IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.4941 OF 2024

Sir Jamsetjee Jejeebhoy Charity Fund, ... Petitioner
127 Maneckji Wadia Building,
M. G. Road, Fort,
Mumbai – 400 023

Versus

1. Income Tax, Officer (Exemption),
Ward-2(3) , Mumbai,
Room No.617, 6th Floor,
MTNL Telephone Exchange Building,
Pedder Road, Dr. Gopalrao Deshmukh
Marg, Cumballa Hill,
Mumbai – 400 020

2. Principal Chief Commissioner of
Income Tax (Exemption), Delhi,
5th Floor, E-2, Block,
Pratyaksh Kar Bhawan, Civic Centre,
J.L.N. Marg, New Delhi – 110002.

3 Union of India,
Through the Joint Secretary & Legal
Advisors,
Branch Secretariat, Department of Legal
Affairs,
Ministry of Law and Justice,
2nd Floor, Aayakar Bhavan, M. K.
Marg, ... Respondents.
New Marine Lines, Mumbai - 400020

Mr. J. D. Mistri, Senior Advocate, *with Jeet Kamdar i/b. Mr. Atul K. Jasani, Advocates for the Petitioner.*

Mr. Dinesh R. Gulabani (through V.C.), *Advocate for the Respondents Nos. 1 and 2.*

CORAM: B. P. COLABAWALLA &
AMIT SATYAVAN JAMSANDEKAR, JJ.

Judgment Reserved On : 30th September, 2025

Judgment Pronounced On: 7th November, 2025

JUDGMENT (*PER Amit Satyavan Jamsandekar, J)*.

1. By the present Petition, the Petitioner has impugned the Notices dated 9th August 2024 and 20th August 2024, which are issued under Section 148A(b) of the Income Tax Act, 1961 ("the Act"). The relevant Assessment Year (A.Y.) is 2018-2019. Further, the Petitioner has also impugned the order dated 28th August 2024, passed by the 1st Respondent under Section 148A(d) of the Act. The Petitioner has also impugned the Notice dated 28th August 2024 issued by the 1st Respondent under Section 148 of theAct. By the Notice

dated 28th August 2024, the 1st Respondent has reopened the assessment of the Petitioner for A.Y. 2018-2019. The Revenue has filed its Reply dated 14th November 2024 to the Petition, which is affirmed on behalf of the 1st and the 2nd Respondent by one Mr. Pravin Kumar. The Petitioner has filed its Rejoinder to the Revenue's Reply.

2. The Pleadings are complete, and therefore, by consent of the parties, we have heard the Petition finally at the admission stage. Accordingly, we issue Rule. The Respondents waive service. By consent of the parties, Rule is made returnable forthwith and heard finally.

3. The facts and circumstances leading to the Notices and the order impugned in the present Petition are as follows :-

i) The Petitioner is a charitable Trust registered under section 12A of the Act. Sir Jamsetjee Jejeebhoy, First Baronet, a Parsi Merchant and a Philanthropist, was the settlor of the Petitioner in 1838.

ii) The Petitioner filed its Return of Income for the A.Y. 2018-2019 in which it declared its total income at Rs.1,96,983/-. The Petitioner is assessed in Mumbai. The Petitioner's Return of Income claimed exemption

under Section 11 of the Act. The Petitioner also filed Form No. 10, which contains a statement to be furnished to the Assessing Officer under Section 11(2) of the Act. It is the case of the Petitioner that along with the statement, the Petitioner also pointed out that the Trustees of the Petitioner have passed a Resolution on 26th September 2018, by which a sum of Rs.3,17,00,000/-, which is 66.72% of the Income of the Petitioner for the A.Y. 2018-2019, would be accumulated or set apart for carrying out the purposes of the Trust. The Petitioner accumulated or set apart this amount for the purposes of medical, education and social relief to the Members of the Zoroastrian community and conservation, maintenance and upkeep of properties till March 31, 2023.

iii) The Petitioner's case was selected for scrutiny, and the 1st Respondent issued a Notice dated 22nd September 2019 under Section 143(2) of the Act, read with Rule 12E of the Income Tax Rules, and sought clarification on the issue which is "Accumulation of Income by Trust".

iv) Thereafter, on 10th January 2020, the 1st Respondent issued notice to the Petitioner under Section 142(1) of

the Act and sought details, as more particularly, mentioned therein, and in particular, the details of accumulation under Section 11(2), if any, in the last ten years and the details of utilization as per the chart given in the notice. By this notice, the 1st Respondent also sought copies of the Application in Form 10 and the Resolution of Trustees in this regard for each accumulation under section 11(2), in case of an amount spent in the year under consideration.

v) On 30th January 2020, the Petitioner, by its letter, provided a true copy of the Resolution dated 26th September 2018 of the Trustees of the Petitioner for the accumulation of Rs. 3,17,00,000/- for the F.Y. 2017-2018.

vi) Thereafter, the assessment took place under the National Faceless Assessment Centre ("NFAC"), and a notice dated 19th November 2020 under Section 142(1) of the Act was issued to the Petitioner.

vii) On 4th January 2021, the Petitioner provided all the details to the NFAC in respect of the accumulation made under Section 11(2) of the Act in the last ten years and the utilisation as per the format provided in the notice under Section 142(1) of the Act.

viii) On 15th February 2021, the NFAC passed an Assessment Order under Section 143(3) read with Section 143(3A) and 143(3B) of the Act. By the Assessment Order, the total income of the Petitioner was assessed at Rs.1,96,980/-, and the accumulation made by the Petitioner was accepted.

ix) Thereafter to the shock and surprise of the Petitioner on 9th August 2024, the 1st Respondent issued a notice to the Petitioner under Section 148A (b) of the Act. The annexure to the notice dated 9th August 2024, under section 148A(b), reads as follows :-

> "*In this case, as per the details filed you it is observed that the assessee has not specified the reason for utilization of accumulated income u/s 11(2) in Form 10. It is* ***not enough for the trustees to repeat the object of the trust in Form 10****, but should specify the particular purpose for which the income is being accumulated to meet the requirement of section 11(2) of the Act. As the assessee has not complied with the provisions of section 11(2)(a) of the Act, the assessee's claim for accumulation of funds u/s. 11(2) of the I.T. Act, amounting to Rs.3,17,00,000/- needs to be rejected.*"
>
> (***emphasis supplied***)

x) Accordingly, the 1st Respondent asked the Petitioner to show cause as to why the exemption claimed for the accumulation of funds under Section 11(2) should not be disallowed.

xi) On 19th August 2024, the Petitioner filed its Reply, *inter alia*, stating that :

> "*May be also point out that our case was selected for compulsory scrutiny on grounds of 'Accumulation of Income by the Trust" which are exactly identical to the grounds stated in your notice u.s.148A clause(b). Prima facie it appears to be nothing but a "change of opinion*".

xii) Thereafter, a further notice under Section 148A(b) was issued by the 1st Respondent on 20th August 2024, by which the 1st Respondent granted time to the Petitioner to submit its Reply on or before 22nd August 2024.

xiii) In response to the show cause notice, the Petitioner, on 21st August 2024, filed a detailed Reply, *inter alia*, stating:-

> "*As the case has already been examined on the grounds of "Accumulation of Income by the Trust" to propose to reopen the case on the grounds proposed in your notice under clause (b) of section 148A that the assessee has not specified the reason for utilisation of accumulated income u.s. 11(2) in form 10 is absurd and needs to be rejected.*
>
> *It should be appreciated that* ***Form 10 has extremely limited space to report on the detailed proposed utilisation of accumulation of income and as such only a short summation can be stated. The full details can only be in the accompanying resolution.***
>
> *Such a resolution was passed and a copy of this resolution was shared with the Assessing officer.*

For your information and record the detailed resolution is also shared with you at Annexure E.

Once the resolution is read it will be abundantly clear that the Trustees have not repeated the "objects of the Trust" in Form 10 but has clearly and explicitly specified the purposes on which the accumulation will be utilised."

The requirements of Section 11(2) of the Income Tax Act, 1961 have been abundantly met and there is full compliance of the provision of section 11(2) (a) and there is no case that the accumulation of Rs. 3,17,00,000 can be or should be rejected."

(***emphasis supplied***)

xiv) Thereafter, on 28th August, 2024, the 1st Respondent passed an order under Section 148A(d) of the Act. The 1st Respondent rejected the submissions of the Petitioner. In the order, the 1st Respondent referred to the internal audit objections which, *inter alia*, recorded that :-

"*During the course of internal audit, it is observed that the assessee has claimed accumulation u/s. 11(2) of the I. T. Act, amounting to Rs. 3, 17,00,000/-. It is also seen from the statement in Form No. 10 by the assessee that it has shown purpose of accumulation as "Medical, Educational and Social relief to members of the Zoroastrian community and conservation, maintenance and upkeep of the properties".*

For allowing the exemption u/s. ***11(2) the condition is that the trust should specify in the prescribed Form the purpose for which the income is accumulated or set***

> *apart. It is not enough for the trustees to repeat the object of the trust, but must specify a particular purpose for which the income is being accumulated. It is essential that the trust should specify its purposes and the requirement is that, the purposes must have some individuality and mere repetition of the object of the trust or mentioning like General activities, special activities & capital expenditure of the institution would not meet the requirement of section 11(2) of the Act.*"
>
> (*emphasis supplied*)

The 1st Respondent further held in the order that the above audit objection constitutes information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment. As far as the requirement of Section 11(2) to specify the purpose in Form 10 is concerned, the 1st Respondent held that the Resolution of Trustees submitted by the Petitioner was passed on 28th January 2020, which is well beyond the due date for filing the return of income and Form 10. According to the 1st Respondent, the Resolution was passed by the Trustees of the Petitioner to cover up the issue for the purpose of accumulation after the case was selected for scrutiny by Notice dated 22nd September 2019. According to the 1st Respondent, the prescribed Form, which is Form 10, has ample space to clearly mention the 'Specific Purpose' for which the

amount has been accumulated. Therefore, he rejected the Petitioner's submission that Form 10 has limited space to specify the purpose of accumulation.

xv) The 1st Respondent also rejected the submission of the Petitioner that there is a change of opinion. The 1st Respondent held that the Assessee Trust did not fully and truly disclose the facts during the assessment proceedings, and therefore, the Assessing Officer was unable to form his opinion or able to uncover the facts. Further, the 1st Respondent held that the Petitioner's case is being reopened based on the above-referred audit objections. In this background, the 1st Respondent held that the Petitioner has not complied with the provisions of Section 11(2) of the Act, and therefore, rejected and disallowed the Petitioner's claim for accumulation under Section 11(2) of the Act and added the same to the total income of the Petitioner for A.Y. 2018-2019.

xvi) On 28th August 2024, the 2nd Respondent (the Principal Chief Commissioner of Income-tax (Exemption) New Delhi) granted approval under Section 151 of the Act.

xvii) Accordingly, on 28th August 2024, the 1st Respondent issued Notice to the Petitioner under Section 148 of

the Act, *inter alia*, calling upon the Petitioner to furnish within a period of three months from the end of the month in which the notice was issued, a return of income in the prescribed Form for A.Y. 2018-2019.

4. It is in this factual backdrop that, the Petitioner has challenged, i) the show cause Notices dated 9th August 2024, and 20th August 2024; ii) the Order dated 28th August 2024 passed under Section 148 A(d) of the Act; and iii) the Notice dated 28th August 2024 issued under Section 148 of the Act by the 1st Respondent.

5. The Petitioner's challenge to the said notices and the order is on various grounds which, *inter alia,* includes: i) that the 1st Respondent lacked jurisdiction; ii) that the Notice under Section 148 is barred by limitation under section 149 of the Act; iii) that there exists no "information" for the purpose of Section 148 of the Act; iv) that the 1st Respondent has no power to review its own assessment based on the same information; v) that the order under Section 148A(d) is bad in law; vi) that the sanction given by the 2nd Respondent is bad in law; and vii) that even on merits of the case, no income has escaped assessment, etc. In any case, it is the contention of the Petitioner that it is fully compliant with the

provisions of Section 11 (2) and the Assessing Officer has grossly erred on facts.

6. Though various grounds are taken to challenge the Notices and Order, Mr. Mistri, the Learned Senior Counsel appearing on behalf of the Petitioner submitted that he is restricting his submissions to the grounds that (i) the Petitioner has fully complied with the requirements of section 11(2) of the Act, (ii) the record clearly establishes that the 1st Respondent has changed his opinion, and therefore, cannot reopen the assessment. He further submitted that in view thereof, the other grounds of challenge need not be gone into. However, he submitted that all other grounds of challenge be kept open.

7. Accordingly, we heard Mr. Mistri, the Learned Senior Counsel, on the grounds mentioned in the preceding paragraph.

8. Mr. Mistri submitted that as required under section 11(2) of the Act, the Petitioner has submitted Form 10. He further submitted that the Petitioner also provided a certified true copy of the Resolution dated 26th September 2018. The Petitioner's Form 10 specifically refers to the Resolution

dated 26th September 2018. Form 10 filed by the Petitioner clearly states that:

> *"…. hereby bring to your notice that it has been decided by a resolution passed by the trustees/governing body, by whatever name called, on 26/09/2018 that, out of the income of the trust / institution/ association for the previous year, relevant to the assessment year 2018-19 an amount of Rs.31700000 which is 66.72 per cent of the income of the trust / institution / association for the said previous year, shall be accumulated or set apart for carrying out the purposes of the trust / association / institution."*

In the limited space provided in Form 10, the Petitioner has stated the purpose for which the amount is being accumulated or set apart in the following words:

> "MEDICAL, EDUCATIONAL AND SOCIAL RELIEF TO MEMBERS OF THE ZOROASTRIAN COMMUNITY AND CONSERVATION, MAINTENANCE AND UPKEEP OF THE PROPERTIES"

9. Mr. Mistri submitted that the prescribed form, which is Form 10, has only limited space to mention the purpose for which the amount is being accumulated or set apart. Therefore, the Petitioner, in the same Form, has specifically given a reference to the Resolution dated 26th September 2018 passed by the Trustees of the Petitioner. He further submitted that, in any case, the certified true copy of the Resolution was sent to the 1st Respondent by the Petitioner vide letter dated 30th January 2020, after submitting it

online on 20th January 2020. Further, the information which was sought by the 1st Respondent by issuing Notice under Section 143(2) was specifically in respect of the issue of accumulation of income by Trustees of the Petitioner. Further, the information which was sought by the 1st Respondent under Section 142(1) by the notice dated 10th January 2020 was specifically in respect of accumulation made under Section 11(2) of the Act. The Petitioner has provided a detailed Reply to the 1st Respondent and has furnished the required information and documents. Therefore, the 1st Respondent had all the documents and the required information when the 1st Respondent assessed the return of income. Therefore, Mr. Mistri submitted that the Petitioner has complied with the provisions of section 11(2) of the Act. Therefore, the notices issued and the order passed by the 1st Respondent are factually incorrect and legally non-sustainable.

10. Mr. Mistri, further submitted that in view of the fact that all the required documents and information were given to the 1st Respondent during the original assessment proceedings, which included the Resolution of the Trustees of the Petitioner, as well as the information about the details of accumulation made in the last 10 years and the details of utilisation, etc., the 1st Respondent cannot now initiate

proceedings under Section 148 of the Act to review the earlier stand adopted by the Assessing Officer. He submitted that a change of mind cannot be a ground to invoke the provisions of Section 148. Therefore, Mr. Mistri submitted that the impugned notices and the impugned order ought to be quashed and set aside.

11. On the other hand, Mr. Gulabani, the Learned Counsel on behalf of the Revenue, submitted that the Petitioner has not complied with the requirements of Section 11(2) of the Act. Therefore, the impugned notices and order are sustainable in law, was the submission. Consequently, he submitted that the Petitioner is not entitled to the benefits of the provisions of Section 11(2) of the Act. Mr Gulabani further relied on the statements made in the Affidavit-in-Reply, which is filed on behalf of the 1st Respondent and the 2nd Respondent. It is stated in the Affidavit-in-Reply that:-

> *"Further, during the course of proceedings u/s 148A of the Act, assessee has never produced the resolution passed on 26.09.2018. The resolution passed by the trust is dated 28.01.2020, which was well beyond the due date for filing return of income and Form 10 and which was to cover up the issue of purpose of accumulation after the case was selected for scrutiny vide notice dated 22.09.2019. The objection raised by the assessee has no relevance to the procedure laid down u/s 148A of the IT. Act, 1961."*
>
> (*emphasis supplied*)

12. As far as the Resolution dated 26th September 2018 passed by the trustees of the Petitioner is concerned, Mr. Gulabani further relied on the statements in the Reply Affidavit, which reads as :-

> "*In the instant case* ***the resolution for accumulation of income is dated 28/01/2020 which clearly shows that no genuine discussion has happened for accumulation before the due date of filing of audit report*** *and income tax returns and resolution was just passed for the purpose of submissions during assessment proceedings.*"
>
> ***(emphasis supplied)***

13. Therefore, Mr. Gulabani submitted that, there is no compliance of Section 11(2) of the Act. In this background, Mr. Gulabani submitted that the order passed by the 1st Respondent to open the reassessment under Section 148 of the Act is justified and is not based on a change of mind. According to Mr. Gulabani, true and correct information was not disclosed by the Petitioner during the original assessment, and therefore, income has escaped the assessment, which entitled the revenue to invoke the provisions of Section 148 of the Act. He, therefore, submitted that there was no merit in the above Writ Petition and the same be dismissed with costs.

14. We have heard the rival submissions and perused the record.

15. The Petitioner has claimed benefit under Section 11(2) of the Act. Section 11(2) of the Act reads as follows:-

> *"11[(2) "Where* ***"[eighty-five] per cent of the income*** *referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to* ***charitable or religious purposes*** *in India during the previous year but* ***is accumulated or set apart,*** *either in whole or in part, for application to such purposes in India,* ***such income so accumulated or set apart shall not be included in the total income*** *of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-]*
> *[(a) such person furnishes* ***a statement in the prescribed form and in the 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;*
> *(b) the money so accumulated or set apart* ***is invested or deposited in the forms or modes specified*** *in sub-section (5);*
> *(c) the statement referred to in clause (a) is* ***furnished [at least two months prior to] the due date*** *specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:*
> *Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.]*
>
> ***(emphasis supplied)***

16. By the plain language of the section, the following are the requirements to claim the accumulation or set apart the income:-

(i) The assessee must furnish a statement in the prescribed Form and in the prescribed manner to the Assessing Officer. This statement should state 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.

(ii) The period for the which income is to be accumulated or set apart shall in no case exceed five years.

(iii) The money so accumulated or set apart has to be invested, or to be deposited in the manner or modes specified in sub-section (5) of Section 11.

(iv) The statement in the prescribed Form and in the prescribed manner ought to be furnished at least two months prior to the due date specified under sub-section (1) of Section 139 for furnishing the return of income for the previous year.

17. These are the core requirements of section 11(2) of the Act. The corresponding Rule, which is Rule 17 of the Income Tax Rules, reads as follows:-

> "*17.(1) The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 of the Act in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 1.39 of the Act for furnishing the return of income of the relevant assessment year.*
>
> *(2) The statement to be furnished to the Assessing Officer or the prescribed authority under clause (a) of the Explanation 3 to the third proviso to clause (23C) of section 10 of the Act or under clause (a) of* ***sub-section (2) of section 11 of the Act or under the said provision as applicable under clause (21) of section 10 of the Act shall be in Form No. 10*** *and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act, for furnishing the return of income.*
>
> *(3) The option in Form No. 9A referred to in sub-rule (1) and* ***the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code****.*
>
> *(4)* ***The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-***
>
> ***(i) specify the procedure for filing of Forms referred to in sub-rule (3);***
> ***ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (3), for purpose of verification of the person furnishing the said Forms, and***

(iii) be responsible for formulating and implementing appropriate security. archival and retrieval policies in relation to Forms so furnished."

(*emphasis supplied*)

18. Rule 17 of the Income Tax Rules has prescribed Form 10. It has also been prescribed that Form 10 shall be furnished electronically, either under a digital signature or an electronic verification code. Form 10 and the procedure of filing the same are specified under Rule 17(4) of the Income Tax Rules. Thus, the data structure, standard and manner of generation of electronic verification code, etc., are specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be. The Authorities mentioned in the Rule have decided the format of Form 10 as required by the Section and the corresponding Rule.

19. In the present case, there is no dispute that the Petitioner has filed the prescribed Form 10, two months prior to the due date specified under sub-section (1) of Section 139 of the Act. There is also no dispute that the income as accumulated or set apart by the Petitioner is for a charitable or religious purpose in India. The income which is accumulated or set apart has also not exceeded the threshold limit of 85% of income referred to in Clause (a) or Clause (b) of sub-section (1) read with explanation II, sub-section (1) of Section 11.

20. Admittedly, Form 10 was filed by stating that the Petitioner has accumulated or set apart the income for the purpose, more particularly, mentioned in the limited space provided in Form 10, which was filed electronically, as prescribed by the Rule. The Petitioner has also mentioned the date of Resolution by which the income is accumulated or set apart. Form 10 is a Form provided to the Petitioner by the Rules, and the Petitioner has merely filled in the details. The purpose as required by the Section is also clearly stated in Form 10 by the Petitioner.

21. The notice dated 22nd September 2019, under Section 143(2) of the Act, read with Rule 12 E of Income-tax Rules, specifically sought clarification from the Petitioner on the issue of "accumulation of income by Trust". Notice dated 10th January 2020 issued by 1st Respondent under section 142(1) of the Act also sought details and particulars from the Petitioner. This notice of the 1st Respondent also sought a copy of the Resolution passed by the Trustees of the Petitioner. On 30th January 2020, the Petitioner provided a copy of the Resolution dated 26th September 2018 to the 1st Respondent. Thereafter, an assessment was conducted, and on 15th January, 2021, the NFAC passed an assessment order under Section 143(3) read with Sections 143(3A) and 143(3B)

of the Act. By this assessment order, the accumulation made by the Petitioner was accepted. Thus, when the NFAC passed the assessment order, all the details and material particulars which are required to be furnished by virtue of the provisions of Section 11(2) of the Act were provided by the Petitioner. Form 10 filed by the Petitioners specifically referred to the Resolution dated 26th September, 2018, and in which, in clear terms, the purpose for which the amount is being accumulated or set apart was mentioned. The purpose is clearly stated in the space provided in the electronic form. In addition, a copy of the Resolution under which the amount is accumulated or set apart was also furnished to the NFAC.

22. The notice issued by the 1st Respondent on 9th August 2024, under section 148(A)(b) of the Act, is issued on the ground that the Petitioner has not specified the particular purpose for which the Income is being accumulated to meet the requirements of Section 11(2) of the Act. As per the annexure to the notice, it is not enough for the Trustees to repeat the object of the Trust in Form 10. The reason given by the 1st Respondent in the notice dated 9th August 2024 is reiterated by the 1st Respondent in the order dated 28th August 2024 passed by the 1st Respondent under section 148(A)(d) of the Act.

23. We have gone through the impugned notices and the impugned order passed by the 1st Respondent. First of all, the reasons stated by the 1st Respondent in the impugned notices and the impugned order are factually wrong. The Petitioner in Form 10 has specifically stated the particular purpose for which the income is being accumulated to meet the requirements of Section 11(2) of the Act. Additionally, the Petitioner has also provided a copy of the Resolution, which was already mentioned in Form 10 filed by the Petitioner. It is not the fault of the Petitioner that a more specific purpose could not be mentioned in Form 10 due to the limited space provided therein. The Petitioner repeatedly pointed out this practical difficulty in the Petitioner's reply to the notice issued by the 1st Respondent. Therefore, we find that the reasons given by the 1st Respondent that there is no compliance with Section 11(2) of the Act is factually wrong. The purpose stated by the Petitioner in Form 10 for accumulating or setting apart the income of the Petitioner in Form 10 is more than sufficient, and is as contemplated by Section 11(2) read with Rule 17 of the Act. Additionally, a copy of the Resolution was also given to the 1st Respondent. Further, the 1st Respondent has clearly erred in reading the copy of the Resolution dated 26th September, 2018. The findings of the 1st Respondent that the Resolution was passed only on 28th January 2020 are factually wrong. The statement

made on behalf of the 1st Respondent that the Assessee never produced the Resolution passed on 26th September 2018 during the course of the proceedings under section 148(A) of the Act is also factually wrong. The Petitioner explicitly referred to the Resolution in Form 10, and the Petitioner provided a copy of the same to the 1st Respondent by its letter dated 30th January 2020. Therefore, the 1st Respondent has based his decision on incorrect and wrong facts. A copy of the Resolution dated 26th September 2018, provided by the Petitioner to the 1st Respondent, clearly states that the Resolution is dated 26th September 2018 and that a copy of the same was certified as a true copy on 28th January 2020. The 1st Respondent has misread the dates on the certified true copy of the Resolution. Therefore, he arrived at the wrong finding that the Resolution for the accumulation of income is dated 28th January 2020.

24. In ***Commissioner of Income Tax (Exemption) Vs. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust [2019] 102 taxmann.com 122 (Gujrat),*** while answering the question that:

> "*A. Whether on the facts and circumstances of the case and in law, the Tribunal was justified in interpreting the provisions of section 11(2) of the Act and holding that it is not mandatory to specify the object/purpose in Form No.10 for claiming accumulation u/s. 11(2) of the Act?*",

it is observed that:

> *"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 staying 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. Tax Appeals are dismissed."

25. The Revenue provides the format and the contents of Form 10. The only way by which Form 10 can only be filled in and submitted is electronically. There is no scope for the Assessee to make any changes in the Form. If that is the only way to comply, the Assessee cannot be faulted for non-compliance. Looking at the format and the contents of Form 10, in which the Assessee is required to fill in the details, clearly shows that limited space in the Form is contemplated, and therefore the contents of the Form also require the Assessee to give details of the resolution passed by the Assessee Trust. The relevant part of the content and the format of Form 10 reads as : *"…hereby bring to your notice that it has* ***been decided by a resolution passed by the*** *trustees/governing body, by whatever name called, on ---- that, out of the income…"* (*emphasis supplied*). Therefore, the particulars specified in the limited space provided in Form 10 ought to be supported by providing the date of the resolution. Once the date of resolution of the Assessee Trust is provided in the Form, the Assessing Officer can verify the same by calling upon a certified copy of the resolution during the assessment. In the present case, a certified copy of the resolution passed by the Trustees of the Petitioner was provided to the 1st Respondent not only in the original

assessment proceedings but also in their replies to the notices issued under Section 148A (b) of the Act.

26. The plain language of Section 11(2) is unambiguous and mandatory. Once the requirements of the Section are fulfilled, then the mandatory provisions, 'such income so accumulated or set apart ***shall*** not be included in the total income of the previous year of the person in receipt of income', triggers, and therefore the assessees, after fulfilling the requirements of section 11(2), as a matter of right become entitled for the benefit of Section 11(2) of the Act. Once the Assessees fulfill the requirements and conditions, the Assessing Officer has no discretion to reject and disallow the Assessees claim for accumulation or setting apart the income under Section 11(2) of the Act.

27. Therefore, we are of the view that the Petitioner has fully complied with all the requirements of section 11(2) of the Act and Rule 17 of the Income-tax Rules. There is nothing more that the Petitioner could have done to comply with the provisions of Section 11(2).

28. Further, after considering the facts and circumstances and perusing the record, we are of the view that the Assessing Officer has looked into the relevant details and particulars of

accumulation during the course of the original assessment, and the Petitioner had provided all the details and documents during the original assessment proceedings. It is settled law that the proceedings under Section 148 of the Act cannot be initiated to review the earlier stand adopted by the Assessing Officer. The Assessing Officer cannot initiate reassessment proceedings to have a re-look or re-examine the documents that were filed and considered by him in the original assessment proceedings.

29. Our view is supported by the judgment of this Court in *Chandrakant Narayan Patkar Charitable Trust Vs. Income-tax officer (Exemption) [2022] 138 taxmann.com 564 (Bombay)*. In this case, this Court has taken a view that when there is no tangible material or no new information and no fresh material was placed before the Revenue, then the Revenue cannot justify the reopening of the assessment. The reopening cannot be based on a change of opinion. In the present case, all the material particulars and documents were before the Assessing Officer when the original assessment was conducted. There is no new material before the Revenue, nor are there any new facts or information to justify the reopening of the assessment.

30. Similarly, this Court in ***Siemens Financial Services (P.) Ltd. Vs. Deputy Commissioner of Income-tax [2023] 154 taxmann.com 159 (Bombay)*** has held as follows :-

> *"37. The Assessing Officer does not have any power to review his own assessment when during the original assessment petitioner provided all the relevant information which was considered by him before passing the assessment order under section 143(3) of the Act dated 23rd December 2018. Petitioner had debited an amount of Rs. 6,41,87,931/- on account of software consumables in the profit and loss account and a detailed break-up of the said expenses were submitted before the Assessing Officer during the course of assessment proceedings vide a letter dated 6th December 2018. It is settled law that proceedings under section 148 cannot be initiated to review the earlier stand adopted by the Assessing Officer. The Assessing Officer cannot initiate reassessment proceedings to have a relook at the documents that were filed and considered by him in the original assessment proceedings as the power to reassess cannot be exercised to review an assessment. In petitioner's case the Assessing Officer having allowed the amount of software consumables as a revenue expenditure now seeks to treat the same as capital expenditure which is a clear change of opinion. Various judicial precedents have held that reassessment proceedings initiated on the basis of a mere change of opinion are invalid and without jurisdiction.*
>
> *38. The Apex Court in Kelvinator of India Ltd. (supra) emphasised on the difference between a power to review and the power to reassess. The Apex Court held that the Assessing Officer has no power to review but has only the power to reassess. The concept of 'change of opinion' must be treated as an in-built test to check*

abuse of power by the Assessing Officer. The relevant extract of the judgement is reproduced as under:-

> *".....However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot beper screason to reopen. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced*

> *the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer.....”*
>
> *39. The Delhi High Court in Seema Gupta v. ITO [2022] 140 taxmann.com 463/288 Taxman 519 (Delhi) held that the order under section 148A(d) and notice under section 148 of the Act should be set aside when the reassessment was initiated on a change of opinion where the same was discussed and verified by the Assessing Officer at the time of original assessment proceedings.*

This decision in ***Siemens Financial*** *(supra)* is not affected by the decision of the Hon'ble Supreme Court in *Union of India v. Rajeev Bansal* (2024) 469 ITR 46 (SC) insofar as the present issue is concerned. Therefore, we find that the reassessment proceedings initiated by the 1st Respondent are not justified on any count. In the present case, we find that the order initiating the re-assessment has been based not only on a change of mind but also on the non-application of the mind.

31. For all the reasons set out above, we quash and set aside the impugned show cause notices dated 9th August 2024 and 20th August 2024, the impugned order dated 28th August 2024 and the impugned notice dated 28th August 2024, and make the Rule absolute in terms of the prayer clause (a) which reads as follows:

"a) that this Hon'ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari, or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, calling for the records of the Petitioner's case and after examining the legality and validity thereof quash, cancel and set aside the impugned show cause notices dated August 9, 2024 and August 20, 2024, the impugned order dated August 28, 2024 and the impugned notice dated August 28, 2024 issued by Respondent No.1"

32. All other grounds of challenge to the impugned show cause notices dated 9th August 2024 and 20th August 2024, the impugned order dated 28th August 2024 and the impugned notice dated 28th August 2024 are expressly kept open.

33. However, there shall be no order as to cost.

34. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT SATYAVAN JAMSANDEKAR, J.] [B. P. COLABAWALLA, J.]