CASE NO.:
Appeal (civil) 1662 1994
Appeal (civil) 1663 1994

PETITIONER:
THE COMMISSIONER OF INCOME-TAX, VIDARBHA, NAGPUR.

Vs.

RESPONDENT:
THE NAGPUR HOTEL OWNERS ASSOCIATION NAGPUR.

DATE OF JUDGMENT: 13/12/2000

BENCH:
Y.K.Sabharwal, S.P.Bharucha, N.S.Hegde

JUDGMENT:

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J U D G M E N T

SANTOSH HEGDE, J.

In the abovesaid appeals, though the respondent was duly served, is unrepresented, hence it is placed ex parte.@@
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The assessee-respondent is an association of hotel owners which is registered under the Societies Registration Act, 1860. The object of the Association is to coordinate with the activities of hotel owners and to help them in their business. The assessee filed returns of income for the assessment years 1974- 75 and 1975-76 in February, 1977. It claimed exemption under Section 11 of the Income-tax Act, 1961 (for short the Act) on the ground that income received by it is for charitable purpose. The said claim for exemption was refused by the Income Tax Officer on the ground that it was not duly registered with the Commissioner of Income Tax under Section 12(a) of the Act, and also on the ground that no notice of accumulation of income as required under Section 11(2) of the Act was given. When the matter was taken up in appeal, the same was remanded to the Assessing authority by the appellate authority holding that the finding of the assessing officer that the association was not duly registered as required under Section 12(a) of the Act, was incorrect. On remand, the assessing authority held that the object of the assessee was not charitable but was to carry on the profit-making activities hence, it was not entitled to exemption under Section 11 of the Act. The said authority also held that the assessee had not applied for accumulation of its income for charitable purposes as required under Section 11(2) of the Act within the time specified in Rule 17 of the Income-tax Rules (for short the Rules), hence, he assessed the total income of the association to tax under the Act. In appeal, the appellate authority confirmed the said order and when the matter was taken to the tribunal in second appeal, the tribunal held

that the assessees objects were charitable, hence the relief sought for by the assessee could not have been refused on that ground. The tribunal also held that the time limit fixed under Rule 17 of the Rules cannot be insisted upon by the assessing authority because the said Rules could not have fixed a time limit for filing an application under Section 11(2) of the Act. Being aggrieved the following questions of law were referred to the High Court: (1) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the application in form No.10 under rule 17 of the I.T.Rules, 1962 could be filed even after the assessment is completed ?

(2) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the I.T.I.Rules could not fix any time limit for submitting an application in form 10 under rule 17 of the I.T. Rules, 1962.

That the High Court as per its order dated 15.10.1992 held that though Section 11(2)(a) of the Act contemplated a notice in writing to the Income Tax Officer in the prescribed manner, the Rule concerned, namely, Rule 17 of the Rules did not prescribe any time limit and it is only Form No.10 which prescribed such a limitation of six months commencing from the end of each previous year for issuing the notice as required under Section 11(2) of the Act. It also held that the Act had not provided for such Rule-making authority to fix such a period of limitation which meant that the Legislature did not impose a limitation for giving a written notice to the assessing authority, therefore, it held that the time fixed in para 2 of Form No.10 requiring the said intimation to be given within 6 months is beyond the delegated authority, hence the said prescription of limitation was illegal. In these appeals, the Revenue has raised same two questions referred to the High Court before us also.

Mr. M.L. Verma, learned senior counsel appearing for the Revenue contends if the first question is answered in favour of the revenue, there is no need to go to the next question referred. According to Mr. Verma, assuming for arguments sake that the fixation of limitation in Form No.10 is beyond the delegated power even then in view of the fact that the substantive Section 11(2) has made it mandatory for a party claiming the benefit of Section 11 of the Act to intimate in writing to the assessing authority in the prescribed form specifying the purposes for which the income is being accumulated or set apart it must be deemed that such intimation should be within a reasonable period. He pointed out that in the instant case till the date of completion of assessment for the assessment years 1974-75 and 1975-76, the respondent Association did not furnish the required information, hence the said requirement not having been fulfilled for the assessment years concerned, the Association was not entitled to claim the benefit under Section 11(2) of the Act for those years. We find substantial force in this argument. Chapter III of the Act which consists of Sections 10 to 13A enumerates various types of income which do not form part of total income for the purpose of levy of tax. The relevant part of Section 11 in the said Chapter reads thus :- 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 or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;

x x x x x

[(2) (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;

It is abundantly clear from the wordings of sub-section (2) of Section 11 that it is mandatory for the person claiming the benefit of Section 11 to intimate to the assessing authority the particulars required, under Rule 17 in Form No.10 of the Act. If during the assessment proceedings the Assessing Officer does not have the necessary information, question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from Section 11 and is subjected to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, in our opinion, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules even then, in our opinion, it is reasonable to presume that the intimation required under Section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income the assessing authority cannot entertain the claim of the assessee under Section 11 of the Act, therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of Section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such reopening of the assessment. In the case in hand it is evident from the records of the case the respondent did not furnish the required information till after the assessments for the relevant years were completed. In the light of the above, we are of the opinion that the stand of the Revenue that the High Court erred in answering the first question in favour of the assessee is correct, and we reverse that finding and answer the said question in the negative and against the assessee. In view of our answer to the first question, we agree with Mr. Verma that it is not necessary to answer the second question on the facts of this case. In view of the above findings of ours, the second question referred will

not arise for consideration. Accordingly these appeals are allowed.