

(1983) 07 CAL CK 0028

In the Calcutta High Court

Case No : Income-tax Reference No. 484 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Ramchandra Poddar Charitable Trust

RESPONDENT

Date of Decision : 18-07-1983

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(1)

Citation : (1987) 164 ITR 666 : (1986) 26 TAXMAN 512

Hon'ble Judges : Suhas Chandra Sen, J; R.N. Pyne, J

Bench : Division Bench

Judgement

S.C. Sen, J.—The assessee is a religious and charitable trust. The relevant assessment year is 1967-68 (financial year 1966-67). The issue before the Income Tax Officer was whether the donation of shares made by one charitable trust to another would amount to application of income for charitable purposes within the meaning of Section 11(1)(a) of the Income Tax Act, 1961 ("the Act").

2. The assessee's income during the relevant accounting period was Rs. 30,201. The Income Tax Officer found that Rs. 13,387 were applied towards charitable purposes. The expenses amounted to Rs. 328. The Income Tax Officer calculated that there was an accumulation of a sum of Rs. 16,486 out of the year's income (Rs. 30,201 minus Rs. 13,715). This exceeded 25 per cent. of the assessee's income or Rs. 10,000. The assessee was, therefore, held liable to tax.

3. Before the Appellate Assistant Commissioner, it was argued that the assessee had donated 1,500 shares of Poddar Automobiles Ltd. valued at Rs. 15,000 to Subhkaran Poddar Charitable Trust and 1,500 shares of Bharat Credit Corporation valued at Rs. 15,000 to Nandalal Poddar Charitable Trust. The Income Tax Officer should have held that an amount of Rs. 30,000 had been donated by way of shares for charitable purposes. The Appellate Assistant Commissioner, following an order of the Tribunal dated December 30, 1972, in I.T. Appeal No. 3822 (Cal) of 1971-72, held that the donation of shares valued at Rs. 30,000 should have been taken by the Income Tax Officer as application of

income for charitable purposes.

4. The Department appealed to the Tribunal. The Tribunal, following its abovementioned decision, held that the gift of shares by the charitable trust to another (trust) would amount to application of its income for charitable purposes. The Tribunal dismissed the appeal.

5. The Commissioner applied for referring certain questions of law arising out of its order to the High Court u/s 256(1) of the Act. The Tribunal dismissed that application. Thereupon, on further application u/s 256(2) by the Commissioner, this Court directed the Tribunal to refer the following question of law :

"Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 11 of the Income Tax Act, 1961, the Tribunal misdirected itself in law in holding that by giving away the shares valued at Rs. 30,000 as charity, there was an application of the income of the year under consideration for charitable purposes ?"

6. There is no dispute that the assessee is a religious and charitable trust. The only dispute is whether it has applied sufficient percentage of its income of the year in order to get the benefit of Section 11. Section 11 at the material time was as under :

"Income from property held for charitable or religious purposes.--(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 ;.....

Explanation.--For the purposes of Clauses (a) and (b), in computing twenty-five per cent. of the income from any such property as is referred to in the said clauses for any previous year, the income from such property for the year immediately preceding the previous year may be adopted, if that income is higher than the income for the previous year.....

(3) Any income referred to in Sub-section (1) or Sub-section (2) as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so accumulated or so set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid."

7. The contention made on behalf of the assessee is that the shares that were gifted for charitable purpose were purchased out of its accumulated income of the earlier years. What Section 11(1)(a) requires is application of income derived from charitable trust. It has to be seen whether an amount equal to at least 75 per cent. of the income of the assessee was applied for charitable purpose. Expenditure may be from the accumulated income of the years. When an amount equal to 75 per cent. of the income of the year had been spent by the assessee for charitable purpose, the assessee was entitled to claim exemption u/s 11(1)(a).

8. We are unable to uphold this contention for a number of reasons. It is well settled that an assessee incurs liability to pay tax on income as soon as the income accrues or is received by the assessee depending upon the system of accounting followed by the assessee. Generally, the application of income is quite immaterial for the purpose of deciding chargeability of the income to tax. Section 11 is an exception to this principle and specifically provides that the income derived from property held under trust wholly for charitable or religious purposes will not be included in the total income of the previous year of the person in receipt of the income if the income was applied in the manner indicated in that section. In other words, the includibility of the income of such a trust in the total income of a year will depend upon how the income was actually applied.

9. The exemption is limited only to the extent to which the income was actually applied to the purposes of the trust in India. An amount not in excess of 25 per cent. of the income from property or Rs. 10,000, whichever is higher, can be accumulated for application for the purpose of the trust. If the assessee does not apply the income of a year for charitable purposes but spends a like amount for charitable purposes out of its accumulated profits, the conditions laid down in Section 11(1)(a) are not fulfilled. In the instant case, the assessee has made a gift of shares valued at Rs. 30,000. Even if the shares were purchased out of profits made by the assessee in the earlier years, the conditions laid down in the section are not fulfilled. The income from property held for charitable purpose is not to be included in the total income of the previous year of the person in receipt of the income only "to the extent to which such income is applied" to charitable purposes in India. Therefore, the language of the section clearly requires application of income of the trust for charitable purpose and the exemption is limited to the extent of the application.

10. The position can be viewed from another angle. Section 11(1)(a) not only requires application of income for charitable purpose but also prohibits accumulation in excess of 25 per cent. of the income or Rs. 10,000, whichever is higher. If an assessee spends an amount equal to the entire income of a particular year for the purpose of charity out of its savings of the past years and accumulates the entire income of the year for purpose of charity, the assessee will not be entitled to claim exemption u/s 11(1)(a) in excess of 25 per cent. of the income or Rs. 10,000, whichever is higher. In order to claim exemption u/s

11, the income of the year has to be applied for charitable purpose. The section permits accumulation of 25 per cent. of the income or Rs. 10,000, whichever is higher, only for a very limited period. The accumulated amount will have to be spent for charitable purpose within the prescribed period of time.

11. In order to claim exemption u/s 11, it is incumbent upon the assessee to actually apply the income of the year for the purpose of charity. Only 25 per cent. of the income or Rs. 10,000, whichever is higher, can be set apart for application for charitable purposes in future. The section does not permit accumulation of a larger amount of income than what has been strictly prescribed. If the assessee's contention is to be accepted, it will have to be held that the assessee will be able to retain its entire income of a year on the ground that it had made a gift of a like amount from its past savings for the purpose of charity. This, in effect, will give the assessee an exemption from the requirements of Section 11(1)(a). The language of the section is clearly against such construction. The section requires application of income received by the assessee in a particular year for charitable purpose. The income that would otherwise be includible in the total income of the assessee will not be included provided the assessee has applied that income for the purpose of charity. The relief is limited only to the extent to which the income has been actually applied for charity or set apart for charity only to the extent permitted by Section 11.

12. On behalf of the assessee strong reliance was placed on the decision of the Mysore High Court in the case of Siddaramanna Charities Trust Vs. Commissioner of Income Tax, . In that case, the assessee made a donation of a sum of Rs. 25,000 to the College of Engineering, Tumkur, on October 1, 1963. The sole ground on which the Tribunal disallowed the claim of the assessee for exemption u/s 11(1)(a) was that the sum of Rs. 25,000 came from the trust funds of the assessee and not from its income of the relevant accounting year. It was stated that the donation was made on the very first day of the commencement of the accounting year on which date there were no profits available from which the funds could have been donated. Govinda Bhat C.J. held that during the previous year relevant to the assessment year, there was a profit and the sum donated was less than the amount of the profits. A copy of the profit and loss statement of account was produced in the court and it appeared from that that the donation of Rs. 25,000 formed part of profits for the year ending on September 30, 1964, and it was not shown that the said amount was paid out of the capital account.

13. This case, in our opinion, far from supporting the contention of the assessee, goes against the submission made on behalf of the assessee. In the case before us, there is no dispute that the shares were purchased out of the accumulated savings of the past year. The gift of the shares made in the case before us cannot possibly have any impact on the profit and loss account of the year under consideration before us. Moreover, there is an independent statutory obligation to apply the accumulated income of the past year for charitable purposes. Application of accumulated income of the past years for the purpose of charity

will not fulfil the requirement of application of the income of the relevant previous year for charitable purpose.

14. Reliance was also placed on the decision of the Calcutta High Court in the case of Commissioner of Income Tax, Central I Vs. Ashoka Charity Trust, . That was a case where the assessee received voluntary contributions from non-charitable institutions. The assessee had also accumulated income of the previous years. The contributions from non-charitable institutions and the accumulated income of the previous years as well as income from charitable property held under charitable trust of the current year were kept by the assessee in a composite fund. Expenditure was made by the assessee out of this fund. One of the questions raised in that case was whether it could be said that the expenditure was out of the income of the property held under trust. It was held that there was no dispute that in the composite fund, the income of the current year was included. There was no dispute that the expenditure was incurred out of the composite fund. Exemption was claimed in respect of that expenditure u/s 12 of the Act. The point at controversy was whether the assessee would be entitled to the exemption u/s 12 if it could be shown that the assessee's income from property held under trust was larger than the amount of donations made by the assessee for the purposes of charity out of the composite fund. It was held on these facts by a Division Bench of this court that it could not be inferred that the donations were made not out of the income derived from property held under charitable trust but from some other income,

15. The controversy before us in the instant case is entirely different. The gift that has been made for the purpose of charity is a gift of shares. At the highest, it can be said that the accumulated income of the previous years was being held in the form of shares. There is no dispute that the income derived from property held under trust in the relevant previous year was not applied for the purpose of charity.

16. The advocate, on behalf of the assessee, invited our attention to a circular issued by the Central Board of Direct Taxes on January 24, 1973.

17. By that Circular No. 100 (F. No. 195/I/72-IT(A-I), dated January 24, 1973) (see [1973] 88 ITR 66), it was clarified by the Central Board :

"Section 11 of the Income Tax Act requires 100 per cent. of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered regarding the application of income:

(i) Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust ? and

(ii) Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes ?

2. Board has decided that repayment of the loan originally taken to fulfil one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfilment of the objectives of the trust, granting of loans, even interest-bearing, will amount to application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year."

18. It was sought to be argued that in the instant case, the assessee had really made a debit entry in one part of its accounts and had made a corresponding credit entry by transferring the current income to that account. If repayment of a loan taken for charitable purpose will amount to an application of income for charitable purpose, then this transfer of the current income to an account from which a debit entry has been made for charitable purpose should also be regarded as application of income for charitable purpose.

19. We are entirely unable to uphold this contention. When the income of a charitable trust is set apart or accumulated, it can only be with the object of application of the amount for charitable purposes. The relief granted by Section 11(1)(a) is limited only to cases where accumulation has been made of only 25 per cent. of the income of a particular year. The mere fact that the assessee had applied its accumulated income of the earlier years for the purpose of charity will not absolve the assessee of its duty to apply its income for the purpose of charity in the current year nor will it enlarge the limit of the amount which is permitted to be accumulated by Section 11(1)(a). An assessee may borrow money and spend it for charitable object. The circular merely recognises that in such a case, application of income for repayment of a loan taken for charitable purpose will amount to application of income for charitable purpose. The circular, however, does not permit an assessee to accumulate more than 25 per cent. of its income or Rs. 10,000, whichever is higher (for the purpose of charity). The wording of Section 11 is clear and unambiguous. The relief is limited to the amount of income of a charitable trust actually applied for charitable purpose. Accumulation of income is permitted only to the extent and subject to the conditions laid down in that section. An assessee can accumulate or set apart only 25 per cent. of the income of the trust or Rs. 10,000, whichever is higher, in a given year. The circular does not seek to and cannot enlarge the scope of the section.

20. In our opinion, the Tribunal erred in holding that the gift of the shares valued at Rs. 30,000 to a charity amounted to application of the income of the trust for the purpose of charity in the year under consideration.

21. The question, therefore, is answered in the affirmative and in favour of the Revenue.

22. There will be no order as to costs.

Pyne, J.

23. I agree.