

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 10.01.2013

+ ITA 523/2012
+ ITA 524/2012
+ ITA 525/2012
+ ITA 526/2012

**ASSOCIATION OF CORPORATION &
APEX SOCIETIES OF HANDLOOMS**

..... Appellant

Versus

ASSISTANT DIRECTOR OF INCOME TAX

..... Respondent

Advocates who appeared in this case:

For the Appellant

: Mr Rajat Navet and Mr Kushagra Pandit, Advs.

For the Respondent

: Mr Sanjeev Sabharwal, sr. standing counsel with Mr
Puneet Gupta, jr. standing counsel with Ms Gayatri
Verma, Adv.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 15411/2012 in ITA No.524/2012

CM 15423/2012 in ITA No.525/2012

CM 15434/2012 in ITA No.526/2012

Exemption is allowed subject to all just exceptions.

The applications are disposed of.

ITA No.523/2012

ITA No.524/2012

ITA No.525/2012

ITA No.526/2012

These appeals were admitted for hearing by an order dated 04.09.2012 on the following substantial questions of law :-

“(i) Was the Tribunal correct in holding that the sum of Rs.9.80 crores, which accrued towards interest on Fixed Deposits, made by the Assessee (to secure the bank guarantee amount furnished to the State of Bihar) bear the character of income in the Assessee’s hands for the relevant years under appeal?

(ii) Was the Tribunal correct in rejecting the claim for accumulation of income on the ground that Form-10 had not been furnished along with the return but was filed during the course of the assessment proceedings?”

The learned counsel for the appellant took up arguments on the second question first. He submitted that insofar as ITA No.523/2012 is concerned (which pertains to assessment year 2001-02), the Form-10 prescribed under Rule 17 of the Income Tax Rules, 1962 was filed only at the stage of the appeal before the Tribunal. In respect of the other three appeals, which pertain to assessment years 1998-99, 1999-2000, 2000-01 the said Form-10 has been furnished during the course of re-assessment

proceedings pursuant to proceedings initiated under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the said Rules).

2. It is an admitted position, in view of several decisions of the Courts including the decision of the Supreme Court in the case of **CIT Vs. Nagpur Hotel Owners Association : (2001) 247 ITR 201 (SC)**, that the said Form-10 could be furnished by the assessee up to the stage of completion of the assessment under Section 143(3) of the said Act. The only point in issue in the present case is whether the Form-10 could be furnished by the assessee for the purposes of Section 11 of the said Act during the re-assessment proceedings.

3. The learned counsel for the revenue contended that Form-10 could be produced by the assessee only up to the completion of the original assessment proceedings under Section 143(3). He submitted that the re-assessment proceedings are for the benefit of the revenue and the assessee cannot take advantage of the same. Therefore, in the course of re-assessment proceedings the assessee would not be entitled to furnish the said Form-10 to seek the benefit of Section 11 of the said Act.

4. On the other hand, the learned counsel for the assessee/appellant submitted that assessment included re-assessment as was evident from

Section 2(8) of the said Act. Therefore, whether the assessment was an original assessment or as a part of a re-assessment, it would not make any difference and that the assessee would be entitled to file the said Form-10 in either of the two proceedings and the revenue would have to take the said form that into account.

5. Having considered the arguments advanced by the counsel for the parties on this aspect of the matter we feel that it would be necessary to set out the reasoning adopted by the Supreme Court in *Nagpur Hotel Owners Association (supra)*. The Supreme Court held as under :-

“It is abundantly clear from the wording of sub-section (2) of section 11 that it is mandatory for the person claiming the benefit of section 11 to intimate to the assessing authority the particulars required, under rule 17 in Form No. 10 of the Rules. If during the assessment proceedings, the Assessing Officer does not have the necessary information, question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from section 11 and is subjected to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, in our opinion, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules even then, in our

opinion, it is reasonable to presume that the intimation required under section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act, therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such re-opening of the assessment. In the case in hand it is evident from the records of the case that the respondent did not furnish the required information till after the assessments for the relevant years were completed. In the light of the above, we are of the opinion that the stand of the Revenue that the High Court erred in answering the first question in favour of the assessee is correct, and we reverse that finding and answer the said question in the negative and against the assessee. In view of our answer to the first question, we agree with Mr. Verma that it is not necessary to answer the second question on the facts of this case.”

On going through the above extract we find that the Supreme Court observed that it was necessary that the assessing authority must have the information under Form-10 at the time he completes the assessment and in its absence it is not possible for the assessing authority to give benefit of such exclusion. Furthermore, once the assessment is so completed it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. The

Supreme Court held categorically that without the particulars of this income as given in Form-10, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act and therefore, compliance with the requirement of the Act will have to be at any time before the assessment proceedings are completed. The Supreme Court also observed that any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. The Supreme Court noticed that the Act did not contemplate such re-opening of the assessment.

6. The learned counsel for the revenue relied on this portion of the finding of the Supreme Court to contend that during re-assessment proceedings, the said Form-10 could not be furnished by an assessee. However, we have to keep in mind the fact that while reopening of an assessment cannot be asked for by the assessee on the ground that he had not furnished the Form-10 during the original assessment proceedings, this does not mean that when the revenue re-opens the assessment by invoking Section 147 of the said Act, the assessee would be remediless and would be barred from furnishing Form-10 during those assessment

proceedings. Consequently, insofar as the second question is concerned and with regard to the appeal No.s 524/2012, 525/2012 and 526/2012, the same has to be answered in favour of the assessee/appellant and against the revenue. However, with regard to the ITA No.523/2012 because the Form-10 was filed only before the Tribunal, the question has to be decided, in that appeal, against the assessee and in favour of the revenue.

7. In view of the fact that we have decided the question No.2 as above, the learned counsel for the appellant does not press for a decision on question No.1.

As a result appeal no.523/2012 is dismissed. The other appeals are allowed to the extent indicated above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 10, 2013

vld