

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORESHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3156 & 3192/Del/2023, A.Y.2016-17 & 2017-18

National Childrens Fund 5 Siri Institutional Area, Hauz Khas, New Delhi PAN: AAATN5009N	V/s	The Income Tax Officer, Ward (Exemption) 2(4), Delhi
(Appellant)		(Respondent)

Appellant by	Sh.Sudhir Sehgal, Advocate
Respondent by	Sh. Diwakar Singh, Sr.DR

Date of Hearing	20/08/2024
Date of Pronouncement	28/08/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

Since the issues involved in these two appeals are identical; hence, these are being heard together and are being disposed off by way of a common order for the sake of brevity.

2. Both appeals filed by the assessee for the Assessment Years (hereinafter, the 'AY') 2016-17 and 2017-18 are directed against the orders dated 08.09.2023 and 10.10.2023 respectively passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre(NFAC), New Delhi [hereinafter, 'the CIT(A)'].

3. Following grounds are raised in these appeals:-

ITA No. 3156/Del/2023, A.Y. 2016-17

- “1. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in not allowing the accumulation u/s 11(2) as mentioned in Form No. 10, only on account of the fact that the 'specific charitable purpose' has not been mentioned in Form No. 10, as filed to the department.
2. That the finding of the CIT(A) that the mentioning of 'charitable purpose' is not sufficient for accumulation of income u/s 11(2) beyond the previous year, is not based on correct facts and circumstances of the case and also the legal position on this issue.
3. That the CIT(A) has failed to follow the judgment of Hon'ble Apex Court in the case of CIT (Exemption) Vs Bochasanwasi Shri Akshar Purushottam Public Charitable Trust cited in (2019) 105 Taxmann.com 1997 (SC), wherein the Hon'ble Apex Court have confirmed the finding of the Hon'ble High Court that for the lack of declaration in Form No. 10, regarding 'specific purpose' by the assessee Trust is not fatal to exemption claimed u/s 11(2) of the Act and also failed to follow the various other judgments of difference High Court including the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Market Committee Tohana reported in 201 Taxmann 235 (P&H) & Others.
4. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”

ITA No. 3192/Del/2023, A.Y. 2017-18

- “1. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in not allowing the accumulation u/s 11(2) as mentioned in Form No.10, only on account of the fact that the 'specific charitable purpose' has not been mentioned In Form No. 10, as filed to the department.
2. That the finding of the CIT(A) that the mentioning of 'charitable purpose' is not sufficient for accumulation of income u/s 11(2) beyond

the previous year, is not based on correct facts and circumstances of the case and also the legal position on this issue.

3. *That the CIT(A) has failed to follow the judgment of Hon'ble Apex Court in the case of CIT (Exemption) Vs Bochasanwasi Shri Akshar Purushottam Public Charitable Trust cited in (2019) 105 Taxmann.com 1997 (SC), wherein the Hon'ble Apex Court have confirmed the finding of the Hon'ble High Court that for the lack of declaration in Form No. 10, regarding 'specific purpose' by the assessee Trust is not fatal to exemption claimed u/s 11(2) of the Act and also failed to follow the various other judgments of difference High Court including the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Market Committee Tohana reported in 201 Taxmann 235 (P&H) & Others.*
4. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

3.1 In nutshell, we are tasked to decide that whether the disallowance of accumulation under section 11(2) of the Act in both appeals are justified.

4. The relevant facts giving rise to these appeals, in brief, are that the appellant/assessee is a charitable organization registered under the Societies Registration Act and also under section 12A of the Income Tax Act, 1961 (hereinafter, 'the Act'). The appellant/assessee came into existence by the enactment of the Government of India under the Charitable Endowments Act, 1890. The Union Minister of Women and Child Development is an Ex-officio Chairperson of the Trust and the remaining office bearers of the Trust are also the Government Officers &

Employees. The main objectives of the National Children's Fund (NCF) are: -

- i. To raise funds from individuals, institutions, corporate, and others; and
- ii. to promote and fund the various programmes for children who are affected by natural calamities, disasters, distress, and in difficult circumstances through voluntary agencies and State Governments, in un-served and under-served areas including tribal and remote areas in pursuance of the National Charter for Children, and Children in difficult circumstances including children living in Child Care Institutions (CCIs).

4.1 The Fund is reaching out to the designated target population through Grants-in-Aid to voluntary agencies till 2016 and through Scholarships to children living in the CCIs. From 2017 onwards, the NCF has continued only scholarships for children living in the Child Care Institutions.

5. The appellant/assessee filed its Income Tax Return (hereinafter, the 'ITR') of AY 2016-17 and 2017-18 on 29.09.2016 and 07.11.2017 declaring income of Rs.1,91,37,995/- Rs.60,07,760/- respectively. These cases were picked up for scrutiny and consequential assessments were completed at income of Rs.2,60,72,247/- and Rs.1,91,37,995/-

vide orders dated 27.12.2018 and 26.12.2019 passed under section 143(3) of the Act at income of Rs. 2,60,72,247/- and Rs. 2,63,04,986/- for the assessment year 2016-17 and 2017-18 respectively. In both the assessments, the Assessing Officer (hereinafter, the 'AO') had held that the claim under section 11(2) of the Act could not be allowed as the Form No.10 of both the years were filed beyond the due dates and the appellant/assessee had failed to specify the charitable purpose for which the accumulated funds were set apart. For the sake of appreciation of the facts, the relevant finding in para 5.3 and 5.5 of the assessment order of the AY 2016-17; is extracted as under:-

"5.3 It is an admitted fact that the assessee filed Form 10 well beyond the due date. Further section 13(9) of the Act inserted by Finance Act, 2015 wef AY 2016-17 clearly stated that:-

"(9) Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if-

- (i) the statement referred to in clause (a) of the said sub-section in respect of such income is not 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; or*
- (ii) the return of income for the previous year is not furnished by such person on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the said previous year."*

5.5 In addition to the above, it is seen that the purpose for which the amount is claimed to be accumulated or set apart is mentioned in form 10 as "To be applied to promote and support research scientists for the advancement of research and development in future". This is a not a specific purpose which has been intended by law to allow accumulation of income. The purpose mentioned is quite vague and merely reflects one of the objects of the assessee, which

is all encompassing. It is stated that the AO has to scrutinize the application regarding object of accumulating the income. There are many judicial pronouncements which state that purpose of accumulation should not be vague but specific and realistic. The purpose mentioned in Form 10 would apply to any other activities falling into the objects of the trust and as such cannot be said to be specific. In the case of Director of Income Tax v. Singhania Charitable Trust 199 ITR819(Cal), the High Court has held that:-

(a) the very fact that the statute requires the purpose for accumulations to be specified implies such a purpose should be a concrete one, an itemized purpose or a purpose instrumental or ancillary to the implementation of object or objects.

(b) the specification of purpose as required by section 11(2) admits of no amount of In CIT Vs M Ct. Muthiah Chettiar Family trust 2451TR400 the Hon'ble Madras High Court has observed that only by mentioning the purpose specifically, it will be possible for the Assessing Officer to monitor the situation whether the trust has applied its accumulated income for the purposes mentioned in Form10. It is therefore necessary that the organization should specify its purposes and such purposes should have some individuality instead of being mere repetitions of the objects of the organization.”

[Emphasized by us]

5.1 Aggrieved with the assessment orders, the appellant/assessee preferred appeals before the Ld. CIT(A) who dismissed both the appeals.

For the sake of appreciation of the facts, the relevant finding in para 5.7

and 5.8 of the appellate order of the AY 2016-17; is extracted as under: -

“5.7. In this case, the appellant filed form 10 electronically on 21.11.2018 and assessment u/s 143(3) was completed on 27.12.2018. As per circular 7/2018, the Commissioner of Income Tax (E), New Delhi has condoned the delay in the case of the appellant vide order F.No. CIT(E)/119(2)(b)/2019-20/60/3132 dated 26.02.2020 A copy of the order was furnished by the appellant during appellate proceedings. Therefore, the delay in filing Form 10 stands addressed. Ground 2 is therefore allowed.

5.8. Ground 3 is discussed below:

Section 11(2)(a) provides that the 'purpose' for which the income is accumulated should be stated in the prescribed manner and prescribed form. The AO has pointed that the purpose for accumulation mentioned in Form 10, "charitable Purpose" is too vague and defeats the purpose of section 11(2). The AO placed reliance on decisions of Singhanian Charitable Trust [1993] 199 ITR 819 (Cal) and CIT vs M.Ct. Muthiah Chettiar Family Trust [2000]245 ITR 400 (Madras). In Singhanian Charitable Trust, Hon. Calcutta High Court held as under.

"Doubtless, it is not necessary that the assessee has to mention only one specific object. There can be setting apart and accumulation of Income for more objects than one but whatever objects or purposes might be. assessee must specify in notice concrete nature of purposes for which accumulation is being made. Plurality of the purposes for accumulation may not be precluded but it must depend on the exact and precise purposes for which the accumulation is intended for the statutory period of ten years. The generality of the objects of the trust cannot take the place of the specificity of the need for accumulation.... The very fact that the statute requires the purpose for accumulation to be specified implies such a purpose to be a concrete one, an itemized purpose or a purpose instrumental or ancillary to the implementation of its object or objects. The very requirement of specification of purpose predicates that the purpose must have an individuality. The provision of sub-section (2) is a concession provision to enable a charitable trust to meet the contingency where the fulfillment of any project within its object or objects needs heavy outlay to call for accumulation to amass sufficient money to implement it. Therefore, specification of purpose as required by section 11(2) admits of no amount of vagueness about such purpose."

6. The Ld. CIT(A) has condoned the delay in filing Form No. 10 of both years. The Revenue has not challenged this issue before the Tribunal. Hence, the first reasoning on which the AO disallowed the accumulation under section 11(2) of the Act did not survive. The only one reason survived after first appeal is that the appellant/assessee has not categorically specified the charitable purpose for which the said funds, in both the AYs, have been set apart.

7. The Ld. Counsel argued that the finding of the Ld. CIT(A) was contrary to the decision of not only the Hon'ble Supreme Court but also of various Hon'ble and High Courts. To buttress the arguments/contentions, the Ld. Counsel placed reliance on the following decisions:-

- a). *Bochasanwasi Shri Akshar Purshottam Public cable Trust [2019] 105 taxmann.com 97 (SC)*
- b) *Market Committee, Tohana [2011] 12 taxmann.com 252 (P&H)*
- c) *Ohio University Christ College [2018] 408 ITR 352 (Karnataka)*
- d) *NBIE Welfare Society[2015] 54 taxmann.com 196 (Delhi)*
- e) *Bharat Kalyan Pratisthan [2007] 160 Taxman 216 (Delhi)*
- f) *Gurudwara Godri Sahib Baba Farid Society [2023] 154 taxmann.com 503 (Chandigarh-Trib.)*
- g) *Rogi Kalyan Samiti [2017] 88 taxmann.com 344 (Chandigarh-Trib.)*
- h) *Arhatic Yoga Ashram Management Trust [2021] 126 taxmann.com 76 (Chennai-Trib)*

8. The Ld. Counsel drew our attention to the purpose for which the amount was claimed to be accumulated or set apart mentioned in the Form No. 10 of the AY 2016-17 as "To be applied to promote and support research scientists for the advancement of research and development in future". The Ld. Counsel contended that this would be treated as specific purpose in view of the notification and resolution annexed with the Form No. 10. For AY 2017-18, the Ld. Counsel placed emphasis not only to the purpose "Charitable" mentioned in the Form No. 10 of AY 2017-18 but also to the resolution passed by its Governing Body/Ministry of

Women and Child Welfare. It was further contended that the appellant/assessee worked only under the supervision and control of the Ministry of Women and Child Welfare; therefore, it could work for welfare and charitable purposes only. The Ld. Counsel submitted that the Judgment of the Hon'ble Supreme Court in the case of N. Balakrishnan vs. M. Krishnamurthy (AIR 1998 SC 3222) wherein it was held when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserved to be preferred. The doctrine must be applied in a rational, commonsense and pragmatic manner. The Ld. Counsel further submitted that the settled law is that the Revenue Authorities have to tax the right person in right manner and should not disallow the eligible deductions on mere technicalities.

9. The Ld. Sr. DR placed reliance on the orders of lower authorities.

10. We have heard both the parties and have perused the material available on record. We find that the appellant/assessee's objectives derive its spirit from the Directive Principles of State Policy enshrined in the Constitution of India. Since, the Govt. of India makes endeavor to provide welfare to one and all in the society at large and in view thereof the registration for public charitable trust through enactment is given in

order to ensure that through these charitable trusts benefits should flow to the entire society and the objectives of the Govt. of India in furtherance to the Directive Principles of State Policy are achieved. In the present case in hand, the appellant/assessee is directly controlled by the Ministry of Women and Child Welfare. Therefore, the appellant/assessee Trust's aims and objectives are not questionable at all. There may be some technical lacuna in compliances as such Trust is not being advised by the top available Professionals in day-to-day affairs and routine compliances. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue.

11. We find the purpose for which the amount was claimed to be accumulated or set apart mentioned in the Form No. 10 of the AY 2016-17 "To be applied to promote and support research scientists for the advancement of research and development in future" as specific and categorical and thus, we are inclined to interfere with the finding of the CIT(A) in this regard. Accordingly, we order so and allow the appeal of the AY 2016-17 with the direction to the AO to allow the consequential benefit under section 11(2) of the Act to the appellant/assessee.

12. As far as the appeal of the AY 2017-18 is concerned, we find force in the arguments of the Ld. Counsel that this case is covered by the decision of the Hon'ble Gujrat High Court in the case of

Bochasanwasi Shri Akshar Purshottam Public cable Trust; against which the SLP was dismissed[2019] 105 taxmann.com 97 (SC). The relevant part of the decision of the Hon'ble Gujrat High Court in the case of Bochasanwasi Shri Akshar Purshottam Public cable Trust [Tax Appeal No. 1260 of 2018,R/Tax Appeal No. 1261 of 2018] is extracted as under: -

“7. Section 11(2) of the Act provides that eighty five percent of the income which is not utilized by the Trust for charitable or religious purposes would not be included in the total income of the previous year of receipt of the income provided the conditions laid down in clause (a) to (c) contained therein are satisfied. Clause (a) in particular, which is applicable, provides that such person furnishes the statement in the prescribed form and in 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. Undoubtedly therefore, the statement of purpose for which the income is being accumulated or set apart is one of the requirements which must be satisfied before the assessee can avail the benefit under sub-section (2) of section 11 of the Act. However, that by itself would not mean that any inaccuracy or lack of full declaration in the prescribed format by itself would be fatal to the claimant. The prime requirement of this clause is of stating of the purpose for which the income is being accumulated or set apart. In the present case, we are prepared to accept the Revenue's stand that the declaration made in Form 10 by the assessee was not sufficient to fulfill this requirement. However, as noted, during the course of assessment proceedings, the Assessing Officer called upon the assessee to explain the position in response to which, the assessee in detail pointed out background under which the board of trustees had met, considered the material and eventually passed a formal resolution setting apart the funds for the ongoing hospital projects of the Trust and for modernization of the existing hospitals. There was thus a clear statement made by the assessee setting out

the purpose for which the income was being set apart. We therefore do not find any error in view of the Tribunal.”

[Emphasized by us]

13. Here, in this case of the AY 2017-18 also, the appellant/assessee has failed to detail the specific purpose for which the amount was claimed to be accumulated or set apart mentioned in the Form No. 10 of the AY 2017-18. However, when called upon during the assessment proceedings, made a clear statement about the purpose for setting aside the fund under section 11(2) of the Act. Therefore, in the interest of justice and following the above ratio and considering all the aforestated observations, we are of the considered view that it is a fit case to interfere with the finding of the CIT(A) in this regard in the AY 2017-18 also. Accordingly, we order so and allow the appeal of the AY 2017-18 with the direction to the AO to allow the consequential benefit under section 11(2) of the Act to the appellant/assessee in this year also.

14. In the result, both the appeals are allowed.

Order pronounced in open Court on 28th August, 2024.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated:28/08/2024
Binita, Sr. PS

Copy forwarded to:

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2. Respondent
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