

(1997) 11 MAD CK 0110

In the Madras High Court

Case No : Tax Case No's. 224 to 228 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Thanthi Trust

RESPONDENT

Date of Decision : 18-11-1997

Acts Referred:

Income Tax Act, 1961 — Section 11, 147

Citation : (1999) 239 ITR 510

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; R. Janakiraman, for the Respondent

Judgement

N.V. Balasubramanian, J.—It is a consolidated statement of the case both at the instance of the assessee as well as by the Revenue for the

asst. yrs. 1965-66 to 1967-68 and the Tribunal has referred the following questions of law for the opinion of this Court :

1. Whether, in the facts and circumstances of the case, the reassessment were validly initiated and completed within the time prescribed ?

2. If the answer to the first question is in the negative whether on the facts and circumstances the ITO could review the entire assessments and on

the basis of only the material already on record, change his opinion and make additions to the total income.

3. If the answer to the second question is in the affirmative, whether on the facts and circumstances of the case, the crediting of the amounts to the

Adithanar Educational Institution can be regarded as not sufficient compliance of the provisions of s. 11 relating to the application of the income for

charitable purposes and the assessee be denied the exemption thereunder as a consequence ?

2. The first question referred by the Tribunal is at the instance of the assessee and the questions 2 and 3 are at the instance of the Department. It is

not necessary to burden the judgment with all the facts as we intend to agree with the Tribunal on the issue arising out of the third question of law.

During the previous assessment years relevant for 1965-66, 1966-67 and 1967-68, the assessee credited in its book towards the account of

Adithanar Educational Institution and claimed that there was an application of income within the meaning of s. 11 of the IT Act, 1961. The ITO,

however, held that mere credit entry would not be sufficient and there was no application of income by the assessee. The CIT(A) held that there

was an application of income that the assessee was entitled to exemption under s. 11 of the Act. The Revenue carried the matter in appeals before

the Tribunal and the Tribunal following the earlier order of this Court rendered the assessee's own case and reported in Commissioner of Income

Tax Vs. Thanthi Trust, held that the crediting by the charitable institution on the facts of the case would amount to an application of income. As

regards the verification of the figures, the Tribunal found that there was a thorough enquiry at the time of the original assessment, and in the absence

of any information as to the actual mistake or omission on any particular amount being applied for charitable purposes, there can be no ground for

reopening the assessment made by the ITO. The Tribunal also found that the CIT(A) also found that there were actual withdrawals of the amount

by the charitable institution during the relevant years and, therefore, the crediting of the amount in the accounts can be taken as the application of

the income. The Tribunal agreed with the views of the CIT(A) and held that income was applied for charitable purposes and the additions cannot

be sustained. The assessee has challenged the order of the Tribunal insofar as it upheld the validity of reassessment. The Tribunal though upheld the

action under s. 147(a) of the Act ultimately held that there was no escapement of income.

3. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that mere crediting of the amount in the assessee's books of accounts cannot be

taken as an application of income. Mr. R. Janakiraman, learned counsel for the assessee submitted that it is not a case of mere crediting of the

amounts in favour of the educational institution in the assessee's books of accounts, but, it is a case where the educational institution was made

aware of the credit entries and the educational institution has withdrawn money from and out of the credit entries made in their favour in the assessee's books of accounts. He made reference to the observation of this Court to a table noticed by this Court in CIT vs. Thanthi Trust cited supra and submitted that the amounts were withdrawn by Aditanar Educational Institution during the relevant years. We carefully considered the submissions of the learned counsel. There can be no doubt that mere credit entries in favour of the educational institution in the assessee's books of account would not be sufficient, and would not amount to application of income. It is also the view taken by this Court in CIT vs. Thanthi Trust cited supra. However, it is seen that this Court has noticed that during the accounting years relevant for the asst. yrs. 1965-66 to 1967-68, the amounts were not only credited in favour of the Adithanar Educational Institution but the amounts were actually withdrawn by Adithanar Educational Institution. As a matter of fact it is seen that during the asst. yr. 1966-67 the amount withdrawn was Rs. 70,31,082 which was the amount credited in favour of the educational institution. Hence, it cannot be said that it is a case of a mere credit entry in favour of the educational institution, but it is a case of withdrawal of the same by the educational institution. This Court also in the earlier tax case found that the Revenue has not taken up the plea that the assessee had not divested of the ownership in the money credited in favour of the educational institution to retain any beneficial interest therein. The only fund (sic-point) that was raised by the ITO was that the mere credit entries in the assessee's books of account in favour of the educational institution would not be sufficient. But when the Revenue has not challenged the position that the monies were not utilised or that the assessee had utilised the amount credited for its own use, it cannot be assumed that the assessee had retained the beneficial interest in the money even after making the credit entries. It is significant to note that reassessment proceedings were initiated by the ITO for the said assessment years. The Tribunal found that the ITO had made a thorough enquiry of the assessee's books of account at the time of original assessment and has not disputed about the genuineness of the credit entries. In the absence of any plea before the Tribunal that the amounts were not withdrawn by the Adhithanar Educational Institution or in the absence of any plea that the assessee had retained the beneficial interest in the

amounts credited in favour of the educational institution, we are of the opinion that the Tribunal has come to correct conclusion in holding that there

was an application of income. The view of the Tribunal is supported by the decision of this Court rendered in the assessee's own case in CIT vs.

Thanthi Trust cited supra. The above decision of this Court is confirmed by the Supreme Court in CIT vs. Thanthi Trust, Madras) (Civil Appeal

Nos. 1257 to 1262 of 1984 by judgment dt. 14th March, 1996. The apex Court held that it is not the Revenue's case at any point of time that the

credit entries made in the assessee's books of accounts were not genuine or true or that they were mere make-believe or bogus, and it was not

brought to the notice that the ITO doubted the said entries and called upon the assessee to produce the accounts of the college and the assessee

failed to produce the same.

In the instant case also it is not brought to our notice that the ITO at any point of time doubted the genuineness of the credit entries and it was also

(sic-not) brought to the notice that the ITO called upon the assessee to produce the account books of the educational institution and the assessee

failed to produce the same.

4. In view of the decision of this Court in CIT vs. Thanthi Trust cited supra rendered in the assessee's own case which has been subsequently

confirmed by the Supreme Court, we are of the view that there is no infirmity in the order of the Tribunal in holding that there was valid application

of income. We reframe the third question of law referred to us as follows :

Whether, on the facts and circumstances of the case, the Tribunal is right in law that there was valid application of income by the assessee during

the asst. yrs. 1965-66, 1966-67 and 1967-68 ?

5. We answer the question of law as reframed by us in the affirmative and against the Department. Since we confirm the order of the Tribunal on

the merits of the case, we are of the view that it is not necessary to render any answer to the question of law referred by the assessee or the

second question of law relating to the addition referred to us by the Department. Accordingly are not answering the questions 1 and 2. In the

circumstances of the case there will be no order as to costs.