

(2004) 12 GUJ CK 0030

In the Gujarat High Court

Case No : Income Tax Reference No. 140 of 1992

Commissioner of Income Tax

APPELLANT

Vs

Mayur Foundation

RESPONDENT

Date of Decision : 29-12-2004

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(2), 139(1), 139(1), 2(24)
Income Tax Rules, 1962 — Rule 17

Citation : (2005) 194 CTR 197 : (2005) 274 ITR 562

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; J.P. Shah, for the Respondent

Judgement

D.A. Mehta, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench "C", Ahmedabad has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (the Act) for the opinion of this Court at the instance of the Commissioner of Income Tax, Rajkot.

"Whether under the facts and circumstances of the assessee's case, the Tribunal was right in holding that in the absence of any specific time limit prescribed u/s 11(2) of the I.T. Act, 1961 for submission of the notice in the prescribed manner to the assessing authority, and in the absence of any express or by clearly implied delegation to the rule making authority of any power to impose any time limit, such time limit prescribed in Rule 17 for submission of Form No. 10 by the rule making authority is invalid and whether the Tribunal was right in holding that the appellant trust has complied with all the conditions prescribed in Section 11(2) and is entitled to benefits allowable under the aforesaid provisions?"

2. The assessee is a charitable trust, registered under the provisions of the Bombay Public Trusts Act, 1950. The assessment year is 1980-81 and the relevant accounting year is 31st March 1980. During the year under consideration, the assessee received voluntary contributions amounting to Rs. 2,04,468=00. The said donations were treated as "income" within the meaning

of Section 2(24)(iia) of the Act by the assessing officer. The assessee contended that the donations of Rs. 1,74,432=00 and Rs. 9,036=00 included in the aforesaid total amount of donations were towards the corpus of the trust and in support of the said contention, confirmation letters from two donors were submitted. The assessing officer did not accept this submission and after granting permissible accumulation of 25%, held the balance amount of Rs. 1,53,351=00 as liable to tax in hands of the assessee. The Commissioner (Appeals) vide his order dated 20th March 1987 confirmed the assessment order and dismissed the appeal filed by the assessee.

3. The assessee preferred second appeal before the Income Tax Appellate Tribunal, and during the pendency of the appeal, moved an application before the C.I.T., Rajkot on 5th October 1989, accompanied by Form No. 10 and a copy of resolution passed by the trustees on 22nd August 1988, to the effect that the donations may be treated as general donations and the assessee be permitted to accumulate the trust income u/s 11(2) by condoning the delay in filing the Form No. 10. The resolution passed by the trustees on 22nd August 1988 stated that a total sum of Rs. 5,09,000=00 had been set apart by the assessee trust for purchasing land and constructing an orphanage on the said land. A sum of Rs. 1,54,000=00 was required to be utilised for the aforesaid purpose on or before 31st March 1990. The C.I.T. rejected the assessee's application on 28th February 1990. The assessee challenged the said order of C.I.T. before this High Court by way of a writ petition and by order dated 30th April 1990, this Court directed the Commissioner to re-consider the matter about condonation of delay in light of circular dated 3rd June 1980. However, the C.I.T. vide order dated 24th July 1990 once again rejected the petition filed by the assessee.

4. The assessee thereupon filed additional ground of appeal before the Tribunal. The said additional ground reads as under :

"The trust is not taxable in view of resolution of accumulation and the notice thereof to I.T.O. u/s 11(2)."

The Tribunal admitted the additional ground and after hearing both the sides, held that, in absence of any specific time limit prescribed u/s 11(2) for submission of the notice as prescribed, and in absence of any express or clear implication of any delegation to the rule making authority of any power to impose any time limit, such limit prescribed in Rule 17 for submission of Form No. 10 by the rule making authority was invalid and also contrary to various judgments. The Tribunal further held that, while interpreting provisions of Section 11 of the Act, the object with which such provision has been enacted has to be borne in mind and accordingly, the provisions have to be interpreted in a manner that would advance a genuine cause of charity and should not deprive an assessee the statutory benefit on the basis of mere technicalities. The Tribunal has further held that even if the interpretation of such a beneficial provision is reasonably capable of more than one interpretation, one which does not result in deprivation of such an intended relief, should be accepted.

5. On facts, the Tribunal has found that, in the present case, the genuineness of the trust is not in doubt; that the trust has set apart the aforesaid amount of donation for the purpose of purchasing land and constructing an orphanage thereupon; that the funds received by way of donations had been kept apart in fixed deposit receipts of nationalised banks; and that the trustees or the settlors had not benefitted by the failure or delay on the part of the trust to give notice of such accumulation. Accordingly, the Tribunal has held that the assessee trust had complied with all the requirements stipulated by provisions of Section 11(2) of the Act.

6. Heard Mr. Tanvish U. Bhatt, the learned standing counsel on behalf of Mr. B.B.Naik, for the applicant revenue. Inviting attention to the decision in case of *The Commissioner of Income Tax, Vidarbha, Nagpur Vs. The Nagpur Hotel Owners' Association Nagpur*, it was submitted that it was mandatory for a person claiming benefit of Section 11 to intimate to the assessing authority the prescribed particulars under Rule 17 in Form No. 10 of the Income Tax Rules, 1962. That if the assessing authority does not have the information at the time when the assessment is completed, it will not be possible for the assessing authority to give the benefit of inclusion. In other words, a particular portion of income, according to the learned counsel, could not be excluded from the net of taxation in absence of compliance with provisions of Section 11 read with relevant rules. That, as laid down by the said decision, the particulars have to be submitted before the completion of assessment proceedings and if the information is supplied subsequent to the completion of the assessment, it would mean that the assessment order will have to be re-opened and the Act does not contemplate such re-opening of assessment. He, therefore, urged that, in light of the ratio of this decision, the Tribunal was in error in granting benefit to the assessee and upholding the contention that the assessee trust was entitled to exemption in relation to the accumulated income u/s 11(2) of the Act.

7. Mr. Manish J. Shah, the learned advocate for the respondent assessee read extensively from the order of the Tribunal and submitted that, in light of the backdrop of facts in which the assessee trust was put, the order made by the Tribunal was perfectly legal and calls for no interference. He invited attention to the orders of the lower authorities, including the C.I.T. (Administration), refusing to condone the delay in submitting Form No. 10, and fixing a notional time limit by reference to provisions of Section 139(1) or 139(2) of the Act, to submit that the said proposition was not borne out by the provisions of the Act and the rule making authority could not curtail the scope of such provisions by imposing a time limit by way of rules. Mr. Shah further submitted that the findings recorded by the Tribunal regarding genuineness of the trust, the setting apart of the income, investment in prescribed securities, non-utilisation of funds by the trustees etc. are relevant factors for the purposes of determining the controversy and in light of such findings, the approach of the revenue authorities in denying legitimate relief to an assessee who was bona fide litigating, requires that the order of the Tribunal be confirmed by answering the question in favour of the

assessee.

8. The facts, as stated hereinbefore, are not in dispute. The only question which the Court is required to decide is, as to whether, in absence of any specific time limit prescribed u/s 11(2) of the Act, whether the time limit prescribed in Rule 17 for submission of Form No. 10 by the rule making authority is valid. In the case of Nagpur Hotel Owners' Association (supra), following two questions came up for consideration before the Bombay 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 Income Tax 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 Income Tax Rules could not fix any time limit for submitting an application in Form No. 10 under Rule 17 of the Income Tax Rules, 1962?"

The High Court of Bombay held that, once Rule 17 of the Rules did not prescribe any time limit and the limitation of six months commencing from the end of previous year for issuing the notice as required u/s 11(2) of the Act, was only in Form No. 10, it was not permissible for the rule making authority to fix such a period of limitation because the legislature did not impose a limitation for giving a written notice to the assessing authority. The revenue, having carried the matter before the Apex Court, after referring to provisions of Section 11 of the Act, the Apex Court has enunciated the law in the following words :

"It is abundantly clear from the wording 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 Rules. 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 limitation required u/s 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 u/s

11 of the Act, therefore compliance with 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 re-opened. In our opinion, the Act does not contemplate such re-opening of the assessment."

9. At first blush, the reading of the aforesaid pronouncement gives an impression that the stand of the revenue is correct, inasmuch as a notice in writing furnishing the prescribed particulars should be submitted before the assessing authority and a completed assessment cannot be re-opened, if such particulars are furnished subsequent to the completion of the assessment. However, it is apparent that the Apex Court has stated that the details have to be furnished before completion of the assessment proceedings and any information supplied subsequent to the completion of assessment cannot be taken into consideration. The question, therefore, that arise is when can an assessment be said to be complete or till what point of time the assessment proceedings can be said to be alive.

10. In the case of *Rambhai Jethabhai Patel Vs. Commissioner of Income Tax, Gujarat-I*, this Court was called upon to decide the question as to till what point of time an assessment can be said to be pending. This Court referred to various interpretations of the word "pending" at page 784 of the reported decision, and ultimately relied upon the decision of the Apex Court in case of *Asgarali Nazarali Singaporawalla Vs. The State of Bombay*, to hold that it can safely be said that a matter can be said to be pending in a court of justice when any proceedings can be taken in it and that is the test to be applied. In *Stroud's Judicial Dictionary*, fourth edition, volume 4, at page 1975, it is stated :

"A legal proceeding is "pending" as soon as commenced and until it is concluded, i.e. so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein."

11. Applying the aforesaid principle, can it be stated that when the matter is pending before the Tribunal by way of an appeal, the assessment proceeding is pending? The answer has to be in the affirmative. The assessing authority is empowered and is duty bound, to pass order giving effect to the order of the Tribunal for the purposes of assessing the tax liability of an assessee for the assessment year which was under consideration before the Tribunal. In these circumstances, it cannot be contended on behalf of the revenue that the assessment proceedings come to an end when the assessment order is framed. The contention on behalf of the revenue to equate the assessment order with assessment proceeding is based on a fallacious premise.

12. The aforesaid view that this Court is taking finds support from the decision of the Apex Court in case of *National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax*, . The Apex Court held that the Tribunal has jurisdiction to examine a

question of law which arose from the facts as found by the income tax authorities and having a bearing on the tax liability of the assessee. The powers of the Tribunal u/s 254 of the Act and the discretion that the Tribunal has to entertain or not entertain a new ground have been explained in the following words, in the aforesaid decision :

"Under Section 254 of the Income Tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The powers of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal u/s 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals). Both the assessee as well as the Department have a right to file an appeal / cross-objections before the tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) is too narrow a view to take of the powers of the Tribunal.

Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

13. Thus, the proceedings before the Tribunal are meant to correctly assess the tax liability of an assessee. If this be so, it follows that the assessment proceeding cannot be said to be complete and is pending till the appeal is heard and disposed of by the Tribunal and the order of the Tribunal is given effect to by the assessing authority by computing the correct tax liability of an assessee. In other words, whether an assessee is required to pay tax or becomes entitled to a refund, would be ascertained by the assessing authority after giving effect to the order of the Tribunal.

14. In these circumstances, in the present case, the Tribunal was well within its jurisdiction to entertain the new ground by which the assessee claimed the benefit u/s 11(2) of the Act and adjudicate the tax liability of the assessee. As already noticed hereinbefore, the Tribunal has categorically found that "the additional ground involves the question relating to interpretation of Section 11(2) and the facts on the basis of which such a decision is to be given regarding

interpretation of Section 11(2) are not at all in dispute". In the circumstances, there is no infirmity in the order of the Tribunal, holding that the assessee is entitled to benefits allowable u/s 11(2) of the Act.

15. The question referred to the Court is accordingly answered in light of the opinion expressed hereinbefore in favour of the assessee and against the revenue. There shall be no order as to costs.