

KERALA HIGH COURT

Commissioner of Income-Tax

Vs

H.H. Marthanda Varma Elayaraja

(V Balakrishna Eradi, C.J. G.B Nair, J.)

26.03.1980

JUDGMENT

V Balakrishna Eradi, C.J.

1. In these 7 reference cases the Income-tax Appellate Tribunal, Cochin Bench (hereinafter called "the Tribunal"), has referred to this court under Section 256(1) of the I.T. Act, 1961, hereinafter called "the Act", the following common question of law :

"Whether, on the facts and in the circumstances of the case and on an interpretation of the provisions of Section 11(1)(a) and Section 11(2) of the Income-tax Act, 1961, the Income-tax Appellate Tribunal is right in law in holding that, in order to avail of the exemption under the said provisions, it is enough if the assessee invests in Government securities only that part of the unspent balance which is over and above 25% of the total income derived from the property held under trust?"

2. The assesseees in these cases are charitable trusts. The assessment years concerned in I.T.R. Nos. 5 to 8, 14 and 15 of 1977 are 1969-70 and 1970-71. In I.T.R. No. 9 of 1977 the relevant assessment year is 1970-71. The assesseees in these cases had claimed exemption under Section 11 of the Act in respect of income not spent by them during the relevant accounting period, but which had been accumulated for application to the charitable purposes of the trust after duly giving notice in writing to the ITO in the prescribed form. The amount so accumulated should not exceed the limit specified in Section 11(1)(a), namely, "25% of the income from the property or rupees ten thousand, whichever is higher". The assesseees had deposited in approved Government securities that portion of the accumulated income which was in excess of the limit specified in Section 11(1)(a). In view thereof, the ITO allowed in full the claim put forward by the assesseees. But the Commissioner acting under Section 263 held that the order of the ITO was erroneous and unsustainable, since the entire unspent balance income had not been invested by the assesseees in approved Govt. securities. In the view of the Commissioner, in cases where the trust claims exemption in respect of accumulated income which exceeds the limit specified in Clause (a) of Sub-section (1) of Section 11, the assessee is required by Sub-section (2) to deposit

in approved Govt. securities the entirety of the accumulated income. In other words, the Commissioner held that by reason of the failure on the part of the assesseees to invest in approved Govt. securities the entire income accumulated, the assesseees were not entitled to exemption on the unspent balance to the extent to which it exceeded 25% of the income. The assesseees having taken up the matter in appeal before the Tribunal, the Tribunal allowed the appeals upholding the contention of the assesseees that, on a combined reading of the provisions of Sub-sections (1) and (2) of Section 11, it was clear that the assesseees would be entitled to exemption in respect of the amount of accumulation falling outside the limit specified in Clause (a) of Sub-section (1) of Section 11, if that part of the unspent balance which is in excess of 25% of the total income is invested in approved Govt. securities. It is the correctness of this view that is really under challenge in those references that have been made by the Tribunal at the instance of the revenue.

3. We shall extract the provisions of Sub-sections (1) and (2) of Section 11 as they stood at the material time in so far as they are relevant for our present purpose:

" 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 twenty-five per cent. 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 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 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 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."

4. The effect of Clause (a) of Sub-section (1) is to lay down that income derived from property held under trust wholly for charitable or religious purposes is exempt from tax to the extent to which such income is applied in India during the relevant accounting period to such charitable or religious purposes. It is further provided that if a trust has unspent balance income in its hands and such unspent balance is accumulated for application to charitable or religious purposes in India, the trust shall be entitled to exemption in respect of so much of such accumulated income as is not in excess of 25% of the income of the trust derived from property or Rs. 10,000,

whichever is higher. Thus, in respect of income accumulated by a trust for application to its charitable or religious purposes in India, which does not exceed 25% of the income of the trust derived from property or Rs. 10,000, whichever is higher, an absolute right of exemption from tax is conferred by Clause (a) of Sub-section (1).

5. The wording of Sub-section (2) is by no means happy. But when its terms are carefully studied it becomes manifest that the legislative intention underlying the enactment of the said sub-section is to provide for a relaxation of the restriction (we are omitting the reference by Clause (b) of Sub-section (1) since that is not relevant for our purpose) imposed by Clause (a) of Sub-section (1) regarding the grant of exemption in respect of accumulated income, subject to compliance by the assessee with the conditions specified by Clauses (a) and (b) thereof (sub-s. (2)). Clause (a) enjoins that the persons claiming the benefit of the relaxation provided for under Sub-section (2) should have by notice in writing given to the ITO in the prescribed manner specifying the purpose for which the income is being accumulated and also the period for which such accumulation is being made, such period not to exceed 10 years. Clause (b) lays down a further condition that the " money so accumulated " is invested in any Govt. security or in any other security which may be approved by the Central Govt. in that behalf. We consider that the words " money so accumulated " have, in the context, to be understood as meaning the amount accumulated in respect of which the benefit of relaxation is being claimed under Sub-section (2). In other words, the said expression will take in only so much of the amount of accumulation as is in excess of the limits specified in Sub-section (1)(a) of Section 11.

6. It was strongly urged by the counsel for the revenue that the expression " money so accumulated " can be understood as having reference only to the income accumulated under Clause (a) of Sub-section (1) of the section. It is significant that the words used in Clause (a) of Sub-section (1) are "where any such income is accumulated ", Whereas Parliament has deliberately employed a totally different expression in Clause (b) of Sub-section (2), namely, the " money so accumulated ". If Parliament had intended to refer to the income accumulated by the person under Clause (a) of Sub-section (1), one should have expected it to use the words " the income accumulated " under Sub-section (1)(a) or at least the words " the income so accumulated" in Clause (b) of Sub-section (2). That instead of doing so, a totally different expression has been employed is a clear indication that the reference in Clause (b) of Sub-section (2) is not to the entirety of the income accumulated by a person under Clause (a) of Sub-section (1). The argument put forward by the counsel for the revenue cannot, therefore, be accepted.

7. In this connection it is relevant to remember that the very purpose underlying the grant of exemption provided for by Clause (a) of Sub-section (1) is to enable a trust to accumulate at least a part of its income not exceeding 25% of the income from property or Rs, 10,000, whichever is higher, and utilise the same for the charitable or religious purpose of the trust during the year or years immediately following the accounting period without incurring liability for taxation. It is reasonable to think that while restricting the availability of the exemption to the aforementioned limit, namely, 25% of the income from property or Rs. 10,000 (whichever is higher), Parliament

thought that the said limit may be relaxed provided the amount accumulated beyond the limit specified in Clause (a) of Sub-section (1) is invested in any Govt. security or in any other security approved by the Central Govt. and accordingly incorporated a provision in that behalf in Sub-section (2). If the interpretation of Sub-section (2) suggested by the revenue, namely, that for the purpose of obtaining the benefit of relaxation provided for in sub-s, (2) the assessee has to invest in Govt. security or other approved securities the entirety of the accumulated income and not merely so much thereof as is in excess of the limit laid down by Clause (a) of Sub-section (1) is to be accepted, it will lead to the unreasonable result of wholly depriving the trust of the benefit of user for charitable and religious purposes of even that part of its accumulated income which falls within the limit specified in Clause (a) of Sub-section (1). This will be defeating the very object and purpose underlying the grant of the exemption provided for in Clause (a) of Sub-section (1). In our opinion, it will not be right to place such a construction on the provisions contained in Clause (b) of Sub-section (2).

8. We are supported in our above view by the decisions in *CIT v. Shri Krishen Chand Charitable Trust*¹. *CIT v. A.L.N. Rao Charitable Trust*² and *Mohanlal Hargovinddas Public Charitable Trust v. CIT*³

9. In the light of the foregoing discussion, we answer the question referred in all the cases in the affirmative, i, e., in favour of the assesses and against the department. The parties will bear their respective costs.

10. A copy of this judgment under the seal of the court and the signature of the Registrar will be forwarded to the Tribunal as required by law.

Cases Referred.

1[1975J 98 ITR 387 (J & K), Addl

2[1976] 103 ITR 44 (Kar)

3[1980] 122 ITR 130 (MP)