

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.4612/Mum/2019  
(Assessment Year :2014-15)**

St. Anthony's Institute (Formerly known as St. Anthony's School Trust) TPS-III, Pali, 33 <sup>rd</sup> /21 <sup>st</sup> Road Corner, Bandra (W) Mumbai – 400 050	Vs.	ITO (IT)3(1), Centralized Processing Centre Bengaluru Karnataka - 560500
<b>PAN/GIR No.AABTS8069G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Phalgun Desai
Revenue by	Shri Brajendra Kumar
<b>Date of Hearing</b>	<b>20/07/2021</b>
<b>Date of Pronouncement</b>	<b>23/07/2021</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.4612/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-1, Mumbai in appeal No.CIT(A)-1/143/DCIT(CPC)/2018-19 dated 16/05/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.154 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 17/11/2017 by the Id. Income Tax Officer (E)2(3), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the disallowance made by the Id. AO by denying accumulation u/s.11(2) of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a public charitable trust running a school and had filed its return of income for the A.Y.2014-15 on 29/09/2014 declaring total income of Rs.Nil. We find that assessee trust is duly registered u/s.12A of the Act. The assessee had claimed deduction u/s.11 of the Act while filing return of income. The return of income was duly processed u/s.143(1) of the Act on 28/02/2016 by Id. AO (CPC) wherein the benefit of accumulation claimed by the assessee u/s.11(2) of the Act was denied and accordingly, the total income was determined at Rs.35,90,518/-. The assessee filed a rectification application u/s.154 of the Act which was rejected by the Id. AO (CPC) on the ground that the assessee had not filed Form No.10 electronically on or before the due date of filing of return. We find that assessee had indeed filed Form No.10 on 26/06/2014 before the Id. AO in physical form by hand delivery for which receipt was issued by the Id. AO. The assessee pleaded that for the A.Y.2014-15, there was no system of online filing of Form No.10 and hence, assessee trust could not have filed the same electronically. It was also pointed out that online filing of Form No.10 was introduced only w.e.f. 01/04/2016 i.e. relevant to A.Y.2016-17. It was also stated that the Auditor of the assessee trust had uploaded the audit report in Form No.10B electronically wherein it was clearly indicated that assessee trust had accumulated Rs.24,20,610/- u/s.11(2) of the Act. Moreover, before

processing the return of income u/s.143(1) of the Act, CPC (Benguluru) had issued notice of defect in the return of income which was duly corrected by the assessee. There is no mention in the said defect notice regarding non-filing of Form No.10 in electronic form. If CPC had intimated the assessee trust, then it would have informed CPC regarding the filing of Form No.10 in physical mode before the Id. AO on 26/06/2014 and could have furnished scanned copy of the same. Accordingly, it was pleaded that the CPC while processing the return of income u/s.143(1) of the Act had erred in not granting the benefit of accumulation of income u/s.11(2) of the Act for want of electronic filing of Form No.10 and also by ignoring the audit report in Form No.10B wherein the figure of accumulation has been duly mentioned by the Auditor. Thereafter, the assessee preferred a rectification petition u/s.154 of the Act before the CPC which was rejected by the CPC on the ground that assessee did not file Form No.10 electronically. This fact was not appreciated even by the Id. CIT(A) while upholding the action of the CPC. Aggrieved, assessee is in appeal before us.

3.1. It is not in dispute that Form No.10, being the statutory form for accumulation of income in terms of Section 11(2) of the Act has been filed physically by the assessee before the Id. AO on 26/06/2014, which has been duly acknowledged by the Id. AO. We find that the statute mandated online filing of Form No.10 only w.e.f. 01/04/2016 i.e. relevant to A.Y.2016-17. Hence, we find considerable force in the argument advanced by the Id. AR that for the year under consideration, the assessee could not have electronically filed Form No.10 in terms of Section 11(2) of the Act. We find that assessee had filed Form No.10 in physical form before the Id. AO on 26/06/2014

which is much prior to the date of filing of return of income on 29/09/2014. In the said return of income filed on 29/09/2014, the assessee trust had claimed accumulation of 15% of income u/s.11(1) (a) of the Act at Rs.11,69,907/- and balance amount of Rs.24,20,611/- was claimed as accumulation u/s.11(2) of the Act for which Form No.10 was filed in physical form in time. The assessee has also filed audit report in Form No.10B clearly reflecting the accumulations u/s.11(1)(a) and 11(2) of the Act. Merely because Form No.10 was not filed electronically by the assessee, more so when it was also not even mandated by the statute for the relevant year under consideration, the Id. AO (CPC) ought not to have disallowed the accumulation of Rs.35,90,518/- while processing the return vide intimation u/s.143(1) of the Act. Pursuant to section 154 application preferred by the assessee before the Id. AO (CPC), the regular accumulation u/s.11(1)(a) of the Act was duly allowed but the accumulation u/s. 11(2) was denied for want of Form No.10 in electronic mode. We find that both the lower authorities have grossly erred in not appreciating the facts of the case and by denying the benefit of accumulation on a mere technical inability on the part of the assessee. Moreover, we find the very same issue had been the subject matter of adjudication by this Tribunal in the case of Parle Hindu Devalaya Mandir vs. DCIT (CPC) Bangalore, in ITA No. 766/Mum/2019 dated 04/03/2020 for A.Y.2015-16 wherein this issue has been decided in favour of the assessee. For the sake of convenience, the entire Tribunal order is reproduced hereunder:-

*“The captioned appeal has been filed by the assessee challenging the order dated 18th December 2018, passed by the learned Commissioner*

*of Income Tax (Appeals)-1, Mumbai, pertaining to the assessment year 2015-16.*

*2. The dispute in the present appeal is confined to denial of assessee's claim of exemption under [section 11\(2\)](#) of the Income Tax Act, 1961 (for short "the Act").*

*3. Brief facts are, the assessee is a charitable trust and has been granted registration under [section 12AA](#) of the Act. For the assessment year under dispute, the assessee had filed its return of income on 28<sup>th</sup> September 2015, electronically declaring nil income after claiming exemption under [section 11\(2\)](#) of the Act for an amount of ` 22,27,410. While processing the return of income filed by the assessee, the Central Processing Centre (CPC) denied assessee's claim of exemption under [section 11\(2\)](#) of the Act since the declaration in Form no.10, was not filed electronically along with the return of income. Against the intimation issued under [section 143\(1\)](#) of the Act by the CPC, the assessee moved an application under [section 154](#) of the Act seeking rectification of mistake on the ground that as per existing provisions applicable to assessment year 2015-16, there was no requirement of filing Form no.10 electronically. It was submitted by the assessee, since Form no.10, was furnished manually before the Assessing Officer on the due date of return of income i.e., 28<sup>th</sup> September 2015, the claim of exemption under [section 11\(2\)](#) of the Act has to be allowed. The application filed under [section 154](#) of the Act was rejected on the ground that there is no mistake apparent on the face of record requiring rectification. Against the order passed under [section 154](#) of the Act, the assessee preferred appeal before the first appellate authority.*

*4. Before the learned Commissioner (Appeals) also, it was submitted by the assessee that filing of Form no.10, electronically was made mandatory by virtue of amendment made to rule 17, vide CBDT notification dated 14<sup>th</sup> January 2016, and was made effective from 1<sup>st</sup> April 2016. Therefore, prior to the amendment made to rule 17, there was no requirement for filing of Form no.10 electronically. The learned Commissioner (Appeals), however, did not accept the contention of the assessee and dismissed the appeal.*

*5. Reiterating the stand taken before learned Commissioner (Appeals), the learned Authorised Representative submitted, mandatory filing of Form no.10 electronically become operative from 1<sup>st</sup> April 2016. She submitted, prior to the amendment made to rule 17, by CBDT Notification dated 14<sup>th</sup> January 2016, there was no requirement of filing Form no.10, electronically. She submitted, since the assessee has filed Form no.10, manually before the Assessing Officer within the due date of filing of return of income for the impugned assessment year,*

assessee's claim of exemption under [section 11\(2\)](#) of the Act cannot be rejected.

6. The learned Departmental Representative relied upon the observations of learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. Undisputedly, assessee's claim of exemption under [section 11\(2\)](#) of the Act has been rejected only due to non-filing of declaration in Form no.10 in electronic mode. However, the facts on record clearly reveal that the assessee has filed Form no.10, manually before the Assessing Officer on 28th September 2015, the very same date the return of income for the assessment year 2015-16, was filed by the assessee. On a perusal of rule-17, as it existed prior to its amendment/substitution by Income Tax (1st Amendment) Rule, 2016, w.e.f. 1st April 2016, the provision only required filing of Form no.10, before the expiry of the time allowed under sub-section (1) of [section 139](#) of the Act for furnishing return of income. Only w.e.f. 1st April 2016, amended rule 17 provided for filing Form no.10 electronically before the due date of return of income under [section 139\(1\)](#) of the Act. That being the case, assessee's claim of exemption under [section 11\(2\)](#) of the Act cannot be rejected only for the reason that Form no.10, was not filed electronically. In view of the aforesaid, we restore the issue to the Assessing Officer with a direction to verify Form no.10, filed by the assessee manually, as stated by the learned Counsel for the assessee and allow assessee's claim of exemption under [section 11\(2\)](#) of the Act. Grounds are allowed for statistical purpose.

8. In the result, appeal is allowed for statistical purposes.”

3.2. In view of our aforesaid observations and respectfully following the aforesaid judicial precedent, we deem it fit to restore this issue to the file of the Id. AO with a direction to verify Form No.10 filed by the assessee manually and allow assessee's claim of exemption u/s.11(2) of the Act in accordance with law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced on 23/07/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Mumbai; Dated 23/07/2021  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai