IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.234/Bang/2024
Assessment Years : 2018-19

Vaidic Dharma Sansthan, 21st KM VVMP Campus, Kanakapura Main Road, Bengaluru-560 082. **PAN – AABTV 0776 H.**	Vs.	The Dy. Commissioner of Income Tax (Exemptions), Circle- 1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ankur Pai, Advocate
Revenue by	:	Shri P.V Pradeep Kumar, CIT (DR)

Date of hearing	:	05.06.2024
Date of Pronouncement	:	18.06.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 13/12/2023 in DIN No. ITBA/ NFAC/S/ 250/2023-24/1058723909(1) for the assessment year 2018-19.

2. The first issue raised by the assessee is that the ld. CIT(A) erred in confirming the order of the AO by treating the amount of Rs. 86,92,219/- as accumulated unspent fund as provided u/s 11 of the Act.

2.1 The assessee in the present case is a public charitable trust and engaged in providing religious and spiritual education to the public at large. The assessee in the year under consideration has claimed to have utilized the amount of Rs. 3,13,07,781/- for the purpose of its activities out of the funds accumulated u/s 11(5) of the Act in the financial year 2012-13 corresponding to assessment year 2013-14. However, the AO found that the amount accumulated in the assessment year 2013-14 as per Form 10 stands at Rs. 4 crores against which, the utilization in the year under consideration stands at Rs. 3,13,07,781/- only leaving the unspent accumulated amount of Rs. 86,92,219/- only, which should have been utilized in the year under consideration being the last year for utilization. On question by the AO, the assessee submitted that the actual amount accumulated stands at Rs. 3,13,07,781/- in the financial year 2012-13 corresponding to assessment year 2013-14 but the sum of Rs. 4 crores as shown in Form 10 was declared on tentative basis which was approved by way of resolution in the meeting of the Board of Trustees. As per the assessee, the amount shown in Form 10 as accumulated fund of Rs. 4 crores were done before the close of the financial year. However, once the books of accounts were finalized, actual amount eligible to be accumulated was worked out at Rs. 3,13,07,781/-, which has been utilized in the year in dispute. Thus, there is no question of treating the sum of Rs. 86,92,219/- as unutilized accumulated fund but the AO disagreed with the contention of the assessee on the reasoning that the assessee in Form 10 has clearly specified the amount accumulated u/s 11 of the Act at Rs. 4 crores and, therefore, the difference being unutilized amount of Rs. 86,92,219/- represents the income of the assessee in the year under consideration. Accordingly, the AO added the same to the total income of the assessee.

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3. On appeal, the ld. CIT(A) confirmed the order of the AO.

4. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

5. The ld. AR before us filed a paper book running from pages 1 to 124, case law compilation running from pages 1 to 28, written submission running from 1 to 10 pages and additional evidence running from 1 to 20 pages. The ld.AR before us contended that the amount was declared in Form 10 for the purpose of accumulation at Rs. 4 crores but, the amount to be accumulated was determined at Rs. 3,13,07,781/- which was actually accumulated and this fact can be verified from audited financial statement for the assessment year 2013-14. The ld. AR further submitted that the assessee has not submitted the audited financial statements before the authorities below and accordingly, prayed for the admissions of the additional documents with the request to set aside the issue to the file of the AO for fresh adjudication as per the provisions of the law.

6. On the other hand, the ld. DR opposed to admit the additional evidence on the reasoning that the assessee was offered sufficient opportunities by the respective authorities below, but it failed to avail the same and, therefore, he should not be given further opportunity. The ld. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the case on hand relates whether the amount accumulated for the assessment year 2013-14 stands at Rs. 4 crores or Rs. 3,13,07,781/- only. On perusal of the statement of income for the assessment year 2013-14, placed on page No. 13 of the paper book, we find that the amount accumulated under

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section 11 of the Act was Rs. 3,13,07,781/- only. Likewise, on perusal of the income-tax return placed on page Nos. 14 to 26 of the paper book, we find that the amount accumulated u/s 11(2) of the Act stands at Rs. 3,13,07,781/- only and not Rs. 4 crores. Though, in the present circumstances, we are of the view that the amount specified in the report in Form 10 by the auditor cannot be relied upon. However, we note that the audited financial statements, statement of income and the copy of the return of income for the assessment year 2013-14 were not filed by assessee during the proceedings before the authorities below. Nevertheless, it is pertinent to note that all these documents, stated above, are filed along with the return of income, meaning thereby, these documents were already available with the authorities below, but the revenue authorities did not look into it. However, in the interest of justice and fair play, we are inclined to set aside the issue to the file of AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence, the ground of appeal raised by the assessee is allowed for statistical purposes.

8. The next issue raised by the assessee is that the ld. CIT(A) erred in confirming the addition made by the AO for Rs. 19,71,83,527/- under the provisions of sec. 13(1)(d) of the Act.

8.1 The AO during the assessment proceedings found that the assessee has shown non-corpus fund as on 31/03/2018 at Rs. 46,12,84,985/-, whereas the investment shown u/s 11(5) of the Act stands only at Rs. 26,41,01,368/- only. According to the AO, the additional amount of Rs. 19,71,83,527/- being the difference in the amount stated above, has not been invested in the manner as specified u/s 11(5) of the Act, which contravenes the provisions of sec. 13(1)(d) of

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the Act. Thus, the AO disallowed the same and added to the total income of the assessee.

9. On appeal, the ld. CIT(A) upheld the order of the AO.

10. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

11. The ld. AR before us submitted that the amount shown under the head corpus fund was utilized in the fixed assets, capital work in progress and current assets. The balance amount was invested in the mode specified u/s 11(5) of the Act. However, the AO completely ignored all these facts, but the ld. AR agreed that all these facts have not been duly represented before the authorities below, and therefore, the ld. AR requested to restore the issue to the file of the AO for fresh adjudication as per the provisions of law.

12. The ld. DR vehemently supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the balance sheet of the assessee placed on page 3 of the paper book, we note that the capital fund shown by the assessee was utilized in fixed assets, capital work in progress and current assets. In our considered view, such an amount represents the application of income and, therefore, the same should be excluded while calculating the amount to be invested under the provisions of sec. 11(2) r.w.s. 11(5) of the Act. Nevertheless, the assessee has not represented the facts properly and, therefore, we are inclined to restore this issue to the file of the AO for denovo adjudication as per the provisions of law. Hence, ground of appeal raised by the assessee is allowed for statistical purposes.

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14. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in court on 18th day of June, 2024

Sd/- Sd/-

(GEORGE GEORGE K) **(WASEEM AHMED)**
Vice President Accountant Member

Bangalore,
Dated, 18th June**,** 2024

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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