

KERALA HIGH COURT

Commissioner of Income Tax

Vs

Shree Padmanabhaswamy Temple Trust

ITR. 31 and 32 of 1977

(Gopalan Nambiyar, C.J. and Balagangadharan Nair, J.)

16.02.1979

JUDGMENT

Gopalan Nambiyar, C.J.

1. These are references by the Income-tax Appellate Tribunal, Cochin Bench, under Section 256(1) of the I.T. Act, 1961, sent up at the instance of the revenue. The two references arise out of an appeal filed to the Tribunal by the revenue and a cross-objection preferred to it by the assessee. Both related to the assessment year 1971-72. The assessee, Shree Padmanabhaswami Temple Trust, Trivandrum, is a charitable and religious trust. The previous year is the year ended March 31, 1971. The controversy revolves round the question whether the trust whose objects are admittedly charitable within the meaning of Section 2(15) of the Act, was entitled to the exemption conferred by Section 11 of the I.T. Act, as it stood at the relevant time. The material part of the section as it stood at the relevant time read as follows :

"(2) Where any income referred to in Clause (a) or Clause (b) of Sub-section (1) read with the Explanation to that sub-section is not applied or is not deemed to have been applied to charitable or religious purposes in India during the previous year but is accumulated, or finally set apart, for application to such purposes in India, such income shall not be included in the total income of the previous year of the person in receipt of the income provided the following conditions are complied with, namely :

(a) such person specifies, by notice in writing given to the Income-tax 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;

(b) the moneys so accumulated or set apart is-

(i) 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, or

(ii) deposited in any account with the Post Office Savings Bank (including deposits made under the Post Office (Time Deposits) Rules, 1970) or a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in Section 51 of that Act) or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a cooperative land development bank), or

(iii) deposited in an account with a financial corporation which is engaged in providing long-term finance for industrial development in India and which is approved by the Central Government for the purposes of Clause (viii) of Sub-section (1) of Section 36."

This section allows certain income to be not included in the total income of the previous year subject to certain conditions being satisfied. One of the conditions is that the assessee specifies by notice in writing to the ITO "in the prescribed manner" the purpose for which the income is being accumulated and the period for which the income is to be accumulated. By definition the expression "prescribed" means prescribed by Rules. That should turn our attention to the relevant rule, which is Rule 17. That rule reads:

"Notice for accumulation of income by charitable or religious trusts.--The notice to be given to the Income-tax Officer under Sub-section (2) of Section 11 shall be in Form No. 10 and shall be delivered to him before the expiry; of the time allowed under Sub-section (1) or Sub-section (2) of Section 139, whether fixed originally or on extension, for furnishing the return of income."

And Form No. 10, which is referred to in the said rule, contains the following provisions :

Form No. 10

(see Rule 17)

Notice to the Income-tax Officer under Section 11(2) of the Income-tax Act, 1961

To

The Income-tax Officer,

.....

I,....., on behalf of..... (name of the trust), hereby bring to your notice that it has been decided by a resolution passed by the trustees on(date) (copy enclosed) that, out of the income of the trust for the previous year(s) relevant to the assessment year 19.....19..... and subsequent.....previous year(s), an amount of Rs..... per cent. of the income of the trust/such sum as is available at the end of the previous year(s) should be accumulated or set apart till the previous year(s) ending in order to enable the trustees to accumulate sufficient funds for carrying out the following purposes of the trust:

(1)

(2) etc.

2. Before the expiry of six months commencing from the end of each previous year, the amount so accumulated or set apart has been/will be-

(i) invested in any Government security as defined in Clause (2) of Section 2 of the Public Debt Act, 1944, or in any other security which may be approved by the Central Government in this behalf;

(ii) deposited in any account with the Post Office Savings Bank (including deposits made under the Post Office (Time Deposits) Rules, 1970), or a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in Section 51 of that Act), or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank) : or

(iii) deposited in an account with a financial corporation which is engaged in providing long-term finance for industrial development in India and which is approved by the Central Government for the purposes of Clause (viii) of Sub-section (1) of Section 36.

3. Copies of the annual accounts of the trust along with details of investments (including deposits) and utilization, if any, of the money so accumulated or set apart, will be furnished to you before the expiry of six months commencing from the end of each relevant previous year or before the 30th day of June immediately following such previous year, whichever is later.

It is requested that in view of our complying with the conditions laid down in Section 11(2) of the Income-tax Act, 1961, the benefit of that section may be given in the assessments of the trust in respect of the incomes accumulated or set apart as mentioned above,

**Signature

Designation

Date..... Sharma

Address... ..

It will be noted that Rule 17, as such, does not provide for any period of time within which the amounts set apart for charitable purpose is to be invested in any Government security or in Post Office Savings Bank or in any financial corporations, etc. Indeed, this would be outside the province of the rule, as Section 11 itself authorizes only, prescribing the manner of specifying by notice to the ITO, the purpose for which, the income is being accumulated, etc. These expressions, namely, "in the prescribed manner" have been held to be inadequate and incompetent to take in a time element (vide the decision of the Supreme Court in *STO v. Abraham*¹, More particularly, with respect to the identical provision with which we are here concerned, namely, Section 11 of the I.T. Act and Rule 17 of the Rules, it has been ruled that the time element incorporated in Form No. 10 in the matter of investment of the accumulated amounts in Government securities or Post Office Savings Banks, etc., is ultra vires the provisions of the section and the rule (vide *Second Income Tax Officer v. M.C.T. Trust*², -decided by the

Madras High Court--and *Commissioner of Income Tax v. Shri Krishan Chand Charitable Trust*³, - decided by the Jammu and Kashmir High Court). We are in complete agreement with the principle of these two decisions. Even apart from these decisions, on the terms of the section and the rule, in the light

¹(1967) 20 STC 367

³(1975) 98 ITR 387

²(1976) 102 ITR 138

of the principle expounded by the Supreme Court decision, which we have noticed, we are clearly of the opinion that the provision of a time element in para. 2 of Form No. 10 of the I.T. Rules is clearly beyond the provisions of Section 11 and Rule 17. The decision of the Tribunal to that effect is, therefore, correct.

(2). The question of law referred is as follows:

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in holding that the investments made after the expiry of the period mentioned in para. 2 in Form No. 10 prescribed by Rule 17 of the Income-tax Rules, 1962, has to be considered for the purpose of Section 11(2) of the Income-tax Act and, therefore, the income was exempt from taxation ?"

4. We answer the question of law in the affirmative, that is, in favour of the assessee and against the revenue. There will be no order as to costs.

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