

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 7219/DEL/2017 (A.Y 2014-15)

(THROUGH VIDEO CONFERENCING)

Children Book Trust 4, Nehru House, Bahadur Shah Zafar Marg, I. P. Estate, New Delhi PAN: AAATC0127C (APPELLANT)	Vs	ITO(E) Ward-1(3) New Delhi (RESPONDENT)
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Appellant by	Sh. K. V. S. R. Krishna, Adv
Respondent by	Ms. Nidhi Srivastava, CIT) DR

Date of Hearing	20.01.2021
Date of Pronouncement	22 .01.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 01/09/2017 passed by CIT(A)-40, Delhi for assessment year 2014-15.

2. The grounds of appeal are as under:-

“1. That Ld.CIT(A) has erred in law and on facts in disallowing a sum of Rs. 52,00,000/- being amount accumulated and set apart u/s 11(2) of Income Tax Act, 1961.

2. The appellant contends that the conditions required for accumulation u/s 11(2) have been satisfied and therefore, the same should have been allowed by the Ld.CIT(A)

3. The above grounds are independent and without prejudice to one another.

4. The appellant contends that he may be allowed to add, amend, alter forgo any of the grounds at the time of hearing.

5. The above grounds are independent and without prejudice to one another.”

3. The Children Book Trust is a registered Society under the Societies Registration Act, 1860 vide certificate dated 7th May 1957. It is also registered u/s 12A vide Order dated 18th February, 1975. The assessee filed the return of income for the A.Y. 2014-15 on 30.09.2014 declaring NIL income. The assessee received the notice u/s 143(2) and the assessment was completed vide order dated 23.12.2016 wherein the Assessing Officer observed that the activities of the assessee are no longer charitable in view of proviso to Section 2(15). The Assessing Officer passed order u/s 143(3) dated 23.12.2016 received by the assessee on 23.12.2016. The Assessing Officer concluded that the activities of the Assessee fall under the category of “any other object of General Public Utility” i.e. the last limb of sec. 2(15) defining the term ‘charitable purpose’. By invoking proviso to sec. 2(15) introduced by the Finance Act, 2008 with effect from assessment year 2009-10 the Assessing Officer concluded that the activities are commercial in nature and therefore, does not satisfy the definition of ‘charitable purpose’ as per the amended definition. Thereby the exemption u/s 11 and 12 was denied. The Assessing Officer further observed that if the exemption u/s 11 is resorted to the assessee on a later stage, the claim of deemed application of income of Rs. 84,80,669/- as per clause (2) of explanation to Sec 11(1) of the Income Tax Act will not be allowed to the assessee.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the present appeal is filed for the limited issue that the conditions required for accumulation u/s 11(2) was satisfied by the assessee and the same should have been allowed by the CIT(A) when the CIT(A) has categorically held in the order that the assessee is eligible Exemption u/s 11 and the Assessing Officer thereafter was directed to allow the same with all consequential benefits. The Ld. AR further submitted that the Hon'ble Gujrat High Court in case of CIT(A) Vs. Mayur Foundation 274 ITR 562 has categorically held that once the assessee satisfies the conditions u/s 11(2) then the assessee be given all the benefits related to the same. The Ld. AR also relied upon the decision of the Hon'ble Apex Court in case of Nagpur Hotels Owners Association 247 ITR 201. The Ld. AR further submitted that Form No. 10B was filed before the CIT(A) along with the Form No. 10 and the Resolution to that extent. But the same was not at all considered by the CIT(A) which have could have been taken cognizance once the CIT(A) held that the assessee is eligible for exemption u/s 11. Thus, the appeal may be allowed

6. The Ld. DR relied upon the order of the Assessing Officer and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The assessee has filed revised audit report in Form NO. 10B as well as the Resolution dated 22/5/2017 during the assessment proceedings itself. Merely filing Form No. 10 cannot be held as afterthought. Thus, the CIT(A) though saying that the assessee is entitled for exemption u/s 11 with all the consequential benefits, thereafter cannot restricted the claim of the assessee which the assessee is entitled u/s 11 on the ground that filing of Form No. 10 was an afterthought. Therefore, we direct the Assessing Officer to take cognizance of the revised audit report in Form No. 10B as well as the Resolution dated 22/05/2017 and allow the consequential benefits to the

assessee as enshrined in Section 11 of the Act. The appeal of the assessee is partly allowed.

8. In result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on this 22nd Day of JANUARY, 2021.

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 22/01/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI