

PETITIONER:
S.R.M.M.CT.M. TIRUPPANI TRUST

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME TAX

DATE OF JUDGMENT: 04/02/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
THE 4TH DAY OF FEBRUARY, 1998

Present:

Hon'ble Mrs. Justice Sujata V. Manohar

Hon'ble Mr. Justice D.P.Wadhwa

Aman Hingorani, Adv. for Hingorani & Associates, Advs. for
the Respondent

Harish Chandra, C.V.S. Rao, Advs. for B.K. Prasad, Adv. for
the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

This appeal pertains to assessment year 1970-71. The following question was referred to the High Court of Judicature at Madras by the Income-Tax Appellate Tribunal under Section 256(1) of the Income-Tax Act, 1961:

"Whether, on the facts and in the circumstances of the case, the income of the assessee is exempt from tax under Section 11 of the Income-Tax Act for the assessment year 1970-71?"

The assessee is a Charitable Trust for carrying out Thiruppani or repairs to old Hindu temples, building new ones, giving aid to or establishing hostels, educational and industrial institutions etc. It is not in dispute that the objects of the Trust are charitable. On March 1, 1963, the trustee resolved that the income of the Trust should be accumulated for a period of ten years commencing from April 13, 1961 for the various charitable purposes which are set out in the Resolution. The assessee accordingly filed Form 10 with the Income-Tax Officer as required under Section 11(2) of the Income-Tax Act, 1961. The income was accordingly being accumulated every year and invested in Government securities.

For the year ending April 12, 1970 which is the accounting year relevant to assessment year 1970-71, the amount of Rs. 7,82,792.44 which was shown in the earlier balance sheet (as on 1.4.1969) as advance to S. RM. M. CT. M. Firm, Rangoon on the "Assets" side was substituted by "Building for Rs. 8 lakhs" on the Assets side. It was the case of the assessee that during the assessment year 1970-

71, the advance to the said firm at Rangoon was in effect realised and invested in a building for the purpose of starting a hospital. The Trust had also earned during that assessment year other income amounting to Rs. 1, 64,210.03.

The assessee claimed exemption for the total income of Rs. 8 lakhs plus Rs. 1,64,210.03 under Section 11(1) of the Income-Tax Act, 1961. The Income-Tax Appellate Tribunal by a majority of 2 : 1 held that the sum of Rs. 8 lakhs was to be treated as income of the assessee for the purposes of Section 11. The Tribunal gave the benefit of Section 11(1) to the assessee for the assessment year 1970-71 in respect of the entire income consisting of Rs. 8 lakhs plus Rs. 1,64,210.03. On a Reference to the High Court, the High Court has held that the sum of Rs. 8 lakhs was an asset acquired in realisation of an outstanding due and hence, sum of Rs. 8 lakhs cannot be include in the income of the assessee for the purposes of Section 11(1). Since the balance income of Rs. 1,64,210.03 was not invested by the assessee in accordance with the declaration filed by the assessee under Section 11(2), the assessee could not claim exemption from tax in respect of Rs. 1,64,210.03.

The material part of Section 11, at the relevant time, was as follows:

"11. Income from property held for charitable or religious purposes:

(1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of twenty-five per cent of the income from the property or rupees ten thousand, whichever is higher;

(b).....
.....

(c).....
.....

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in clauses (a) or clause (b) of sub-section (1), as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with-

(a) such persons have, by notice in writing given to the Income-tax Officer in the prescribed manner, specified the purpose for which the income is being accumulated or set apart and the period for which income is to be accumulated or set apart, which shall in n o case

exceed ten years;

(b) the money so accumulated or set apart is invested in any Government security as defined in clause (2) of Section 2 of the Public Debt Act, 1944 (18 of 1944), or in any other security which may be approved by the Central Government in this behalf.

(3).....

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(4).....

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Under Section 11(1)(a), 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% of its total income or Rs. 10,000/-, whichever is higher. Under Section 11(2), if the trust desires to accumulate more than 25% 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)(1) & (b). The first condition is that a notice in writing should be given to the Income-Tax Officer in the prescribed manner specifying the purpose for which the income is being accumulated and the period for which the income is to be accumulated. The period should not exceed ten years. Rule 17 of the Income-Tax Rules 1362 prescribes that the notice which is required to be given under Section 11(2)(a) should be in Form No.10. The second condition is that the amount so accumulated has to be invested in any Government security as specified in Section 11(2)(b). The assessee in the present case had given notice in 1963 in Form No. 10 setting out the purposes for which the accumulation was being made and the period, which was 10 years. Before the expiry of this period, the assessee utilised a sum of Rs.8 lakhs in accounting year relevant to Assessment Year 1970-71, in purchasing a building meant for a hospital instead of investing the amount in Government securities. According to the department, because of this investment which constitutes a breach of the conditions under Section 11(2), the assessee cannot claim any benefit of exemption under Section 11(1).

Before we consider this submission, we would like to make it clear that the department has not addressed to us any argument on the question whether Rs. 8 lakhs constitute the income of the assessee for assessment year 1970-71 or not. Before the Income-Tax Appellate Tribunal, elaborate arguments had been advanced on this issue, and the two members of the Tribunal differed, necessitating a reference to a third member. The High Court did not accept the majority view that the amount should be treated as income for the purpose of Section 11. 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 more 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).

In the premises, the question which was referred to the High Court, is required to be answered in the affirmative and in favour of the assessee.

The appeal is accordingly allowed with costs.