

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 901, 902 & 1037/Ahd/2023

(निर्धारण वर्ष / Assessment Years : 2014-15, 2016-17 & 2017-18)

Gujarat Safety Council 4 th Floor, Midway Height, Kirti Mandir, Kalaghoda, Station Road, Vadodara, Gujarat, 390001	बनाम/ Vs.	ITO Ward Exemption, Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATG0943L		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Soparkar, Sr. Advocate
प्रत्यर्थी की ओर से/Respondent by :	Shri Sudhendu Das, CIT.DR

Date of Hearing	21/08/2024
Date of Pronouncement	27/08/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These three appeals are filed by the assessee. While two of the appeals are against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 28.08.2023 and 27/09/2023 for A.Ys. 2014-15 & 2016-17 respectively, the third appeal is against the order of Addl./JCIT (A)-1, Coimbatore for the A.Y. 2017-18. The issue involved in all three appeals are

identical and hence, these are being disposed of vide this common order.

2. The appeal in ITA No.901/Ahd/2023 is taken as a lead case. There is a delay of 13 days in filing of this appeal. The assessee has filed an affidavit explaining that the order of NFAC was delivered in spam folder of the registered email and was not accessed for a long time. As a result, there has been delay of 13 days in filing of this appeal. The Revenue has no objection to the condonation of delay. Considering the reason as explained by the assessee, the delay is condoned.

3. The assessee has taken following grounds in this appeal:

- “1. *The order passed NFAC is bad in law and required to be quashed.*
2. *Ld. NFAC / CIT (A) erred in law and on facts in confirming addition of Rs.19,86,737/- by invoking provision of section 11(3) of the Act.*
3. *Ld. NFAC / CIT (A) ought to have considered facts that Section 11(3) of the Act has no applicability in current year.*
4. *Charging of interest u/s 234A, 234B, 234C and 234D is unjustified.*
5. *Initiation of penalty u/s 270A is unjustified.”*

4. Shri S. N. Soparkar, Id. Sr. Advocate appearing for the assessee submitted that the assessee is a trust and the objects of the trust is conducting safety training programs, training seminars, workshops conferences etc. for personnel working in

industries (Industrial Safety), for people commuting on roads (Road Safety) and for the persons working at homes (Home Safety). The return of income for A.Y. 2014-15 was filed on 20.09.2014 declaring total income of Rs. Nil after claiming exemption of Rs.1,18,11,274/- u/s. 11 of the Act. In the course of assessment, the AO had raised query regarding accumulation of Rs.5,92,352/- for future application made u/s. 11(2) of the Act made in A.Y. 2008-09, which was not applied within 5 years. The assessee had explained that the surplus amounts were utilized as capital expenditure and the total amount spent on capital expenditure during the A.Y. 2008-09 to 2012-13 was Rs.7,96,543/-. The AO, however, did not accept the explanation of the assessee and the accumulation of income of Rs.5,92,352/- in A.Y. 2008-09, which was held as not applied within the stipulated period of 5 years, was treated as income of the current year. The Ld. Sr. Counsel submitted that the matter was not examined on merits by the Ld. CIT(A) and the addition was confirmed for the reason that no supporting documents to substantiate the grounds raised by the assessee was filed. He submitted that no supporting documents were ever called for either by the AO or by the Ld. CIT(A). The Ld. Sr. Counsel submitted that assessee was eligible to apply accumulated income towards acquisition of fixed assets and the submissions as made by the assessee was not verified by the lower authorities. He, therefore, requested that the matter may be set aside to the file of the AO in order to verify the contention of the assessee and,

thereafter, allow the relief in accordance with the provision of law.

5. Shri Sudhendu Das, the Ld. CIT.DR, had no objection if the matter was set aside to the file of the AO for necessary verification and deciding the matter in accordance with the provisions of the Act.

6. We have considered the rival submissions. It is found from the assessment order that the accumulation of Rs.5,92,352/- in A.Y. 2008-09 was explained as utilized towards capital expenditure in A.Y. 2008-09 to 2012-13. The AO did not verify the submission of the assessee and has given a finding that no proper system was followed by the assessee for utilization of the accumulated income. The AO has also held that the capital expenditure incurred cannot be claimed as applied against accumulation made u/s.11(2) of the Act. This finding of the AO is not found to be in accordance with the provisions of the Act. The provision of Section 11(6) of the Act stipulates that where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year. In essence, there could be no double deduction on account of application towards

acquisition of fixed assets and also on account of depreciation on the fixed assets so acquired out of accumulated amount. Thus, it is evident from this provision that the assessee was eligible to claim application of income towards acquisition of fixed assets. Though, the provision of section 11(6) of the Act was introduced in the statute w.e.f. 01.04.2015, the same was clarificatory in nature and applicable for the current year as well. The Ld. CIT(A) too had brushed aside the submission of the assessee without verifying the correctness of the submission of the assessee.

7. In view of above facts, we deem it proper to set aside the matter to the file of the AO to verify the claim of the assessee for application of accumulated income towards acquisition of the fixed assets. The AO may decide the matter after allowing a proper opportunity of being heard to the assessee and after calling for the necessary evidences to verify the claim of the assessee. The assessee is also directed to produce the necessary evidences in respect of its claim before the AO.

8. In the result, appeal preferred by the assessee is allowed for statistical purposes.

9. The issue involved in ITA Nos. 902/Ahd/2023 & 1037/Ahd/2023 are identical and pertain to accumulation of funds in A.Y.2009-10 and A.Y. 2011-12 respectively, which were not applied within the stipulated period of five years. These matters

are also set aside to the file of the AO for verification of the application of the accumulated amounts towards acquisition of fixed assets as contended by the assessee.

10. In the combined result, all the three appeals filed by the assessee are allowed for statistical purposes.

This Order pronounced on 27/08/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 27/08/2024

S. K. SINHA

True Copy

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad