

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.406/Bang/2020
AssessmentYear:2014-15

M/s. Hira Foundation Trust No.9, Ex-Servicemen Colony R.T. Nagar Bengaluru-560 032  <b>PAN NO :AAATH3070R</b>	<b>Vs.</b>	ITO (Exemptions) Circle-1 Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Raghavendra R. Chakravarthy, A.R.
<b>Respondent by</b>	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	09.11.2020
Date of Pronouncement	:	01.12.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 28.2.2020 passed by Ld. CIT(A)-14, Bengaluru and it relates to the assessment year 2014-15. The grounds urged by the assessee relate to denial of deduction claimed u/s 11(2) of the Income-tax Act,1961 ['the Act' for short] relating to accumulation of income.

2. The assessee is a charitable trust and it filed its return of income for the year under consideration declaring Nil income. In the return of income, the assessee claimed deduction of Rs.75 lakhs u/s 11(2) of the Act on the plea that it has accumulated its income

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in terms of section 11(2) of the Act for application in future. However, the assessee did not furnish Form No.10, the statutory form prescribed for reporting about accumulation of income. This form is required to be furnished for claiming the above said deduction. Hence, in the absence of Form No.10, the claim of accumulation of Rs.75 lakhs was rejected while processing the return of income u/s 143(1) of the Act and a tax demand of Rs.32.59 lakhs was raised upon the assessee.

3. The assessee challenged the above said action by filing the appeal before Ld. CIT(A). It was submitted that the prescribed form No.10 was filed on 30.1.2020, much beyond the due date for filing the same and also after completion of assessment proceedings. Accordingly, it was pleaded before Ld CIT(A) that the deduction towards accumulation of income should be allowed. The Ld. CIT(A), however, rejected the contentions of the assessee with the following observations:

*“4.3 The contentions of the appellant have been considered carefully. The issue in This case is that the appellant has been denied the exemptions because Form-10 was not filed before the due date. The time frame in which the Form 10 to be filed is governed by R17 to the Income Tax Rules, 1962. Rule 17 provides that the said form has to be filed before the due date for filing the return of Income and there is no provision under the Income tax Act which provides for filing of Form-10 belatedly.*

*In the present case, the appellant has filed Form-10 after the completion of the assessment i.e on 30/01/2020. It is seen that the assessee failed to utilize the funds of at least 85% of income during the year and accumulation is also not done as per the procedure prescribed. Filing of Form-10 is not a formality. It is required to be filed on or before the due date for filing return. The funds so accumulated are expected to be invested in specified manner. None of the requirements are satisfied as the assessee blatantly ignored to follow the prescription of law. Filing the same after assessment proceedings before CIT(A) would not cure the defect.*

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*Accordingly, I hold that the accumulation of income can't be allowed and the same should be brought to tax in the current year itself.*

*4.4 Further, the appellant in the present case prayed that the delay in filing of Form-10 may be condoned. For this Circular No. 273, dated 3/6/1980 has clarified that in accordance with sec 119(2)(b) of the Income Tax Act, 1961, the CBDT has authorized commissioners to admit applications under sec 11(2) read with Rule 17 of the Income tax Rules, 1962 from persons deriving Income from property held under trust wholly for charitable or religious purposes for accumulation of such income to be applied for such purposes in India when the aforementioned application are filed beyond the time stipulated. Therefore, only the administrative commissioner has the power to condone the delay in filing of Form-10 in specified circumstances. Hence, in the absence of filing of Form-10 within the due date and even before the completion of the assessment, I hold that the assessment order passed by the AO is sustained and all the grounds raised by the appellant are rejected.”*

Aggrieved by the order passed by Ld CIT(A), the assessee has filed this appeal before us.

4. We heard the parties and perused the record. We notice from the paper book filed by the assessee that the assessee has moved an application dated 19-03-2020 before the Ld CIT(Exemptions) requesting him to condone the delay in filing Form No.10 for accumulation of income u/s 11(2) of the Act. We also notice that the Ld CIT(Exemptions), vide his order dated 19-05-2020, has condoned the delay in filing Form 10 for accumulation of Rs.75,00,000/- for the AY 2014-15.

5. Admittedly, the application has been filed by the assessee before Ld CIT(Exemptions) after the date of order of Ld CIT(A) and the order of Ld CIT(Exemptions) has also been received after that date only. Hence, there was no occasion for the tax authorities to consider these documents. The relief sought by the assessee requires examination of these documents. Accordingly, we are of

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the view that this issue needs to be restored to the file of the AO for examining the same afresh. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine this issue afresh by duly considering Form No.10, order passed by Ld CIT(Exemptions) and/or any other relevant documents. After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 1<sup>st</sup> Dec, 2020

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 1<sup>st</sup> Dec, 2020.  
VG/SPS

**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.