitable Trust (1993) 199 ITR 818(Cal)

5. Now the assessee is in appeal.

6. The Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the assessee furnished the return of income in due time and was registered under section 12A of the Act. It was further submitted that the assessee furnished Form No. 10B with return of income and Form No. 10 was furnished later on, however the benefit under section 11(2) of the Act on the accumulated profit was not provided to the assessee. It was stated that no notice of deficiency if any, was issued to the assessee and that all the details were furnished by the assessee. It was contended that if there was delay in furnishing of the Form No. 10, it could had been condoned because the A.O. never pointed out the defect before disallowing the benefit under section 11(2) of the Act to the assessee. He requested to restore the issue back to the file of the A.O. to allow the claim after verification. The reliance was placed on the following case laws :

- *M/s Infrastructure Development Fund Vs. The DCIT, Exemptions in ITA No. 220/Chd/2020 for the A.Y. 2016-17 vide order dt. 24/08/2020 (Chandigarh ITAT)*
- *Trust for Reaching The Unreached Through Trustee Vs. CIT(E), Ahmedabad [2021] 126 taxmann.com77 (Gujarat HC)*
- *CIT Vs. Mayur Foundation [2005] 274 ITR 562 (Gujarat HC)*
- *Wadia Institute of Himalayan Geology Vs. ACIT [2015] 62 taxmann.com 338 (Delhi-Trib)*
- *M/s Infrastructure Development Fund Vs. DCIT (ITA No. 220/C HD/2020) (Dt. 24/08/2020) (Chd Trib)*
- *Chandraprabhuji Maharaj Jain Vs. DCIT(E) [2019] 110 taxmann.com 11 (Mad HC)*
- *Shree Dharma Sastha Sewa Samajam vs. ITO [2016] 73 taxmann.com 324 (Delhi-Trib)*
- *CIT Vs. Gokula Education Foundation [2017] 81 taxmann.com 372 (SC)*
- *CIT(E) Vs. Bochasanwasi Shri Akshar Purshottam Public Cable Trust [2019] 105 taxmann.com 97(SC)*
- *CIT Vs. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust [2019] 102 taxmann.com 122 (Gujarat HC)*
- *DIT(E) Vs. Daulat Ram Education Society [2005] 278 ITR 260 (Delhi HC)*
- *DIT(E) Vs. NBIE Welfare Society, New Delhi [2015] 54 taxmann.com 196 (Delhi) (Delhi HC)*
- *Arhatic Yoga Ashram Management Trust Vs. ITO (ITA No. 2920/CHNY/2017) (Dt. 20/01/2021)*

7. In his rival submissions the Ld. DR strongly supported the orders of the authorities below and reiterated the observations made by the Ld. CIT(A) in the impugned order.

8. After considering the submission of both the parties and the material available on the record, it is noticed that a similar issue was a subject matter of the assessee's appeal in case of *M/s Infrastructure Development Fund Vs. The DCIT, Exemptions (supra)*, wherein the relevant findings have been given in para 3 at page 3 of the order dt. 24/08/2020 in ITA No. 220/Chd/2020 for the A.Y. 2016-17 which read as under:

" Tribunal for assessment year 2014-15 dated 31/07/2020. The Tribunal adjudicating on the identical issue, as taken vide ground Nos. 4 & 5, has held that if form No. 10 is filed during the continuation of the assessment proceedings that should have been taken into consideration by the Assessing Officer. That non filing of the Form No. 10 within stipulated period may be an irregularity but not illegality, if the assessee cures the defect during assessment proceedings, the assessee is entitled to the benefit fo accumulation as provided u/s 11(2) of the I.T. Act."

On similar issue, the ITAT Delhi Bench 'G' in the case of Shree Dharma Sastha Sewa Samajam Vs. ITO, Ward-II, New Delhi (supra) held in para 11 as under:

“ 11. It is a general rule of jurisprudence about condonation of delay that if a person aggrieved has taken wrong recourse of remedial action, the time taken or wasted in the same can be accounted for while dealing with the matter of condonation of delay. We restrain ourselves from giving a finding on the condonation of delay but in the interest of justice and considering the arguments advanced by both the parties, we find it just and proper that an opportunity to file Form No. 10 before the A.O. should be given to the assessee for proper adjudication of the allegations of the assessee against the assessment order.”

In the present case also it is the claim of the assessee that Form No. 10 was furnished later on but the same was not considered by the A.O. who denied the benefit under section 11(2) of the Act. The Ld. Counsel for the assessee also claimed that Form No. 10B dt. 01/06/2013 was furnished alongwith return of income, however Form No. 10 was furnished on a later date. In the instant case it is not clear as to whether the deficiency, if any was brought to the knowledge of the assessee. I, therefore by considering the totality of the facts of the present case, deem it appropriate to set aside this issue back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced on 04/01/2022)

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG

Date: 04/01/2022

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File