

*** THE HON'BLE SRI JUSTICE DILIP B. BHOSALE**

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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+ I.T.T.A. No.67 of 2004

% 07.04.2015

Samaj Seva Nidhi, Vijayawada.

...Appellant

vs.

\$ ACIT (Inv) Circle III, Vijayawada.

... Respondent

!Counsel for the Petitioner : Sri Challa Gunaranjan

^Counsel for the Respondents : Sri S.R.Ashok

<Gist :

>Head Note :

? Cases referred

1. (1993) 199 ITR 819 (Cal)
2. (2001) 247 ITR 201 (SC)
3. (2003) 261 ITR 190 (Delhi)
4. (2008) 303 ITR 111 (Delhi)

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JUDGMENT: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

This appeal was filed under Section 260A of the Income Tax Act, 1961 (for short, the Act), against the order in I.T.A.No.133/V/1997 passed by the Income Tax Appellate Tribunal, Visakhapatnam, on 05.03.2003.

In this appeal filed by the assessee, the substantial question of law that arises for our consideration is as follows:

“Whether, on the facts and in the circumstances of the case the order of the Income Tax Appellate Tribunal, Visakhapatnam, was perverse in reversing the order passed by the Commissioner of Income Tax (Appeals) so far as disallowing the benefit of accumulation by the assessee of an amount of Rs.3,00,000/- under Section 11(2) of the Act?”

The assessee is a Trust formed for charitable purposes by a deed of trust dated 17.11.1995. The objects of the Trust were mentioned in clause 3 of the

deed of trust and they include upliftment of weaker sections of the society, advancement of the Bharatiya Samskriti, running schools and colleges, providing medical relief, rendering help to the people affected by natural calamities etc. It was registered under Section 12A of the Act. It filed its return of income for the assessment year 1996-97 on 25.09.1996 declaring 'nil' income. The return was processed and taken up for scrutiny and notices under Sections 142(1) and 143(2) of the Act were issued. Pursuant to the said notices, the Secretary of the Trust appeared before the Assessment Officer and produced the books of accounts for verification. The assessee has accumulated an amount of Rs.3,00,000/- and enclosed Form No.10 to the return of the income and also enclosed copy of the resolution depositing the said amount with Indian Overseas Bank for a period of three years for future utilization. Thereafter, by another letter dated 10.03.1997, the President of the Trust requested that the said amount may be allowed for the purpose of utilizing the fund for the welfare of Scheduled Castes, Scheduled Tribes, Vanvasis, socially and economically weaker sections of the society as mentioned in clause 3(a) of the trust deed. He also expressed his willingness to file a revised Form No.10 for consideration and acceptance. The Assessing Officer passed an order on 12.03.1997 disallowing the benefit of accumulation under Section 11(2) of the Act for the amount of Rs.3,00,000/- and demanded the tax at Rs.1,27,676/-. Against the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Vijayawada, who, by his order dated 29.08.1997, allowed the appeal by placing reliance on **Director of Income-Tax (Exemption) v. Trustees of Singhanian Charitable Trust**. Challenging the said order of the appellate authority, the Revenue preferred an appeal before the Income Tax Appellate Authority, Visakhapatnam, in I.T.A.No. 133/V/1997. The Tribunal, by its order dated 05.03.2003, reversed the order of the Commissioner of Income Tax (Appeals) dated 29.08.1997, and allowed the appeal preferred by the Revenue holding as follows:

“In view of the latest position of law as has been held by the Apex Court in the case of **Nagpur Hotel Owners Association**, although there is no specific time limit in the statute for passing on notification/information to the Assessing Officer regarding the purpose of accumulation, yet the assessee has to pass the information before the assessment is completed. Even holding such view of the matter and without taking resort to the case laws, strictly by the A.O. the

information passed on to the Assessing Officer on 10.3.1997, the information was not sufficient and it was just stating that “for future utilization towards the object of the trust”. It is not specific and in the absence of such specific object, only compliance of the object of the trust will not amount compliance of the specific purpose as has been contemplated under Sec.11(2) of the I.T.Act. Therefore, the order passed by the CIT(A) suffers from serious infirmity and has to be rejected. Holding such view of the matter, we cancel the order of the CIT(A) and the appeal filed by the Revenue is hereby allowed.”

Against the said order of the Tribunal, the present appeal was preferred by the assessee.

Learned Counsel for the appellant submitted that the explanatory letter was submitted to the Assessing Officer on 10.03.1997, well before the completion of assessment by the Assessing Officer and as per the ratio laid down in **Commissioner of Income Tax v. Nagpur Hotel Owners' Association**, and hence, the Assessing Officer should have taken the same into consideration as sufficient compliance with Section 11(2) of the Act. She also submitted that though the Tribunal has taken note of the explanation dated 10.03.1997, it has not gone into the contents of the said explanation, but merely quoted from the order of the Assessing Officer, and hence, the order of the Tribunal is incorrect in law. Learned Counsel appearing for the Revenue, on the other hand, submitted, by placing reliance on Rule 17 of the Income Tax Rules read with Section 139 of the Act, that the assessee should have filed required information by 30.09.1996 but submitted the information only on 10.03.1997 and hence could not be taken into consideration. But, he fairly submitted that the explanation in the letter dated 10.03.1997 is in sufficient compliance with Section 11(2) of the Act.

Section 11(2) of the Act reads as follows:

“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 specifies, by notice in writing given to the Assessing Officer in the prescribed manner, 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 ten years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5)..."

A perusal of the above provision makes it clear that the assessee should supply the information in Form No.10 and indicate the purposes for which the accumulated funds were meant to be utilized.

The said provision came up for consideration in **Trustees of Singhania Charitable Trust** (supra). The High Court of Calcutta was considering the following questions of law when they were referred to it under Section 256(1) of the Act for the assessment year 1984-85.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that there is nothing illegal on the part of the assessee in giving notice to the Income-tax Officer in Form No.10 listing all its objects for the purpose of accumulation of income as provided in Section 11(2) of the Income-tax Act, 1961, which requires specification of the purposes?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in cancelling the order of the Commissioner of Income-tax under Section 263 of the Income-tax Act, 1961, holding that the assessment of the Income-tax Officer allowing accumulation of the income under Section 11(2) of the Income-tax Act, for all the objects for which the trust was created and not for any specific objects, was neither erroneous nor prejudicial to the interests of the Revenue?"

In the said case the Income Tax Officer allowed exemption under Section 11 of the Act by relying on the notice given by the assessee under Section 11(2) of the Act. The Commissioner of Income Tax, by invoking powers vested in him

under Section 263 of the Act, called for and examined the assessment records of the assessee. After notice to the assessee and response, he set aside the order of assessment and ordered for *de novo* enquiry. The assessee preferred an appeal to the Tribunal. The Tribunal held that since a plurality of charitable purposes is not ruled out under the scheme of the Act, no objection could possibly be taken to the assessee's listing out all the objects of the trust in Form No.10. The matter was taken by the Revenue to the High Court. It was contended that one purpose is interlinked with the other and, therefore, the mention of all the purposes does not make any difference and satisfies the requirement of Sub-section (2) of Section 11. The said contention of the assessee was not accepted holding that the said contention would render the requirement of specification of the purpose for accumulation in that Sub-section redundant. It was held that the purposes to be specified cannot, under any circumstances, tread beyond the objects clause of the trust and the Legislature could not have thought of the need of specification of the purpose if it did not have in mind the particularity of the purpose or purposes falling within the ambit of the objects clause of the trust deed. Accordingly, it answered question No.2 in the negative and declined to answer question No.1. It remanded the matter to the Tribunal to allow the assessee to adduce fresh evidence whether in the form of any resolution or otherwise showing that the specific purpose for which the trust requires the accumulation of the income exists and observed that the said evidence should be considered by the Tribunal.

The said Section was considered by the High Court of Delhi in **Commissioner of Income Tax v. Hotel & Restaurant Association** and it was held as follows:

“...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 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.”

In another case before the Delhi High Court in **Director of Income Tax v. Mitsui & Co. Environmental** the above issue was considered and the aforementioned decision of the Calcutta High Court was also noticed. Following the earlier judgment in **Hotel & Restaurant Association** (supra) the High Court reiterated its view.

The Supreme Court also had an occasion to consider Section 11 of the Act in **Nagpur Hotel Owners' Association** (supra), wherein the issue related to the time period within which the information should be furnished to the assessing authority. The Supreme Court categorically held that the intimation required under Section 11 of the Act has to be furnished before the assessing authority before he completes the concerned assessment.

In the case before us, the required information was furnished through Form No.10 along with the return and subsequently on 10.03.1997 the assessee submitted another letter to the Assessing Officer intimating the specific purpose for which the said amount was sought to be utilized by indicating that they want to utilize the amount for the objects mentioned in clause 3(a) of the trust deed. Unlike the facts mentioned in the aforementioned case before the Calcutta High Court, in the instant case, the assessee specifically mentioned the purpose for which the accumulated income was sought to be utilized. Learned Counsel for the Revenue also fairly submitted that the said intimation is sufficient compliance within the meaning of Section 11(2) of the Act. But, his opposition is only with regard to the furnishing of the required information on 10.03.1997, as he submits that it ought to have been furnished by 30.09.1996, the last date for filing of the return. It is an admitted fact that the said information was furnished before the completion of the assessment.

In view of the ratio laid down by the Supreme Court in **Nagpur Hotel Owners' Association** (supra) and the acceptance of the date of information by the assessee as 10.03.1997, viz., before the date of completion of assessment by the Tribunal, we do not think that the objection raised by the learned Counsel for the Revenue has any substance.

In view of the above, we answer the substantial question of law in favour of the assessee and against the Revenue, and accordingly, allow the appeal. The miscellaneous petitions, if any, stand disposed of. No costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

07.04.2015

VS

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