

PETITIONER:
THE ADDL. COMMISSIONER OF INCOME TAX & ANR.

Vs.

RESPONDENT:
THE A.L.N. RAO CHARITABLE TRUST

DATE OF JUDGMENT 13/10/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1996 AIR 344 1995 SCC (6) 625
JT 1995 (7) 339 1995 SCALE (5) 742

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar, J.

This appeal by special leave is directed against the decision of the Division Bench of the Karnataka High Court in Writ Appeal No.864 of 1974 decided on 4th September 1975. The said writ appeal, moved on behalf of the Revenue by Additional Commissioner of Income Tax, Mysore and First Income Tax Officer, Mangalore Circle, Mangalore against the order of learned Single Judge Venkataramiah, J., as he then was, in the Writ Petition No.597 of 1973 came to be dismissed by the Appellate Bench of the High Court. In order to highlight the grievance of the Revenue in this appeal a few relevant introductory facts are required to be noted.

Background Facts

Respondent A.L.N. Rao Charitable Trust, Mangalore, is a charitable trust. For the assessment year 1969-70, the respondent, hereinafter referred to as "the assessee" submitted its Return to the First Income-Tax Officer, Mangalore Circle. In the said Return, the assessee claimed that a sum of Rs.85,262/- which was the surplus income of the previous year, was exempt from tax under Section 11(1)(a) and sub-section (2) of the said Section. On the Assessing Authority holding that the assessee is not a genuine Trust and therefore not entitled to claim the benefit of Section 11, the assessee preferred an appeal before the Appellate Assistant Commissioner, which was dismissed. In the second appeal preferred by the assessee before the Income Tax Appellate Tribunal, it was held that the assessee was a charitable trust and therefore was entitled to claim exemption from tax under Section 11 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). In I.T.R.C. No.31 of 1973 which was a reference made at the instance of the Department, the High Court by its judgment dated 4.8.1975 answered the question referred in favour of

the assessee and against the Department. That judgment became final. Consequently there remained no dispute about the eligibility of the assessee to claim benefit of Section 11.

The Assessing Authority took up the assessment to pass an order in accordance with the judgment of the Tribunal and made an order on 21.1.1972 by which it held that the assessee, after complying with the requirement of giving notice under Section 11(2) (a), had invested 75% of the accumulated income intended to be applied for charitable purposes in future years as required by clause (b) of Section 11(2) and therefore, the entire surplus income was exempt from tax.

The Commissioner of Income Tax, on looking into the order dated 21.1.1972 passed by the Assessing Authority was of the view that the order of the Assessing Authority was erroneous as he had not applied his mind to the question whether the assessee had complied with the provisions of Section 11(2) and that if he had applied his mind to the said provisions, he would have noticed that the assessee had not invested the entire surplus income, viz., Rs.85,262/- (but only Rs.70,975/-) and therefore the assessee was not entitled to the exemption provided under Section 11 of the Act. Thus, in the opinion of the Commissioner, the order of the Income Tax Officer was erroneous inasmuch as it was prejudicial to the interests of the Revenue. He issued a show-cause notice under Section 263 of the Act on 18.1.1973 to the assessee to show cause as to why the entire surplus income of Rs.85,262/- should not be brought to tax. The assessee, on receipt of the said notice, approached the High Court for relief under Articles 226 and 227 of the Constitution and prayed for the issue of a Writ in the nature of Certiorari to quash the Notice dated 18.1.1973 issued by the Commissioner. In that writ petition (W.P. No.597 of 1973), Venkataramiah, J. made an order directing the Commissioner to dispose of the proceedings initiated under Section 263 in the light of his order as to the interpretation of Section 11(1)(a) and Section 11(2) of the Act.

Before the learned Single Judge, the contention of the Department was that in order to claim exemption under Section 11, the assessee should have invested the entire surplus income in one or the other of the securities mentioned in Section 11(2)(b) of the Act and it is not sufficient if 75% of the surplus income alone has been invested by the assessee. The learned counsel for the assessee urged that the assessee had complied with the requirements of Section 11; according to the learned counsel, the assessee was entitled to exemption from tax in respect of 25% of the accumulated income or Rs.10,000/- whichever was higher plus that portion of the accumulated income in respect of which the conditions prescribed under Clauses (a) and (b) of Section 11(2) had been satisfied. According to the assessee, since it had deposited 75% of the accumulated income in the Securities mentioned in Section 11(2) (b), the entire surplus income which had accumulated was not taxable.

The learned single Judge rejected the contention of the Revenue and upheld the contention of the assessee in part only. The learned Judge held that the assessee was entitled to exemption from tax only in respect of 75% of the surplus income which was accumulated for future use.

The Revenue carried the matter in writ appeal which came to be decided by the impugned judgment. The Division Bench on interpretation of Section 11(1) (a) and sub-section

(2) thereof as they stood at the relevant time, took the view that 25% of the accumulated income of the Trust arising in the previous year got exempted from income tax under Section 11(1) (a). That Section 11 (2) dealt with remaining 75% of the accumulated income of the previous year and if such 75% of the accumulated income was invested as laid down by the said provision the Trust was entitled to get even the 75% of the accumulated income exempted from income tax payable on the income arising to the Trust in the previous year. In short while dismissing the appeal of the Revenue the Division Bench of the High Court on interpretation of the Sections took a view which was wholly in favour of respondent-Trust. For taking the said view the Division Bench of the High Court referred to similar view taken by the High Court of Jammu & Kashmir in the case of Commissioner of Income Tax, Patiala v. Shri Krishen Chand Charitable Trust (1975) 98 ITR 387.

Rival Contentions

Learned counsel appearing for the appellants vehemently contended that the interpretation placed by Division Bench of the High Court on the relevant provisions of Section 11(1) (a) and 11(2) of the Income Tax Act, 1961 as they stood at the relevant time is not well sustained. That it is true that under Section 11(1) (a) 25% of the accumulated income of the Trust arising during the previous year or Rs.10,000/- whichever was higher was exempted from income tax. But as laid down by Section 11(2) at the stage of investment of such accumulated income unless cent percent of such accumulated income was invested as per the said provision the assessee-Trust would not be entitled to the benefit of exclusion of such accumulated income of the previous year from the tax net of the Income Tax Act. It was further contended that the subsequent of Section 11(2) as brought on the Statute Book by Taxation Laws (Amendment) Act, 1975 clearly showed a different legislative intention and was not merely of a classificatory nature as assumed by the Division Bench of the High Court. The learned counsel for the Revenue, however, fairly submitted that the his submission are based on the express language of Section 11 (1)(a) read with Section 11(2) of the Act as applicable at the relevant time and he is not supported by any decision rendered by any of the High Courts on this point.

Learned counsel for the respondent-assessee on the other hand submitted that the view taken by the Division Bench of the High Court on the interpretation of Section 11(1) (a) and Section 11(2) of the Income Tax Act, 1961 as applicable at the relevant time is the only correct and plausible view that the Division Bench of the High Court was justified in agreeing with the view on similar lines which appealed to the Jammu & Kashmir High Court in Commissioner of Income Tax v. Shri Krishen Chand Charitable Trust (supra). He also submitted that similar view has been taken by the High Courts of Kerala, Madhya Pradesh, Madras, Bombay and Rajasthan in the following decisions:

1. Commissioner of Income Tax, Kerala-I v. Shree Padmanabhaswami temple Trust (1979) 120 ITR 42 (Ker.);
2. Commissioner of Income Tax, Kerala v. H.H. Marthanda Verma Elayaraja of Travancore Trust and Others (1981) 129 ITR 191 (Ker.);
3. Mohanlal Trust v. Commissioner of Income Tax, M.P.(1980) 122 ITR 130 (M.P.);

4. Commissioner of Income Tax, Tamil Nadu-IV, Madras v. C.M. Kothari Charitable Trust (1984) 149 ITR 573 (Mad.);
5. Commissioner of Income Tax v. Trustees of Bhat Family Resaerch Foundation (1990) 185 ITR 532 (Bom.); and
6. Commissioner of Income Tax v. Anjuman Moinia Fakharia (1994) 208 ITR 568 (Raj.).

Consideration of the Rival Conentions

Before we proceed to deal with the rival contentions centering round the true scope and ambit of Section 11(1) (a) and Section 11(2) of the Income Tax Act, 1961 as applicable to the assessment year in question, namely, 1969-70 it would be apposite to refer to these provisions at the outset. These provisions as they stood at the relevant time read as under:

"11 (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 25% of the income from the property or rupees ten thousand, whichever is higher,

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in clause (a) or clause (b) of subsection (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 to the Income-tax Officer in the prescribed manner, specified the purposes 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 in any Government security as defined in clause (2) of section 12 of the Public Debt Act, 1944 (XVIII OF 1944), or in any other security which may be approved by the Central Government in this behalf."

Section 11 underwent an amendment by Taxation Laws (Amendment) Act, 1975. As we are not concerned with these amended provisions in the present case, we need not dilate on them.

A mere look at Section 11(1) (a) as it stood at the relevant time clearly shows that out of total income

accruing to a trust in the previous year from property held by i wholly for charitable or religious purpose, to the extent the is applied for such religious or charitable purpose, the same will get out of the tax net but so far as the income which is not so applied during the previous year is concerned at least 25% of such income or Rs.10,000/- whichever is higher, will be permitted to be accumulated for charitable or religious purpose and will also get exempted from the tax me. Then follows sub-section (2) which seeks to lift the restriction or the ceiling imposed on such exempted accumulated income during the previous year and also brings such further accumulated income out of tax net if the conditions laid down by sub-section (2) of Section 11 are fulfilled meaning thereby the money so accumulated is set apart to be invested in the Government securities etc. as laid down by clause (b) of sub-section 11 apart from the procedure laid down by clause (a) of Section 11 (2) being followed by the assessee-trust. If Rs.1,00,000/- are earned as the total income of he previous year by the trust from property held by i wholly for charitable and religious purposes and if Rs. 20,000/- are actually applied during the previous year by the said trust to such charitable or religious purposes he income of Rs.20,000/- will be exempted from being considered for the purpose of income tax under par of Section 11(1). So far as the remaining Rs.80,000/- are concerned if they could not be actually applied for such religious or charitable purposes during the previous year then as per Section 11(1) (a) at leas 25% of such total income from property or Rs.10,000/- whichever is higher will also earn exemption from being considered as income for the purpose of income tax, hat is, Rs.25,000/- will thus get excluded from the extent net. Thus out of the total income of Rs.1,00,000/- which has accrued to the rust Rs.25,000/- will earn exemption from payment of income tax per Section 11(1)(a) second part. Then follows sub-section (2) which states that ceiling or the limit or the restriction of income to the extent of 25% of the income or Rs.10,000/-, whichever is higher for earning income tax exemption as engrafted under Section 11(1) (a) will get lifted if the money so accumulated is invested as laid down by Section 11(2) (b) meaning thereby out of the total accumulated income of Rs.80,000/- accruing during previous year and which could not be spent for charitable or religious purposes by the Trust balance of Rs.55,000/- if invested as laid by sub-section (2) of Section 11 will also be excluded from the tax net. But for such investment and if Section 11(1) alone had applied Rs.55,000/- being he balance of accumulated income would have been covered by he tax net. Learned counsel for the Revenue submitted that the investment as contemplated by sub-section (2) (b) of Section 11 must be investment of all accumulated income in Government securities etc., namely, 100% of the accumulated income and not only 75% thereof. And if that is not then only the invested accumulated income to the extent of 75% will get excluded from income tax assessment. But so far the remaining 25% of the accumulated income in concerned it will no earn such exemption. It is difficult to appreciate this contention. The reason is obvious. Section 11, subsection (1) (a) operates on its own. By its operation two types of income earned by the trust during he previous year from its properties are given exemption from income tax, (i) the par of the income of previous year which is actually spent for charitable or religious purposes in that year; and (ii) out of the unspent accumulated income of the previous year 25% of such total property income or Rs.10,000/- whichever is

higher can be permitted to be accumulated by the Trust, remarked for such charitable or religious purposes. 25% of the income Rs.10,000/- whichever is higher will also get exempted from income tax. That exhausts the operation of Section 11(1) (a). Then follows sub-section (2) which naturally deals with the question of investment of the balance of accumulated income which has still not earned exemption under sub-section (1) (a). So far as that balance of accumulated income is concerned, that also can earn exemption from income tax meaning thereby the ceiling or the limit of exemption of accumulated income tax as imposed by sub-section (1) (a) of Section 11 would get if additional accumulated income beyond 25% or Rs.10,000/- whichever is higher, as the case may be, is invested as laid by Section 11 (2) after following the procedure laid down therein. Therefore, sub-section (2) only will have to operate when the balance of 75% of the total of the previous year or income beyond Rs.10,000/- whichever is higher which has but not got the benefit of tax exemption under sub-section (1) (a) of Section 11. If learned counsel for the Revenue is right and if 100% of the accumulated income of the previous year is to be invested sub-section (2) of Section 11 to get exemption from income tax then the ceiling of 25% or Rs.10,000/- whichever is higher, which is available for accumulation of income of the previous year for the trust to earn exemption from income tax as laid by Section 11 (1) (a) would be rendered redundant and the said exemption provision would become otiose. It has to be kept in view that out of the accumulated income of the previous year an amount of Rs.10,000/- or 25% of the total income from property, whichever is higher, is given exemption from income tax by Section 11(1) (a) itself. That exemption is unfettered and not subject to any conditions. In other words it is an absolute exemption. If subsection (2) is so read as suggested by the learned counsel for the Revenue, what is an absolute and unfettered exemption of accumulated income as guaranteed by Section 11(1) (a) would become a restricted exemption as laid down by Section 11(2). Section 11(2) does not operate to whittle down or to cut across the exemption provisions contained in Section 11(1) (a) so far as such accumulated income of the previous year is concerned. It has also to be appreciated that sub-section (2) of Section 11 does not contain any non-obstacle clause like "notwithstanding the provisions of sub-section (1)". Consequently it must be held that Section 11(1) (a) has full play and if still accumulated income of the previous year is left to be dealt with and to be considered for the purpose for the income tax exemption, sub-section (2) of Section 11 can be pressed in service and if it is complied with then such additional accumulated income beyond 25% or Rs.10,000/-, whichever is higher, can also earn exemption from income on compliance with the conditions laid down by sub-section (2) of Section 11. It is true that sub-section (2) of Section 11 has not clearly mentioned the extent of the accumulated income to be invested. But on a conjoint reading of the aforesaid two provisions of Sections 11(1) and 11(2) this is the only result which can follow. It is also to be kept in view that under the earlier Income Tax Act of 1922 exemption was available to charitable trusts without any restriction upon the accumulated income. There was a change in this respect under the present Act of 1961. Under the present Act, any income accumulated in excess of 25% or Rs.10,000/- whichever is higher, is taxable under Section 11(1) (a) of the Act, unless the special conditions regarding accumulated income as laid down in Section 11(2) are complied with.

It is clear, therefore, that if the entire income received by a trust is spent for charitable purposes in India, then it will not be taxable but if there is a saving, i.e. to say an accumulated of 25% or Rs.10,000/- whichever is higher, it will not be included in the taxable income. Section 11(2) quoted above further liberalizes and enlarges the exemption. A combined reading of both the provisions quoted above clearly show that Section 11(2) while enlarging the scope of exemption removes the restriction imposed by Section 11(1) (a) but it does not take away the exemption allowed by Section 11(1)(a). On the express language of Sections 11(1) and (2) as they stood on the Statute Book at the relevant time no other view is possible.

In the light of the aforesaid discussion and keeping in view the illustration which we have given earlier the combined operation of Section 11(1)(a) and Section 11(2) as applicable at the relevant time would yield the following result:

- (i) If the income derived from property held under trust wholly for charitable or religious during the previous year is Rs.1,00,000/- and if Rs.20,000/- therefrom are actually applied to such purposes in India then those Rs.20,000/- will get exempted from payment of income tax as per the first part of Section 11(1)(a).
- (ii) Out of the remaining accumulated income of Rs.80,000/- for the previous year, a further sum of Rs.25,000/- will get exempted from payment of income tax as per second part of Section 11(1)(a). Thus out of the total income derived from property as aforesaid during previous year, that is, Rs.1,00,000/-, Rs.45,000/- in all will get excluded from the tax net on a combined operation of first and second part of Section 11(1)(a).
- (iii) The aforesaid ceiling of Rs.25,000/- of accumulated income property of previous year, will get covered under Section 11(2) to the extent the balance of such accumulated income is invested as laid down by Section 11(2). To take an illustration if, say, an additional amount of Rs.20,000/- out of the balance of accumulated income of Rs.55,000/- is invested as per Section 11(2) then this additional amount of Rs.20,000/- of accumulated income will get excluded from the extent net as per Section 11(2).
- (iv) The remaining balance of the accumulated income out of Rs.55,000/-, that is, Rs.35,000/- if not invested as per sub-section (2) of Section 11 will be added to the taxable income of the trust and will not get exempted from the

extent net.

- (v) If of the other hand the entire remaining accumulated of Rs.55,000/- is wholly invested as per Section 11(2) the said entire amount of Rs.55,000/- will get exempted from the net.

We may also at this stage mention that High Courts Kerala in Commissioner of Income-Tax, Kerala v. H.H. Mathanda Varma Elayaraja of Travancore Trust & Ors. [1981] 129 ITR 191; M.P.in Mohanlal Hargovindas Public Charitable Trust v. Commissioner of Income-Tax, m.p. [1980] 122 ITR 130; Bombay in Commissioner of Income-Tax. Trustees of Bhatt Family Research Foundation [1990] 185 ITR 532; and Madras in Commissioner of Income Tax, Tamil Nadu-IV, Madras v. C.M. Kothari Charitable Trust [1984] 149 ITR 573 have akin the same view as Karnataka High Court in the present case. We approve the view akin in the aforesaid decisions. We also approve the similar view taken by the Jammu & Kashmir High Court in Shri Krishan Chand Charitable Trust (supra). The learned counsel for the Revenue, therefore, has made out no case for our interference with the decision rendered by the Division Bench of Karnataka High Court.

In the result, this appeal fails and is dismissed. However, in the facts and circumstances of the case here will be no order as to costs.