

Digitally
signed by
VINA
ARVIND
KHADPE
Date:
2025.11.27
12:16:32
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4322 OF 2024

The B N Gamadia Parsee Hunnarshala Trust

.. Petitioner

Versus

Income-tax Officer, (Exemption)
Ward 2(4), Mumbai & ors.

.. Respondents

Mr. J. D. Mistri, Senior Advocate, with Mr.B. V. Jhaveri & Ms. Bhargavi Raval, Advocates for the Petitioner.

Mr. Pritish Chatterjee, with Mr. Prathmesh P. Bhosle, Advocates for the Respondents.

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**
DATE: NOVEMBER 20, 2025

P. C.

1. At the outset, Mr. Mistri, the learned Senior Counsel appearing on behalf of the Petitioner tenders a copy of draft amendments to the above Writ Petition. The draft amendments are only to bring certain documents on record which were not annexed to the Petition and the averments in relation thereto. Considering this is a formal amendment, the draft amendments tendered to the Court are taken on record and marked “X” for identification. The Petitioner is permitted to carry out the amendments as per the draft

handed in. The amendments shall be carried out by tomorrow. Reverification is dispensed with.

2. By the present Petition, the Petitioner has impugned (i) the notice dated 8th August 2024, issued u/s. 148A(b) of the Income Tax Act, 1961 (“the Act”), (ii) the order dated 29th August 2024, passed u/s. 148A(d) of the Act, (iii) the notice dated 29th August 2024 issued u/s. 148 of the Act. The relevant Assessment Year (A.Y.) is 2018-19. By the Notice dated 29th August 2024, the 1st Respondent has reopened the assessment of the Petitioner for A.Y. 2018-19. The Revenue has filed its Reply dated 5th October 2024 to the Petition, which is affirmed on behalf of the 1st Respondent by one Mr. Rajesh Shahir.

3. In the present petition Rule was issued and interim relief was granted in terms of prayer clause (d) vide Order dated 23rd September, 2024.

4. The Pleadings are complete, and therefore, with the consent of the parties, we have heard the Petition finally.

5. 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 u/s. 12A of the Act. The objects of the Trust are as follows:

“(a) The foundation, maintenance and support of a Technological School or Schools and Institutes, Polytechnical School or Schools or Institutes. Hunnar Shala, Workshops and Industrial and vocational classes for the training of Parsi Zoroastrian young men in the arts and crafts of the factory workshop and as artisans in skilled designs and works and in all manner of handicrafts wood stone and other materials. As ancillary to and in aid of the above objects to take execute and carry out orders from customers and others for the furniture and works turned out in any of the aforesaid schools, institutes, workshops, classes or departments and the receipts and revenue therefrom shall be held as part of the income of the Trusts Funds and applied accordingly.

(b) The grant of scholarships, subscriptions, donations, prizes and other forms of support to schools and Parsi Zoroastrian young men conducive to the aforesaid objects (but not outside India) if funds permit.

(c) The relief of and grant of employment to adult as also elderly Parsi Zoroastrian males.

(d) Provision and maintenance of male Parsi Zoroastrians as apprentices whether in any institute conducted hereunder or in any other factories workshops in India.

- (e) To do all such other things as are incidental or conducive to the attainment of the above objects.
 - (f) To provide by construction of building or otherwise in any manner whatsoever, as the Trustees in their absolute discretion may think fit housing facilities to Parsi Zoroastrian males and females and letting out the building or otherwise allowing the use and occupations of the buildings or parts thereof to Parsi Zoroastrians, males and females on low and/or reason-able rents or fees or compensation and on such terms or fees or compensation and on such terms and conditions as the Trustees in their discretion may think fit to prescribe.
 - (g) to give donations and financial assistance to needy Parsi Zoroastrian, males and/or females to enable them to pay the rents, charges, fees and/or compensation payable by them for the houses or premises occupied by them.”
- (ii) The Petitioner filed its Return of Income for the A.Y. 2018-19 on 8th October 2018. The Petitioner claimed exemption u/s.11 of the Act, including the benefit of an amount accumulated u/s. 11(2) of the Act of Rs.1,00,00,000/-. Accordingly, it declared its total income at Rs. NIL. The Petitioner also e-filed Form No. 10, on 29th September, 2018 which is the statement required to be furnished to the Assessing Officer u/s. 11(2) of the Act. It is indisputable that due to the obvious paucity of space in the form in the box where the purpose for

accumulation is to be set out, the Petitioner had inserted “AS PER THE OBJECTS OF THE TRUST”, and that the statement referred to the Resolution dated 20th September 2018, by which it was resolved that a sum of Rs.1,00,00,000/-, out of the income of the Petitioner for the A.Y. 2018-19, would be accumulated or set apart for carrying out the following specific purposes, viz., (a) education, (b) provision of housing facilities to Parsee Zoroastrians, and (c) financial assistance to needy Parsee Zoroastrians to enable them to pay rent, charges etc. for houses or premises occupied by them. Form No. 10 and the Resolution of the Trustees of the Petitioner recording the purposes/objects for accumulation of the sum of Rs.1,00,00,000/- were uploaded on the Income-tax portal of the Petitioner on 29th September, 2018. A copy of Form No. 10 in the petition records the receipt number and date of uploading the same.

- (iii) Thereafter, the Petitioner’s case was selected for scrutiny, and the 1st Respondent issued a Notice dated 22nd September 2019 u/s. 143(2) of the Act, read with Rule 12E of the Income Tax Rules, and sought clarification on the specific issue of “Accumulation of Income by Trust”.

- (iv) After this, on 3rd December 2020, the 1st Respondent issued a notice to the Petitioner u/s. 142(1) of the Act and sought details, as more particularly, mentioned therein, and in particular, the details of the accumulation u/s. 11(2), if any, in the last ten years and the details of utilization as per the chart given in the notice.
- (v) Various other correspondences took place between the Petitioner and the 1st Respondent from time to time regarding the assessment. During the course of argument we were informed that the 1st Respondent had issued a notice u/s. 142(1) of the Act dated 9th January 2020 seeking details of accumulation u/s.11(2) of the Act which was replied by the Petitioner vide its letter dated 20th February 2020 (uploaded on the same day) annexing various documents including Form No.10 and the Resolution of the Trustees of the Petitioner Trust.
- (vi) On 19th December 2020, the Petitioner received a reminder to reply to the Notice dated 3rd December 2020 and to file documents in support thereof, from the National e-Assessment Centre (NFAC).

- (vii) On 14th January 2021, the Petitioner provided all the details to the NFAC in respect of the accumulation made u/s. 11(2) of the Act in the last five years and the utilization as per the format provided in the notice u/s. 142(1) of the Act dated 3rd December, 2020.
- (viii) On 10th February 2021, the NFAC passed an Assessment Order u/s. 143(3) read with sections 143(3A) and 143(3B) of the Act. By the Assessment Order, the total income of the Petitioner was assessed at Rs. NIL/-, and the accumulation made by the Petitioner was accepted.
- (ix) Thereafter, on 8th August, 2024 the 1st Respondent issued a notice to the Petitioner u/s. 148A(b) of the Act. The annexure to the notice dated 8th August 2024, u/s. 148A(b), reads as follows:

*“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.1,00,00,000/-. It is also seen from the statement in form No.10 filed as per Rule 17(2) of the I.T. Rules, by the assessee that it has shown purpose of accumulation as “**AS PER THE OBJECTS OF THE TRUST**”. However, as per amended provisions of section 11(2)(a) rws 11(3)(a), the assessee is expected to state the exact purpose for which the income is being accumulated & period for which said income is being accumulated. In this case the assessee has transferred aforesaid funds to the Balance Sheet without specifying the exact purpose for which accumulated funds will be utilized for the fulfilment of the object of trust claiming accumulation u/s. 11(2) of the I.T. Act. For allowing the exemption u/s. 11(2) the condition is that the trust should specify in the prescribed form the exact 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/activity of the trust would not meet the requirement of section 11(2) of the Act. Thus, the assessee has not complied with the provisions of section 11(2)(a), hence the assessee's claim for accumulation of funds u/s. 11(2) of the I.T. Act, amounting to Rs.1,00,00,000/- needs to be rejected.”

- (x) The 1st Respondent required the Petitioner to show cause as to why the exemption claimed for accumulation of funds u/s. 11(2) should not be disallowed.
- (xi) On 16th August 2024, the Petitioner filed its Reply, inter alia, stating that it is the settled position of law that issues decided categorically should not be revisited in the guise of reassessment. If the Assessing Officer revisits the issues already decided in the Assessment Order passed u/ s. 143(3) of the Act it will amount to change of opinion which cannot be permitted in law. It was further submitted that the Assessing Officer has failed to appreciate the fact that as per the Resolution forming part of Form 10, three basic objects of the Appellant Trust, out of the several objects mentioned in the Trust Deed, have been specifically stated for which the funds have been accumulated/ set apart. Further, Form No. 10, which was filed by the assessee in a timely manner clearly stated that the purpose for which the amount was being accumulated or set apart was "As per the objects of the trust". It was further submitted that specific mention as

set out in the s148A(b) notice was not the requirement of law. Section 11(2) of the Act does not prohibit plurality of purposes. The objects mentioned by the assessee for accumulation of income are as per the Trust Deed of the Trust and therefore the purposes for which accumulation is made are not beyond the objects of the Trust. It was submitted therefore that the exemption/deduction on account of accumulation made by the Trust cannot be denied. In this connection reliance was placed on the following decisions:

- a) *CIT vs. Hotel & Restaurant Association (261 ITR 190) (Delhi)*
- b) *Director of Income – tax (Exemption) vs. Daulat ram Education Society 278 ITR 260 (Del)*
- c) *Bharat Krishak Samaj vs. Deputy Director of Income – tax (Exemption) 306 ITR 153 (Del)*
- d) *Director of Income – tax vs. Mitsui and Co. Environmental Trust 303 ITR 111 (Del)*
- e) *Bharat Kalyan Prtisthan vs. Director of Income – tax (Exemption) 299 ITR 406 (Del)*
- f) *CIT(E), Bangalore vs. Ohio University Christ College 408 ITR 352 (Karnataka).*

In conclusion it was submitted that the purpose for which accumulation was made by the assessee was not vague but specific and concrete. Without prejudice to the aforesaid, it was submitted that even if it is assumed, without admitting, that the assessee has not

stated the specific purpose of accumulation, then also the assessee is entitled to claim exemption on the basis of the aforesaid decisions which are in favour of the assessee as in all the aforesaid decisions it has been held that the benefit of accumulation should be granted to the assessee given the fact that the accumulation is sought for the purpose of its object on the basis of which the assessee was granted registration u/s.12A of the Act and the objects of the Trust are charitable in character and the purpose mentioned in Form 10 are for achieving the objects of the Trust. In the aforesaid decisions it has also been held that if the accumulation is for more than one purpose then also the assessee is entitled to exemption u/s. 11(2) of the Act. Thus, the exemption as is admissible u/s. 11(2) of the Act cannot be denied to the assessee.

(xii) Thereafter, on 29th August, 2024, the 1st Respondent passed an order u/s. 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. The 1st Respondent further held in the order that the audit objection constitutes information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment.

(xiii) The 1st Respondent 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 the Petitioner's claim for accumulation u/s. 11(2) of the Act for A.Y. 2018-19.

(xiv) On 29th August 2024, the 2nd Respondent (the Principal Chief Commissioner of Income-tax (Exemption) Delhi) had granted approval under Section 151 of the Act. The said approval erroneously recorded that no reply had been received from the Petitioner in response to the section 148A(b) notice.

(xv) Finally, on 29th August 2024, the 1st Respondent issued a Notice to the Petitioner u/s. 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. 2018-19.

6. It is in this factual backdrop that the Petitioner has challenged, (i) the show cause Notice dated 8th August 2024; (ii) the Order dated 29th August 2024 passed under Section 148A(d) of the Act; and (iii) the Notice dated 29th August 2024 issued under Section 148 of the Act by the 1st Respondent.

7. 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 in view of the scheme under section 151A of the Act; (ii) that there exists no "information" for the purpose of section 148 of the Act; (iii) that the 1st Respondent has no power to review its own assessment based on the same information; (iv) that the order u/s. 148A(d) is bad in law; (v) that the sanction given by the 2nd Respondent is bad in law; (vi) that even on the merits of the case, no income has escaped assessment; and (vii) in any case, it is clear that the Petitioner has fully complied with the provisions of section 11(2) of the Act and the Assessing Officer has grossly erred on facts and law.

8. Mr. Mistri, the Learned Senior Counsel appearing on behalf of the Petitioner commenced arguments on the ground that the Petitioner has fully complied with the requirements of section 11(2) of the Act, and therefore, the impugned notices and the impugned order cannot be sustained.

9. Mr. Mistri submitted that as required u/s. 11(2) of the Act, the Petitioner had e-filed Form No 10 on the Income-tax Portal on 29th September 2018 along with the Resolution of the Trustees dated 20th September 2018 which had specified three purposes for accumulation. The prescribed Form No.10 specifically refers to the Resolution dated 20th September 2018 and reads as under:

“.... hereby bring to your notice that it has been decided by a resolution passed by the trustees/governing body, by whatever name called, on 20/09/2018 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.10000000 which is 51.42 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.”

10. Mr. Mistri submitted that in the limited space of 400 characters provided in Form 10, the Petitioner had stated the purpose for which the amount is being accumulated or set apart in the following words:

“AS PER THE OBJECTS OF THE TRUST”

11. Further, the information which was sought by the 1st Respondent by issuing Notice u/s. 143(2) dated 22nd September 2019 was specifically in respect of the issue of accumulation of income by the Petitioner. Further, the information which was sought by the 1st Respondent u/s. 142(1) by the notice

dated 3rd December 2020 was specifically in respect of accumulation made u/s. 11(2) of the Act. The Petitioner had provided a detailed Reply dated 14th January 2021 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 u/s. 148A(b) and 148, and the order passed u/s. 148A(d) by the 1st Respondent are legally not sustainable.

12. Mr. Mistri referred to and relied upon the following judgments in support of his submissions that multiple purposes for accumulation were permissible under the law, as was reference to some/all the objects of a trust as purposes for accumulation. It was contended therefore that the Petitioner had complied with the provisions of section 11(2) of the Act and Rule 17 of the I. T. Rules 1962 (the Rules), and that the Petitioner had rightly claimed accumulation of its income u/s. 11(2) of the Act for the year under consideration:

- (i) **CIT v. Hotel and Restaurant Association (261 ITR 190, Delhi);**
- (ii) **DIT (Exemption) v. Mamta Health Institute For Mother and Children (293 ITR 380, Delhi);**

(iii) **DIT(Exemption) v. NBIE Welfare Society (370 ITR 490, Delhi);**

(iv) **The order of Hon'ble Bombay High Court in Writ Petition No. 4941 of 2024 in the case of Sir Jamsetjee Jejeebhoy Charity Fund vs. Income-tax Officer (Exemption) Ward-2(3), Mumbai & Ors in vide order dated 7th November 2025.**

(v) **it was pointed out that the decision of the Calcutta High Court in Director of Income-tax (Exemption) v Trustees of Singhanian Charitable Trust (1993) 199 ITR 819 (Cal) was clearly distinguishable.**

13. 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 for the reasons set out in the impugned order under section 148A(d) of the Act, and therefore, the impugned notices and order are valid. Mr Gulabani further relied on the Affidavit-in-Reply, filed on behalf of the 1st Respondent and the 2nd Respondent.

14. Mr. Gulabani re-iterated that section 11(2) of the Act has not been complied with as true and correct information was not disclosed by the Petitioner during the original assessment, and the Resolution has not been passed before 31st March 2018 or within a reasonable time. He, therefore, submitted that there was no merit in the above Writ Petition and the same be dismissed with costs.

15. Mr. Mistri in rejoinder pointed out that there is no provision either in the Act or in the Rules directing trustees to pass the Resolution before the end of the previous year. On the contrary Mr. Mistri pointed out that section 11(2)(c) read with Rule 17 of the Rules, prior to its amendment by the Finance Act 2023, required the Petitioner Trust to file Form No.10 on or before the due date specified u/s.139(1) of the Act and the said Form No.10 refers to the Resolution passed by the Trustees. Therefore, the only requirement was that the Resolution needs to be passed by the Trustees before filing Form No.10. It was further submitted by Mr. Mistri that Form No.10 was e-filed on 29th September 2018 and referred to the receipt number printed on the copy of Form No.10 filed in the Petition. Mr. Mistri also submitted that as the Form No. 10 along with the Resolution of the Trustees was available with Respondent No.1 in the original assessment proceedings, Respondent No.1 had allowed accumulation of income of the Petitioner u/s.11(2) of the Act while passing the order u/s.143(3) of the Act on 10th February 2021.

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

17. The Petitioner has claimed benefit u/s. 11(2) of the Act. Section 11(2) of the Act, as it stood in A.Y. 2018-19 reads as under: -

“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 on or before 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).”

18. On a plain reading 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 on or before the due date specified under subsection (1) of Section 139 for furnishing the return of income for the previous year.

19. The relevant Rule, which is Rule 17 of the Income Tax Rules, prior to its amendment by the I.T. (Twenty-fifty amendment) Rule 2022 w.e.f. 1-4-2023, 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 139 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 sub-section (2) of section 11 or under the said provision as applicable under clause (21) of***

section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, 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)”

20. Rule 17 of the Rules has prescribed Form No.10, which is to be furnished electronically, either under a digital signature or an electronic verification code. Thus, the format, contents, 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.

21. In the present case, there is no dispute that the Petitioner has filed the prescribed Form No. 10 on or before 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, which falls within the scope and ambit of the Petitioner's objects.

22. Further, Form No. 10 was filed stating that the purpose for which the Petitioner has accumulated or set apart the income was as per the objects of the trust. In view of inter alia the limited space provided in Form No. 10, which was to be filed electronically, as prescribed by the Rule, the Petitioner has made specific reference to the Resolution dated 20th September 2018, which sets out the 3 purposes for which accumulation is made. These purposes/objects are specific (though multiple), are within the scope of the Petitioner trust's objects, and are charitable in nature. The statutory format of Form No 10 clearly contemplates such statement of purpose by reference to a Resolution. The date of the Resolution by which the income is accumulated or set apart is also mentioned as required by the statutory format. The Petitioner has merely filled in the details. In our opinion Form No. 10 as submitted by the Petitioner read with the Resolution complies with the requirements of section 11(2) of the Act read with Rule 17 of the Rules.

Accordingly, income of the Petitioner chargeable to tax cannot be said to have escaped assessment by reason of the alleged failure to comply with section 11(2) of the Act, and the impugned notices under sections 148A(b) dated 8th August 2024 and under section 148 dated 29th August 2024, as well as the order passed under section 148A(d) of the Act dated 29th August 2024 cannot be sustained.

23. There are other reasons also in support of the view we have taken. The notice issued by the 1st Respondent on 8th August 2024, u/s. 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. It is contended in the annexure to the notice, that it is not enough for the Trustees to repeat the objects of the Trust in Form 10. This reason set out in the notice dated 8th August 2024 is reiterated in the order dated 29th August 2024 passed by u/s. 148(A)(d) of the Act.

24. We have gone through the impugned notice and the impugned order passed by the 1st Respondent. First of all, the reasons stated by the 1st Respondent in the impugned notice and the impugned order are factually erroneous. The Petitioner in Form 10 has specifically stated the particular

purpose/(s) for which the income is being accumulated by referring to the Resolution. This meets the requirements of section 11(2) of the Act. Additionally, the Petitioner had filed a copy of the Resolution, which was specifically mentioned in Form 10 filed by the Petitioner. The Petitioner cannot be faulted when Form 10 provides limited space to set out the purposes/(s). The Petitioner pointed out this practical difficulty in its reply to the notice issued by the 1st Respondent. We find therefore that the reasons given by the 1st Respondent alleging non-compliance of section 11(2) of the Act are erroneous. As mentioned above, Form 10 which explicitly referred to a Resolution setting out 3 specific purposes for accumulating or setting apart the income of the Petitioner is sufficient and is as contemplated by section 11(2) of the Act read with Rule 17 of the Rules. The statement made in the Affidavit in reply dated 5th October 2024 that the Assessee never produced the Resolution passed on 20th September 2018 during the original assessment proceedings nor along with Form 10 appears to be erroneous and in any event is irrelevant. It is not denied by the Respondents that the Resolution is part of the record, was electronically filed as required by law, and that it is explicitly referred to in Form 10. Clearly the Resolution was before the 1st Respondent in the manner required by law. In this view of the matter the statement made in the Affidavit has no bearing on the matter, and the contention of the 1st Respondent has no relevance.

25. In any event, Form 10 is statutorily prescribed and is required to be filled in and submitted electronically. We are informed that there is no scope for the assessee to make any changes in the Form, by way of enlarging the space to be filled in. Looking at the format and the contents of Form 10, with limited space, and the fact that the prescribed Form also requires the assessee to give details of the Resolution passed by the assessee Trust, Viz. “... *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*), it is clearly contemplated that 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 the Resolution of the Assessee Trust is provided in the Form, the Assessing Officer can verify the same by calling for a certified copy of the Resolution during the assessment. The Respondents do not deny that in the present case, a copy of the Resolution passed by the Trustees of the Petitioner was (and still is) available on record (portal) prior to the passing of the assessment order. Further, undeniably the Resolution was provided to the 1st Respondent in their replies to the notices issued u/s. 148A(b) of the Act, and yet, this finds no mention in the impugned order.

26. The plain language of section 11(2) is unambiguous and mandatory. Once the requirements of the section are fulfilled, then ‘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’. Therefore, an assessee, having fulfilled the requirements of section 11(2), as a matter of right, becomes entitled for the benefit of section 11(2) of the Act. The Assessing Officer has no discretion to reject and disallow an assessee’s claim for accumulation or setting apart the income u/s. 11(2) of the Act.

27. For all the reasons set out above, we quash and set aside the impugned show cause notice dated 8th August 2024, the impugned order dated 29th August 2024 and the impugned notice dated 29th August 2024, and make the Rule absolute in terms of the prayer clause (a) which reads as follows:

“(a) that this Hon'ble Court may 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 case leading to the issue of the notice under section 148A(b) of the Act dated 8th August, 2024 (Ex. 'I') and the order u/s. 148A(d) dated 29th August, 2024 deciding the case to be fit for reopening u/s. 148 of the Act (Ex. 'K') and the Notice u/s. 148 of the Act dated 29th August, 2024 (Ex. 'L') and after going through the same and examining the question of legality thereof to quash, cancel and set aside the impugned notice under section 148A(b) of the Act dated 8th August, 2024 (Ex. 'I') and the order u/s. 148A(d) dated 29th August, 2024 deciding the case to be fit for reopening u/s. 148 of the Act (Ex. 'K') and the Notice u/s. 148 of the Act dated 29th August, 2024 (Ex. 'L').”

28. In view of the above, it is not necessary for us to go into the various other grounds raised in the Petition or contentions urged by Mr Mistri, which are expressly left open for consideration should the need so arise in this or some other appropriate case.

29. There shall be no order as to cost.

30. 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 S. JAMSANDEKAR , J.]

[B. P. COLABAWALLA, J.]