IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.1593 of 2008

Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

SPIC Educational Foundation ... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 08.02.2008, made in ITA No.511/Mds/2007.

For appellant : Mr.J.Narayanaswamy,
Senior Standing Counsel.

For respondent : Mr.R.Vijayaraghavan,
for M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

(Delivered by Dr.Anita Sumanth,J.)

This appeal is filed by the Commissioner of Income Tax, Chennai, challenging the order of the Income Tax Appellate Tribunal, Chennai, dated 08.02.2008, in respect of Assessment Year 2003-2004.

2. Respondent/assessee is a Charitable Trust, that is registered in terms of Section 12-A (a) of the Income Tax Act,1961 (in short, 'the Act'). Return of Income was filed by the respondent, claiming exemption in terms of Section 11 of the Act. Along with the return of income, the respondent had enclosed a resolution, dated 22.09.2003, passed by the Board of Trustees, for accumulation of an amount of Rs.4,10,00,000/-, for the purpose of construction of a building. The assessing authority rejected the claim for accumulation vide order of assessment dated 30.03.2006, solely on the ground that the prescribed Form 10 had not accompanied the return of income. The assessment process was completed, assessing the shortfall to tax and raising a demand.

3. In appeal before the first appellate authority viz., the Commissioner of Income Tax (Appeals) (in short, 'CIT(A)'), the respondent contended that the requirement to file Form 10 was only directory and not

mandatory and relied upon various decisions of the High Courts, including the decision of the jurisdictional High Court in the respondents' own case in T.C.No.907 of 1995. The appeal was allowed by the CIT(A) following the ratio of the decision of this Court in *Commissioner of Income Tax* v. *Jayant Patel* (248 ITR 199) challenging which, the revenue filed an appeal before the Income Tax Appellate Tribunal (in short 'Tribunal').

4. The Tribunal, considering a slew of decisions, *CIT* v. *Valli Cotton Traders* (288 ITR 400 (Mad)); *CIT* v. *Mayur Foundation* (274 ITR 562 (Guj)) and *CIT* v. *Anjuman Monia Fakharia* (208 ITR 568 (Raj)) as well as CBDT Circular No.273, dated 03.06.1980, concluded that compliance with the time limit set out in terms of Section 11 (2) of the Act was only directory and, as long as Form 10 had been filed at some stage during the proceedings, either assessment or appellate, it would suffice.

5. The Tribunal also noted, as a finding of fact, that the resolution passed by the Board of Trustees, dated 22.09.2003, for accumulation of the amount of Rs.4,10,00,000/- towards construction of a building was very much available with the assessing officer. The audit report also indicated that the investment of the accumulated amount had been made by the assessee in accordance with the provisions of Section 11

(5) of the Act. In the light of the above discussion, the Tribunal was of the considered view that the benefit of accumulation had been rightly allowed by the first appellate authority.

6. In this appeal before us, the following substantial question of law has been raised :

> *"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for accumulation and carry forward the surplus amount of Rs.5.42 crores, when the assessee had not filed Form 10 within the due date prescribed and having not mentioned any such claim u/s.11 (2) anywhere in the return/audit report Form 10B ?"*

7. We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel, for the appellant/revenue; and Mr.R.Vijayaraghavan, learned counsel, for the respondent/assessee.

8. The provisions of Section 11 (2) of the Act require the assessee to file an application, where the assessee intends to accumulate any portion of its income for certain specified purposes.

9. In the present case, the accumulation is for the purpose of

construction of a building and the same has been duly noted and approved by the Board of Trustees. The Board Resolution in this regard was well available with the assessing officer at the time when the proceedings for assessment were taken up, as has been noted in the order of assessment, dated 30.03.2006. The factum of accumulation and all details in connection therewith, including the quantum and purpose thereof, had been brought to the knowledge of the assessing authority.

10. The legal question that arises for consideration in the above factual matrix is whether the prescription to file Form 10 for the purposes of accumulation under Section 11 (2) of the Act is mandatory for the purpose of grant of exemption in terms of Section 11 of the Act, or only directory.

11. The Supreme Court, in the case of *Commissioner of Income Tax* v. *Nagpur Hotel Owners' Association* (2001 (247) ITR 201), considered the identical question and concluded that a claim under Section 11 of the Act would have to be considered by the assessing authority on the basis of the information supplied by the assessee at the time of assessment and if the relevant information to support such a claim was not available with the assessing authority, the same was liable to be rejected.

12. In the instant case, we find that the Assessing Authority, the CIT (A) and the Tribunal have taken note of the resolution passed by the Board of Trustees dated 22.09.2003, proposing the accumulation of a sum of Rs.4.10 crores for the purpose of construction of a building. As a fact, the prescribed Form 10 for accumulation has also been filed before the CIT (A).

13. In the above circumstances, we are of the view that the requirement of filing Form 10 at the time of assessment is only directory and if it would suffice if the same were filed at the stage of appeal, so long as all relevant information in support of the claim for accumulation is furnished by the assessee along with the claim for consideration by the assessing authority. This conclusion is supported by a line of decisions, including that of the jurisdictional High Court in the case of *CIT* v. *Jayant Patel*, (supra), the Allahabad High Court in *Commissioner of Income Tax* v. *Moti Ram Gopi Chand Charitable Trust* (360 ITR 598 (All)) and Rajasthan High Court in *Commissioner of Income Tax* v. *Anjuman Monia Fakharia* (208 ITR 568 (Raj)).

14. In the case of *Jayant Patel* (supra), a Division Bench of this Court considered the question as to whether filing of audit report to claim

deduction under Section 80-J of the Act was mandatory, concluding that the requirement was only directory. The audit report, even in that case, was not filed at the time of assessment, but only at the time of filing of first appeal.

15. Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the appellant/Department relies on a decision of the Punjab & Haryana High Court in *Haryana Labour Welfare Board* v. *Commissioner of Income Tax*, ((2013) 219 Taxman 158) that, according to him, supports his stand. In the said case, there was no information at all in support of the claim of accumulation that had been furnished before the authorities. It is in such context, where no information in relation to the stated accumulation was available with any of the lower authorities that the claim under Section 11 (2) was rejected. The said decision is thus distinguishable on facts and does not advance the case of the revenue.

16. In the facts of this case as we have noticed, information relevant to the claim of accumulation was furnished to the assessing officer at the time of assessment and there is thus substantial compliance of the provisions of Section 11 (2) of the Act.

17. In the light of the discussion above, we answer the substantial question of law in favour of the assessee and against the revenue. Appeal is dismissed. No costs.

(V.K.,J.) (A.S.M.,J.)
12-12-2018

Index : Yes
Internet : Yes
Speaking / Non-speaking Order

dixit/sl

DR.VINEET KOTHARI, J.
and
DR.ANITA SUMANTH, J.

dixit/sl

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