



Sr. No.	Date	Orders
		<p>IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>ITA 112/2003</p> <p>Decided on: <u>10 March 2003</u></p> <p>THE COMMISSIONER OF INCOME TAXAppellant Through Mr. R.D. Jolly, Adv.</p> <p>versus</p> <p>M/S HOTEL & RESTAURANT ASSOCIA Respondent Through</p> <p>CORAM: HON'BLE MR. JUSTICE D.K. JAIN HON'BLE MR. JUSTICE MADAN B. LOKUR</p> <ol style="list-style-type: none"> Whether the Reporters of local papers may be allowed to see the judgement? To be referred to Reporter or not? Whether the judgement should be reported in the Digest? <p>* <u>D.K. Jain, J (Oral).</u></p> <p>This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (for short the Act) is directed against the order dated 22 July 2002 passed by the Income Tax Appellate Tribunal, Delhi Bench SMC-1, New Delhi, in ITA No.174/D/96, pertaining to the Assessment Year 1992-93.</p>



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		<p>2. The following questions, stated to be substantial questions of law, have been proposed in the appeal memo:</p> <p>"A. Whether on the facts and circumstances of the case, the Tribunal is justified in holding that the accumulation of income by the assessee under Section 11(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for all objects for which the trust was created and not for specific purpose was neither prejudicial nor erroneous to the interests of the Revenue?</p> <p>B. Whether Section 11(2) of the Act makes it necessary for the assessee to make specific mention of any purpose or purposes to enable it to accumulate the income?</p> <p>3. Briefly stated the material facts, leading to the present appeal, are that the respondent-assessee is a Company registered under Section 25 of the Companies Act, 1956. It had been granted registration under Section 12A(a) of the Act. For the relevant previous years ending 31 March 1992, by means of a resolution, the assessee decided to accumulate its income for a period of ten years for fulfillment of the objects for which it had been created. Notice to that effect was given by filing the requisite statutory form, giving particulars of the income sought to be accumulated and invested in the specified securities. However, while completing assessment for the relevant assessment year the assessing officer declined to take into consideration the amounts so accumulated on the ground that in the statutory form the specific object for which the income was sought to be accumulated was not indicated. He accordingly, brought the said amount to tax.</p> <p>4. Aggrieved the assessee preferred an appeal to the Commissioner of</p>



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		<p>Income Tax (Appeals), who, by his order dated 26 April 1995, accepted the claim of the assessee. While holding that the notice to accumulate income by the assessee was in order, the Commissioner observed that the assessee had passed a resolution to accumulate its income so as to apply the same in India in the next 10 years to achieve the object for which it had been incorporated; notice of this fact had been given to the assessing officer in the prescribed format and further the said money had been invested in the specified securities. The Commissioner thus, held that the assessee was entitled to exemption under Section 11(1)(b) of the Act.</p> <p>5. Being dissatisfied, the Revenue carried the matter in appeal to the Tribunal. The Tribunal has affirmed the view taken by the Commissioner (Appeals). It has also noticed that the assessee had applied the accumulated income for achieving its object. Hence the present appeal.</p> <p>6. We ^{have} heard Mr. R.D. Jolly, learned Senior Standing Counsel for the Revenue. Mr. Jolly submits that the appellate authorities have failed to appreciate that in the prescribed form the assessee had failed to indicate the specific purpose for which the income was sought to be accumulated and therefore the statutory requirement had not been strictly complied with, disentitling the assessee from relief under Section 11(2) of the Act.</p> <p>7. We do not agree. It is true that specification of certain purpose or purposes is needed for accumulations of trust's income under Section 11(2) of the Act. At the same time the purpose or purposes to be specified cannot be beyond the objects of the trust. Plurality of the purposes for accumulation is not precluded but it depends on the precise purpose for which the accumulation</p>



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		<p>is intended. In the present case, both the Appellate Authorities below have recorded a concurrent finding that the income was sought to be accumulated by the assessee to achieve the object for which the assessee was incorporated. It is not the case of the Revenue that any of the objects of the assessee company were not for charitable purpose. The aforementioned finding by the Tribunal is essentially a finding of fact giving rise to no question of law.</p> <p>8. We, accordingly, decline to entertain the appeal. The same is dismissed.</p> <p style="text-align: right;"><i>D.K. Jain</i> D.K. JAIN, J.</p> <p style="text-align: right;"><i>Madan Lokur</i> MADAN B. LOKUR, J</p> <p>MARCH 10, 2003 ban</p>