

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.276 of 2010 (O&M)

Date of decision: 04.05.2016

**Improvement Trust, Faridkot through its authorised Signatory Shri
Kulwant Singh, Executive Officer**

.....Appellant

vs.

The Commissioner of Income Tax, Ferozepur and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Ms. Radhika Suri, Sr. Advocate with
Mr. Rinku Dahiya, Advocate for the appellant-assessee.

Mr. Denesh Goyal, Advocate for the respondent-revenue.

Ajay Kumar Mittal,J.

1. The delay in refiling the appeal is condoned.
2. This appeal has been preferred by the appellant-assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 30.6.2009, Annexure A.1 passed by the Income Tax Appellate Tribunal, Amritsar Bench (in short, "the Tribunal") in ITA No.223 (ASR)/2009 for the assessment year 2004-05, claiming following substantial question of law:-

"Whether in the facts and circumstances of the case, the Hon'ble
Income Tax (Appellate) Tribunal was correct in law in denying the
exemption under section 11 of the Act on capital expenditure incurred
by the assessee on objects of general public utility contrary to the

judgment of the Hon'ble Apex Court in ***S.R.M.M.CT.M Teruppani Trust vs. CIT*** reported in (1998) 230 ITR 636?"

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee was registered under section 12AA of the Act vide order passed by the Tribunal on 15.6.2007 in ITA Nos.184 and 195 ASR 2006. The said order was upheld by this court on 31.10.2008, Annexure A.2. The assessee was thus held to be a charitable institution carrying on activities of general public utility within the meaning of Section 2(15) of the Act. The assessee filed return for the assessment year 2004-05. The Assessing Officer while framing assessment disallowed the expenditure against works amounting to ₹ 8,76,538/- and town development expenses at ₹ 3,79,192/- being capital in nature. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 13.2.2009, Annexure A.4, the CIT(A) upheld the order passed by the Assessing Officer and denied the exemption under section 11 of the Act to the assessee only on the ground that the expenditure being incurred by the assessee on its objects was capital in nature. Not satisfied with the order, the assessee filed appeal before the Tribunal contending that the expenditure incurred by it on account of payment against works amounting to ₹ 8,76,538/- and town development expenses at ₹ 3,79,192/- was in consonance with its objects of general public utility and no distinction had been made under the Act holding that application of income must be only towards revenue expenditure in

order to avail exemption under section 11 of the Act. The Tribunal held that the judgment of the Apex Court in ***S.R.M.C.T.M Teruppani Trust's*** case (supra), was not applicable as the assessee had not brought out any material to suggest that the said amounts were spent for charitable purpose. The Tribunal declined the exemption under Section 11 of the Act only on the ground that the expenditure being capital in nature, the assessee was not entitled to exemption. Hence the instant appeal by the appellant-assessee.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant-assessee submitted that the issue involved in this appeal stands concluded by the judgment of this Court in ***Pinegrove International Charitable Trust vs. Union of India and others***, (2010) 327 ITR 73 wherein the judgment of the Apex Court in ***S.R.M.C.T.M Teruppani Trust's case (supra)*** has been relied upon. An affidavit dated 26.4.2016 has also been filed by Executive Officer, Improvement Trust, Faridkot with regard to the payments made to the contractors for construction and other work to show that the assessee had expended the amount for charitable purposes.

6. In ***Pinegrove International Charitable Trust's*** case (supra), this Court inter alia was considering the question whether the amount spent on acquiring/constructing capital assets wholly and exclusively becomes part of the total income or it becomes entitled to exemption under Section 10(23C)(vi) of the Act. After considering the relevant case law on the point and following the

was held by this Court that in case of an educational institution, capital expenditure is to be deducted from its gross receipts/income whenever the institution applies its Income for the attainment of its object. Thus, the capital expenditure incurred by the trust would be application of Income and assessee would be entitled to exemption under section 11(1) of the Act. The relevant observations read thus:-

“59. Even otherwise, unlike the provisions of Section 37 and 36 (1)(xii) of the Act, where the legislature has used the words ‘***not being in the nature of capital expenditure***’, which words do not find place in the third proviso preceding the words ‘***wholly and exclusively***’, clearly demonstrate that in case of an educational institution, capital expenditure is to be deducted, whenever the institution like the petitioner-society applies its income for the achievement of its object. The word ‘***applies its income***’ means ‘***to put to use***’ or ‘***to turn to use***’ or ‘***to make use***’ or ‘***to put to practical use***’ (see ***CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal***, 211 ITR 293 (Guj)]. The aforesaid view is further supported from a bare perusal of clause 11 of Form No. 56D of the Rules, which is required to be filed in terms of the provisions of Rule 2CA when viewed in the light of the judgment rendered by Hon’ble the Supreme Court and the High Court of Delhi in the cases of ***S.R.M.M. CT. M. Tiruppani Trust v. CIT***, [1998] 230 ITR 636 and ***CIT v. Divine Light Mission***, (2005) 196 CTR 135 (Del) respectively. In clause 11 of Form 56D of the Rules it is mentioned that the amount of income of an university or other educational institution that has been or deemed to have been utilized wholly and exclusively for its objects shall have the meaning assigned to it in sub-sections (1) and (1A) of Section 11.

Hon'ble the Supreme Court and the Delhi High Court in the aforementioned cases, arising under Section 11(1) of the Act, have held that the capital expenditure incurred by the trust would be application of income and the assessee would be entitled to exemption under Section 11(1) of the Act. Even the High Court of Uttarakhand in the case of **CIT v. Jyoti Prabha Society, (2009) 177 Taxman 429 (Uttarakhand)** has held that the educational society which had utilized rental income again for the purposes of imparting education by maintaining the buildings and constructing new building for the same purpose, would be entitled to the exemption claimed under Section 11 of the Act. Section 11(1)(a) is **pari materia** to the third proviso to Section 10(23C)(vi) of the Act and the only difference is with regard to the percentage of income and the period for which it can be carried forward. Yet again the judgment rendered by the High Court of Calcutta in the case of **Birla Vidya Vihar Trust v. CIT, (1981) 7 Taxman 391**, deserves to be taken note of wherein noticing the Circular dated 19.6.1968 it has been emphasized that capital expenditure has to be deducted from the total income of the Trust for the purposes of finding out how much has been accumulated by the assessee-Trust. Thus, both on principle and precedents the capital expenditure is to be deducted from the gross income of the educational institutions like the petitioner-society. Admittedly, in the present case of the petitioner-society the application of income is more than 100% for the attainment and achievement of its objects in the last three years, a fact not disputed by the Chief Commissioner of Income Tax. The petitioner-society, when admittedly having utilized more than 100% of the income for achieving its objects, could by no stretch of imagination be held to be an educational institution existing for the purposes of making profit so as to be not entitled to exemption

in view of the provisions of Section 10(23C) (vi) of the Act. The Chief Commissioner failed to keep in view the third proviso while wrongly holding that since the substantial profits are being earned year after year it could not be said that the surplus is arising incidentally and, therefore, the petitioner-society was not entitled to be exempted.”

7. In *S.RM. M.C.T.M.Tiruppani Trust's* case (supra), it was held by the Apex Court that under section 11(1)(a) of the Act, income derived from property held under trust for charity to the extent that such Income is applied for charitable or religious purposes will be exempt from Income tax. Where the Income or the entire Income is not so spent but is accumulated, it will be exempt to the extent of 25 percent of its Income or ₹ 10,000/- whichever is higher. Under Section 11(2), if the trust desires to accumulate more than 25 percent of its income and wants to claim exemption from income tax, it has to comply with the conditions which are laid down in section 11(2)(a) and (b) of the Act. In the said case, the assessee had applied ₹ 8 lakhs for charitable purposes in India by purchasing a building which was to be utilized as a hospital. This Income was held entitled to exemption under section 11(1) of the Act. The relevant observations made by the Apex Court read thus:-

“.....Mr. Harish Chandra, learned counsel; appearing for the Department has, however, stated before us that the sum of Rs. 8 lakhs does constitute that income of the assessee-Trust. But this income was required to be invested in Government securities in view of the declaration filed by the assessee under [Section 11\(2\)](#). Since the

amount is not so invested, the benefit of [Section 11\(1\)](#) cannot be extended to the assessee. This is the only submission we have to consider.

A mere look at [Section 11\(1\)](#) and 11(2) is sufficient to dispel this argument. Under [Section 11\(1\)](#), every Charitable or Religious Trust, irrespective of whether it has filed a declaration under [Section 11\(2\)](#) or not, is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the Charitable or Religious Trust to its charitable or religious purposes in India. If the entire income is so applied, the entire income would be exempted. If the entire income is not applied but some income is accumulated by such a Trust, then also under [Section 11\(1\)\(a\)](#), such accumulated income to the extent of 25% of the total income (or Rs. 10,000/-, whichever is higher) would be exempted from income-tax. [Section 11\(2\)](#), in turn provides that the restriction which is specified in clause (a) of sub-section (1) as regards accumulation, shall not apply if the assessee gives notice as prescribed under [Section 11\(2\)\(a\)](#) and invests the amount accumulated in Government securities as per [Section 11\(2\)\(b\)](#). The restriction specified in clause (a) of sub-section (1) is clearly the restriction of 25% of the accumulated income (or Rs. 10,000/-, whichever is higher) being exempt. If more than 25% (or Rs. 10,000/-) is to be exempted then the assessee has to comply with the conditions prescribed under [Section 11\(2\)](#). In the case of [Additional Commissioner of Income-Tax & Anr. vs. A.L.N. Rao Charitable Trust](#) reported in (1995) 216 ITR 697, this Court considered the provisions of [Section 11\(1\)\(a\)](#) in the light of [Section 11\(2\)](#) and held that [Section 11\(2\)](#) does not in any manner restrict the operation of [Section 11\(1\)](#). The accumulated income which is exempt under [Section 11\(1\)\(a\)](#) need not be invested in Government securities. It is only in

respect of any additional accumulated income beyond 25% that, if the assessee wants exemption of this additional accumulated income also, the assessee is required to invest the additional accumulated income in the manner laid down in [Section 11\(2\)](#) after following the procedure laid down therein.

In the present case the assessee is not claiming any benefit under [Section 11\(2\)](#) as it cannot; because in respect of this assessment year, the assessee has not complied with the conditions laid down in [Section 11\(2\)](#). The assessee, however, is entitled to claim the benefit of [Section 11\(1\)\(a\)](#). In the present case, the assessee has applied Rs. 8 lakhs for charitable purposes in India by purchasing a building which is to be utilised as a hospital. This income, therefore, is entitled to an exemption under [Section 11\(1\)](#). In addition, under [Section 11\(1\)\(a\)](#), the assessee can accumulate 25% of its total income pertaining to the relevant assessment year and claim exemption in respect thereof. [Section 11\(1\)\(a\)](#) does not require investment of this limited accumulation in Government securities. The balance income of Rs. 1,64,210.03 constitutes less than 25% of the income for assessment year 1970-71. Therefore, the assessee is entitled to accumulate this income and claim exemption from income-tax under [Section 11\(1\)\(a\)](#).”

The accumulation to the extent of 25 percent in [Section 11\(1\)\(a\)](#) of the Act has been reduced to fifteen percent by amendment made by Finance Act, 2002 with effect from 1.4.2003.

8. Further, *in Commissioner of Income Tax vs. Division Light Mission*, (2005) 278 ITR 659 (Del.), the Delhi High Court following the judgment of the

Apex Court in *S.R.M.C.T.M. Tiruppani Trust's case (supra)* had also held that

the amounts spent on acquiring capital assets for the trust were exempt.

9. In the present case, the town development expenditure of ₹ 3,79,192/- and expenditure against works of ₹ 8,76,538/- was incurred by the Improvement Trust under the statutory scheme as envisaged in Punjab Town Improvement Trust Act, 1922 and, therefore, would be entitled to exemption. Learned counsel for the respondent-revenue has not been able to dispute the settled legal position and also the factual matrix noticed hereinbefore. Accordingly, the substantial question of law is answered in favour of the assessee and against the revenue. The appeal stands allowed.

(Ajay Kumar Mittal)
Judge

May 04, 2016
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(Shekhar Dhawan)
Judge