

(1975) 03 MAD CK 0028

In the Madras High Court

Case No : Writ Appeals No's. 167 to 170 of 1972

Second Income Tax Officer and Others

APPELLANT

Vs

M.C.T. Trust and Others

RESPONDENT

Date of Decision : 14-03-1975

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(2), 295
Income Tax Rules, 1962 — Rule 17

Citation : (1976) 102 ITR 138

Hon'ble Judges : V. Sethuraman, J;V. Ramaswami, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; C. Ramakrishna, for T.V. Balakrishnan, for the Respondent

Judgement

Sethuraman, J.—These are four appeals against the judgment of Ramaprasada Rao J. on the writ petitions filed before him.

2. The said judgment is reported in M. CT. Muthiah Chettiar Family Trust Vs. Income Tax Officer, City Circle VI, Madras 34, and Others, .

Though the four appeals relate to different trusts, it is enough for our present purpose to set out the facts in W.A. No. 167 of 1972 as typical of all of them.

3. By an indenture dated June 4, 1951, Lady Muthiah Chettiar and her two sons executed a trust settlement transferring and delivering to the

trustees a sum of Rs. 10,000 for certain charitable objects specified in the deed. The settlors intended to and did make further contributions of a

substantial nature towards the objects of the trust. This trust was enjoying the exemption from levy of Income Tax in accordance with the

provisions of Section 4(3)(i) of the Indian Income Tax Act, 1922. The assessment

year with which we are now concerned in this appeal is 1964-

65. The relevant accounting year is the calendar year 1963. In that year the assessee derived income from interest and dividends of Rs. 4,94,575.

After deducting the expenses of Rs. 3,711, the balance of the net income would come to Rs. 4,90,864.

4. u/s 4(3) of the Indian Income Tax Act, 1922, any income falling within the clauses described therein is not to be included in the total income of

the person receiving them. One of them was the income derived from property held in trust wholly for religious or charitable purposes in so far as

such income was applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable

territories. Under the Act as then in force income could be either applied or accumulated for application on a later date. In the Act of 1961 the

corresponding provision is Section 11, under which if the income was applied to charitable purposes in India, then the income derived from the

property held under the trust wholly for charitable purposes would be exempt. Where any income was accumulated for application to such

purposes, then to the extent to which the income so accumulated was not in excess of 25% of the income from the trust property or Rs. 10,000

whichever was higher was alone exempt. In other words, there can be accumulation to the extent of 25% of the trust income without affecting its

exemption from the assessment to that extent.

5. If the accumulation exceeded 25%, then the excess could also be the subject of exemption provided that the trust complied with certain

conditions specified in Section 11(2) of the Act, Broadly speaking, the conditions specified were: (1) the trustees should give a notice in writing to

the Income Tax Officer in the prescribed manner specifying the purpose for which and the period for which the income was being accumulated ;

and (2) the monies so accumulated were to be invested in any Government security as defined in Section 2(2) of the Public Debt Act, 1944, or in

any other security approved by the Central Government in this behalf.

6. On August 1, 1963, the board of trustees of the respondent trust passed a resolution saying that the income of the trust should be accumulated

for a period of 10 years commencing from January 1, 1961, and ending with the year 1970, for being utilised for certain charitable objects as

mentioned therein. It was stated before us that the idea was to have a sizeable amount for expenditure on the establishment of a hospital or educational institution as contemplated by the trust.

7. Rule 17 of the Income Tax Rules provides that the notice to be given to the Income Tax Officer u/s 11(2) of the Act was to be in Form No. 10.

The trustees accordingly gave notice to the Income Tax Officer in Form No. 10 on March 14, 1963. The assessee had invested the amount in

fixed deposits in the Madras Industrial Investment Corporation Ltd. (hereinafter called as "M.I.I.C."), a company sponsored by the Government of

Madras in which 51% of the shares was held by it and the balance by banks and insurance companies. The interest and the principal are fully and

unconditionally guaranteed by the Government of Madras by G.O. Ms. Nos. 5222 dated August 29, 1961. There was no query from the Income

Tax Officer on receipt of the assessee's notice of the 14th March, 1963, as to how it proposed to invest the accumulation.

8. Apparently, the assessee's auditors had drawn the attention of the trustees to the investment in the deposit in the M.I.I.C. not being in a security

contemplated by Section 11(2)(b) of the Act. On March 28, 1963, the trustees wrote to the Commissioner of Income Tax placing before him all

the facts including the fact of investment in M.I.I.C. On May 4, 1963, the Commissioner of Income Tax sent a reply saying that the fixed deposit

with M.I.I.C. had not been approved by the Government of India as a security for the purpose of Section 11 of the Income Tax Act and that, as

such, the investment in the said fixed deposit would not entitle the assessee-trust to the exemption u/s 11 of the Income Tax Act. The trustees

thereupon informed the M.I.I.C. about the Commissioner's reply. The M.I.I.C. intimated that it had decided to take up the matter with the

Government for inclusion of the investment in it as an approved security. The fixed deposit continued with M.I.I.C. pending the matter being taken

up with the Government. Failing in its efforts to get the investment in it as approved securities, M.I.I.C. returned the deposits to the trustees on

August 28, 1964. The trustees thereafter arranged to purchase immediately Government securities from the market. The purchases were

completed by November, 1964.

9. The Income Tax Officer passed the assessment order on August 28, 1968. He

found that out of the income of the trust 25% thereof was exempt from tax and that it came to Rs. 1,22,716. As regards the balance of Rs. 3,45,263 he held that it was not exempt from assessment on the ground that the assessee had not invested in Government securities to the extent of accumulation. During the course of the assessment the assessee pointed out that Rule 17 did not require the investment to be made within any particular time, that the assessee had made investments in September and October, 1964, so as to be eligible for exemption and that, in any event, if there was a delay in making the investment, it should be condoned.

The Income Tax Officer held that Form No. 10 clearly stated that the surplus had to be invested in Government securities within 4 months from the close of the accounting year, that it should be considered as part of Rule 17 and that the rule had the same legal validity as the Act itself. The condition for the exemption had not, in his opinion, been complied with. He held that he could not also condone the delay. The result was that he levied Rs. 2,79,120 as tax for that year. The assessment order dated September 28, 1968, was received on October 9, 1968, by the assessee.

10. The assessee filed an appeal before the Appellate Assistant Commissioner. While the appeal was pending it came forward with a writ petition for quashing the order passed by the Income Tax Officer dated September 28, 1968, as illegal and without jurisdiction by issuing a writ of certiorari or for any appropriate writ. Similar writ petitions were filed by the three other trusts as mentioned above.

11. These petitions came up for hearing before the learned judge. He held that paragraphs 2 and 4 in Form No. 10 were ultra vires in that the rule-making authority had exceeded its limits in including in the form the said two paragraphs. In these appeals, this conclusion of the learned judge is challenged.

12. At this stage, we may reproduce the application in Form No. 10 in the present case to the extent necessary to appreciate the conclusion of the learned judges:

I, M. CT. Muthiah, on behalf of M.C.T. Trust, Bedford House, Vepery, Madras, hereby bring to your notice that it has been decided by a resolution passed by the trustees on 1st March, 1963 (copy enclosed), that out of the income of the trust for the previous year relevant to the

assessment year 1962-63 and subsequent 9 previous years, 100% of the income of the trust should be accumulated or set apart till the previous

year ending 1971-72 in order to enable the trustees to accumulate sufficient funds for carrying out the following purposes of the trusts :--.....

2. Before the expiry of four months from the end of each relevant previous year the amount so accumulated or set apart will be invested in any

Government security as defined in Clause (2) of Section 2 of the Public Debt Act, 1944, or in any other security approved by the Central

Government in this behalf.

4. 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 assessment of the trust in respect of the income accumulated or set apart as mentioned above.

13. As mentioned already, the above form is prescribed under Rule 17. Rule 17 itself owes its origin to Section 11(2) read with Section 295. That

provision runs as follows :

11. (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 (XVIII of 1944), or in any other security which may be approved by the Central Government in this behalf.

14. As indicated earlier, Section 11 gives exemption in case of income derived from the property held under trust wholly for charitable purposes,

to the extent to which such income is applied to such purposes in India. Where any such income is accumulated for application to such purposes in

India, then the exemption is available 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. Where the persons in receipt of the income mentioned above had complied with the conditions stipulated in Sub-section (2), then the restrictions regarding the accumulation of income in excess of 75% would not apply for the period during which the conditions remained complied with. In Clause (a) of Section 11(2) the persons in receipt of the income held under trust have to give notice in writing to the Income Tax Officer "in the prescribed manner". The notice has to specify the purpose for which the income was proposed to be accumulated or set apart and the period for which the income was to be accumulated or set apart, but the period could not exceed 10 years. Clause (b) of Section 11(2) provides that the money so accumulated or set apart is to be invested in any Government security as defined in Section 2(2) of the Public Debt Act, 1944, or in any other security which may be approved by the Central Government in this behalf. It is not in dispute that the Central Government had not approved any other security for this purpose. Section 2(2) of the Public Debt defines "Government security" as the security created and issued by the Government. "Government" is defined in Section 2(1A) as meaning the Central Government or the State Government issuing the security.

15. In the present case the requisite notice had been given by the assessee in time. But the money had been invested in the deposit with M.I.I.C., the principal and interest of which are guaranteed by the State Government. Obviously, the deposit is not an investment in Government security and the assessee invested the trust monies in such deposit bona fide proceeding on the basis that such deposits would come within the scope of Section 11(2)(b) of the Act. The bona fides of the assessee in this behalf are not challenged, and would also be clear from the circumstance that the assessee immediately after it came to know from its auditors that the investment contemplated by Section 11(2)(b) is the investment in Government security, wrote to the Commissioner of Income Tax to find out whether the deposits in M.I.I.C. would come within the scope of Section 11(2)(b) of the Act. When it learnt that the deposits would not come within the scope of Section 11(2)(b) of the Act, it took up the matter with M.I.I.C., who seemed to have also represented to the assessee that the deposits would come within the scope of Section 11(2)(b) of the Act. On receiving

the intimation M.I.I.C. took the matter with the Government and ultimately when it found that the deposits would not ensure the exemption u/s 11

of the Act, the deposits were returned and the assessee took forthwith steps for investing in the Government security. All these took time and the

relevant previous year and the period of 4 months specified in Form No. 10 had expired. These show how the assessee has always been trying to

comply with the law.

16. In these appeals the learned counsel for the department submitted that the Form No. 10 was validly prescribed and that the conclusion of the

learned judge to the contrary was not correct. As seen earlier, Section 11(2)(a) of the Act itself contemplates the notice being ""in the prescribed

manner"". The word ""prescribed"" has been defined in Section 2(33) of the Act as meaning prescribed by rules made under this Act. Thus, the

words ""in the prescribed manner"" contemplate prescription of the form of notice. Section 11(2)(a) indicates that the notice should specify the

purpose for which the income is being accumulated or set apart and the period for which the income is accumulated or set apart, such period not

exceeding ten years. If the form had merely specified the purpose and the period of accumulation there would have been no difficulty in this case.

The validity of the introduction of the time element made in the form, viz., an undertaking to invest in Government securities within a period of four

months from the end of the relevant previous year, is the subject of dispute before us.

17. The words ""in the prescribed manner"" have been the subject of interpretation by the Supreme Court in Sales Tax Officer Vs. K.I. Abraham, .

That was a case under the Central Sales Tax Act. Section 8 of that Act provided for the levy of tax on the dealer who in the course of an inter-

State trade or commerce sold goods to the Government or to a registered dealer. In the case of sales to the registered dealers, Section 8(b)

applied to goods of the description provided in Sub-section (3). In both these cases, viz., sales to the Government and sales to the registered

dealers of specified goods, the tax was leviable at 1% of the turnover. In the case of sales other than those referred to above, the rate of tax was

either at the appropriate State rate or at the rate of 7% as specified in that provision. Section 8(4) provided that Section 8(1) of that Act would not

apply to any sale in the course of inter-State sale or commerce unless the dealer selling the goods furnished to the prescribed authority in the

prescribed manner a declaration contemplated by it. If such a declaration was not filed, then the concessional rate of tax, as provided in Section

8(1), would not apply. Section 13 contemplated rules being framed by the Central Government as well as by the State Government. In the case of

rules framed by the State Government, to carry out the purposes of the Act, Section 13(3) provided that the rules were not to be inconsistent with

the provisions of the Act and the rules made by the Central Government. In accordance with Section 13(3), Rule 6 of the Central Sales Tax

(Kerala) Rules, 1957, was framed. That rule contemplated the declaration reaching the assessing authority on or before 20th of each month

showing the turnover for the preceding month. The form which had to reach within the time mentioned is known as the "C" Form. As the form had

not reached the assessing authority within the time prescribed, the assessee was held by the taxing authorities as not being entitled to take

advantage of the lower rate of assessment u/s 8(1) of the Act. It is in this context that the Supreme Court considered the scope of the expression

"in the prescribed manner" and observed at page 372 as follows:

In our opinion, the phrase in the "prescribed manner" occurring in Section 8(4) of the Act only confers power on the rule-making authority to

prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom

they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in Section 8(4) does not take in the

time element. In other words, the section does not authorise the rule-making authority to prescribe a time limit within which the declaration is to be

filed by the registered dealer.

18. In view of this decision, the learned counsel for the department did not contend that Form No. 10 had been prescribed u/s 11(2)(b) of the

Income Tax Act, 1961. The time element provided in paragraph 2 in Form No. 10 would then be clearly invalid in the light of the Supreme Court

decision.

19. The learned counsel for the department submitted that the Form had been prescribed u/s 295 of the Act. Section 295 of the Act in so far as it

is material runs as follows :

(1) The Board may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part

of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters--.....

(p) any other matter which by this Act is to be, or may be, prescribed.

20. The contention of the learned counsel for the department was that Sub-section (2) of Section 295 was only illustrative and that the scope of the

rule-making power was to be ascertained from Section 295(1). He wanted to bring the present prescription of Form No. 10 within the scope of

Section 295(1). The point to be considered is whether, in the light of Section 295(1) and the decisions to be noticed now, the form can be said to

be a valid one.

21. We may first consider a decision in *Commissioners of Customs and Excise v. Cure & Deeley Ltd.*, [1961] 3 WLR 789 (QB) Section 33(1) of

the Finance Act of 1940 of the United Kingdom enacted that the Commissioners might make regulations; providing for any matter for which

provision appeared to them to be necessary for the purpose of giving effect to the provisions of this Part of the Act and of enabling them to

discharge their functions. Regulation 12 of the Purchase Tax Regulations, 1945, stated that if any person failed to furnish a return as required by

these regulations or furnished an incomplete return, then the Commissioners could determine the amount of tax appearing to them to be due from

such person, and demand payment thereof. The amount was to be deemed to be the proper tax due from such person and had to be paid within

seven days of the demand. There was no provision for any appeal or for the aggrieved assessee taking up the matter to any court of law. The

validity of this regulation came to be examined in that case. At page 820, Sachs J. observed as follows :

To my mind a court is bound before reaching a decision on the question whether a regulation is *intra vires* to examine the nature, objects, and

scheme of the piece of legislation as a whole, and in the light of that examination to consider exactly what is the area over which powers are given

by the section under which the competent authority is purporting to act.

22. It was held that regulation 12 was ultra vires on three grounds, viz., (1) it was no part of the functions assigned to the Commissioners to take upon themselves the power of a High Court judge and decide issues of fact and law as between the Crown and the subject ; (2) it rendered the subject liable to pay such tax as the Commissioner believed to be due, whereas the charging sections imposed a liability to pay such tax as in law was due ; and (3) the regulation was capable of excluding the subject from access to the courts and of defeating pending proceedings. In the result, the attempt of the Commissioners to substitute in one segment of the taxpayer's affairs the rule of tax collectors for the rule of the law was considered to be wrong.

23. The contention of the learned counsel for the department that the rule-making authority had an absolute freedom in view of the language of Section 295(1) to make the rules in any manner it thought fit for carrying out the purposes of the Act has no force. In the U.K. Finance Act of 1940 the statutory delegation of power to frame rules was more or less couched in wide language; but still it was held that the rule was ultra vires.

The power to make rules is not a carte blanche and is a limited one. The limit is to be found within the four corners of the provision for giving effect to which it is designed. As we would show presently, the requirements of the form go beyond the needs or limits of the power.

24. The learned counsel also relied on a decision of the Court of Appeal in *Point of Ayr Collieries Ltd. v. Lloyd-George*, [1943] 2 All ER 546 . In

that case the undertaking of a company had been taken over by the Government under the Defence Regulations on the ground that it was

necessary to do so in the interest of defence of the realm and the efficient prosecution of the war and for maintaining supplies and services essential

to the community. The Court of Appeal held that there was no jurisdiction to interfere with what was an admittedly bona fide decision of a Minister

within his delegated authority and that the exercise of such a regulation could not be questioned in the courts but only in Parliament. At page 547,

Lord Greens observed as follows :

It is for the competent authority to decide whether the situation requires an immediate step, whether some delay may be allowed for further

investigation and perhaps negotiation. All those matters are placed by Parliament

in the hands of the Minister in the belief that the Minister will exercise his powers properly, and in the knowledge that, if he does not do so, he is liable to the criticism of Parliament. One thing is certain, and that is that those matters are not within the competence of this court. It is the competent authority that is selected by Parliament to come to the decision, and, if that decision is come to in good faith, this court has no power to interfere, provided, of course, that the action is one which is within the four corners of the authority delegated to the Minister.

25. The contention is that, so long as the present power comes within the four corners of Section 295(1), then it is not for this court to examine whether the prescribed form in that particular manner was necessary or not.

26. The width of the power canvassed for the rule-making authority before us is not countenanced by the decisions especially in regard to

prescription of time. In *Solar Works Vs. Employees' State Insurance Corporation and Another*, a Bench of this court was concerned with the

validity of certain regulations made under the Employees' State Insurance Act of 1948. Section 96(1)(b) of that Act conferred power to make

rules with regard to the procedure to be followed in proceedings before the insurance court and the execution of orders made by such court. Rule

17 of the Madras Employees' State Insurance Court Rules, 1951, provided that every application to the Insurance Court was to be brought within

12 months from the date on which the cause of action arose or the claim became due. The question was whether this prescription of time was

proper. At page 228, it was held as follows:

Where an Act itself does not provide for limitation with reference to a particular matter and the delegation of power to make rules is conferred by

a section of the Act which does not, expressly or impliedly, relate to the power to prescribe time, the authority to which the power is delegated,

namely, the State in this case, cannot make a rule prescribing limitation.

27. The learned judges had before them a list of the Central Acts and the Madras Acts in which the rule-making power included a power to

prescribe limitation of time in some form or other in the sections concerned. In the absence of any specific power on similar terms, it was held that

the rule was not valid.

28. The identical question arose before the Supreme Court in AIR 1972 1935 (SC) The Supreme Court referred with approval to this decision

among others in its judgment. At pages 871 and 872 it is stated as follows :

There is no gainsaying the fact that if an employee does not file an application before the insurance court within 12 months after the claim has

become due or he is unable to satisfy the insurance court that there was a reasonable excuse for him in not doing so, his right to receive payment of

any benefit conferred by the Act is lost. Such a provision affects substantive rights and must, therefore, be dealt with by the legislature itself and is

not to be inferred from the rule-making power conferred by regulating the procedure unless that is specifically provided for. It was pointed out that

in the Constitution also where the Supreme Court was authorised with the approval of the President to make rules for regulating generally the

practice and procedure of the court, a specific power was given to it by Article 145(1)(b) to prescribe limitation for entertaining appeals before it.

It is, therefore, apparent that the legislature does not part with the power to prescribe limitation which it jealously retains to itself unless it intends to

do so in clear and unambiguous terms or by necessary intendment.
"" (underlining* ours).

29. The view of the Madras High Court, it was stated, was in consonance with the view of the Supreme Court. The Supreme Court did not go into

the question of the legislative practice referred to in the Madras decision in support of this conclusion. This decision clearly supports the assessee's

stand.

30. We may also in this connection refer to another Bench decision of this court in J.A. Kareem Sait Vs. The Deputy Commercial Tax Officer,

Mettupalayam, . That was a case which arose under the Central Sales Tax Act. Rule 3(7) of the Central Sales Tax (Madras) Rules provided for

limitation and determination of the escaped turnover by best judgment. The validity of this rule was questioned. After referring to the decision in

Solar Works v. Employees' State Insurance Corporation, Madras, and referring to Section 13(3) of the Central Sales Tax Act as conferring

power to make rules to carry out the purpose of the Act, it was pointed out as follows:

Nowhere in the Central Act is there any indication that one of its purposes is to

provide for limitation for the exercise of the power to assess

escaped turnover and to determine such turnover by best judgment. We hold that Sub-rule (7) at least in so far as it provided for limitation and

determination of escaped turnover by best judgment is in excess of the rule-making power and the sub-rule, as a whole, should be struck down as

invalid.

31. The same conclusion has to follow here.

32. Similarly, in *State of Mysore and Others Vs. Mallick Hashim and Co.*, the question of the validity of Rule 39-A(2) and (3) of the Mysore

Sales Tax Rules framed under the Central Sales Tax Act was canvassed. It was provided in these rules that before a person was entitled to a

refund, u/s 15(b) of the Central Sales Tax Act and Section 5(4) of the Mysore Sales Tax Act, 1957, of the tax paid under the Mysore Act on

goods sold subsequently in the course of inter-State trade, he must have made an application for refund within the time prescribed in the said rule.

The Mysore High Court, following a decision of this court in *P. Thirumurthi Chettiar Vs. State of Madras and Another*, held that the claim to a

refund could not have been refused by the sales tax authority on the ground that it was not made within the limitation prescribed by Rule 39-A. The

judgment of the Mysore High Court was affirmed by the Supreme Court. At pages 364 and 365, it was observed as follows:

The High Court has taken the view that Rule 39-A is ultra vires the rule-making power. It has opined that the rules made u/s 5(4) of the Mysore

Sales Tax Act, 1957, are those which must relate to the manner and conditions under which refund has to be made and such a rule cannot in

substance deprive the dealer of the right to get refund to which he is entitled u/s 15 of the Central Sales Tax Act, 1956, as well as Section 5(4) of

the Mysore Sales Tax Act, 1957. We have not thought it necessary to go into that question as, in our opinion, Sub-rules (2) and (3) of Rule 39-A

are wholly unreasonable rules and consequently these cannot be sustained." (Emphasis ours).

33. Their Lordships have pointed out how the rules are unreasonable and have also observed as follows:

In our opinion the impugned rule is merely an attempt to deny the dealers the refund to which they are entitled under the law or at any rate to

make the enforcement of that right unduly difficult.

34. Hence, the reasonableness of the rules can, in appropriate cases, be considered by the court. It is true that the reasonableness is not to be

determined on any subjective standard, but the rule, to be valid, has to withstand any objective test. In the present case, there must be some basis

or reason for fixing this four month limit, if that limit is to be accepted as valid. No such basis or reason is available.

35. In the Income Tax Act itself generally time limits are provided by the statutory provisions. See Sections 139, 249, 253 and 256. Section 200

provides for the rule-making authority prescribing the time within which any person deducting tax had to pay it to the credit of the Central

Government. Therefore, it is not as if the legislature has left the entire question of prescriptions of time to subordinate legislation. If the legislature

was so minded as to think it necessary to leave the question of providing any time limit in regard to Section 11 of the Act to the rule-making

authority, then it would have said so as in Section 200. Else it would have itself fixed the time limit as done in" the other provisions mentioned

above. The foregoing discussion would clearly show that the legislature does not part with the power to prescribe limitations, which it jealously

retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment. The introduction of the time element in

paragraph 2 of Form No. 10 prescribed by the Rules cannot, therefore, be sustained.

36. In *Bharat Barrel and Drum Mfg. Co. Ltd. v. Employees' State Insurance Corporation*, there is a discussion as to whether the prescription of

time is procedural law or substantive law. It is pointed out at page 866 that where a statute prescribing the limitation extinguishes the right, it

affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural. In the

present case the right to the exemption would be lost by reason of the (involuntary) inability to comply with the time limit and, therefore, it affects a

substantive right. A substantive right can be done away with only by Parliament and not by its subordinate. The whole purpose of Section 11 is to

confer exemption on the income of a charitable trust. The time element for accumulation is provided in the section itself as a maximum of 10 years.

If any other time limit were to be imposed, then either it should have been specified in Section 11 or expressly or by clear implication delegated to the rule-making authority. That has not been done. Further, the whole idea behind Section 11 is to confer the exemption, subject to certain safeguards in the interests of proper application of the trust monies and appropriate investment of the trust fund. Counsel for the department submitted that the purpose could be effectuated only by making a provision of time limit within which the conditions prescribed by the statute have to be complied with. As already indicated, the prescription of time is jealously retained by the legislature. If the legislature did not think it necessary to provide for it in the provision or to provide for it by delegating it to the rule-making authority then the rule-making authority cannot take upon itself the power to prescribe a time limit.

37. Another contention that was urged for the department was that Section 296 of the Act provided that the Central Government should cause

every rule made under the Act to be laid as soon as possible before each House of Parliament for a period of thirty days and that the House had

power to modify the rules. The submission was that when once the rules had been so made, then they could not be called in question. The

Supreme Court has pointed out in *Hukam Chand etc. Vs. Union of India (UOI) and Others*, , as follows :

The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in

conformity with Section 40 of the Act (Displaced Persons (Compensation and Rehabilitation) Act).

38. That was also a case where rules could be made to carry out the purposes of that Act. It was further added that the Act of the Central

Government in laying the rules before each House of Parliament would not, however, prevent the courts from scrutinising the validity of the rules

and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government. Thus,

Section 296 does not add any greater force to the rules than what they ordinarily have as pieces of subordinate legislation.

39. One other contention that was urged before us on behalf of the assessee was that the two conditions prescribed in Section 11(2)(a) and (b)

are alternative and not cumulative. We do not think it necessary to pronounce on this point, as this identical question is the subject of a reference in

this group of charitable trusts. The point taken is that so long as a notice was given within the time, the condition for exemption has been fulfilled,

and that the investment within any time limit is not necessary even on the language of Section 11(2). It is not necessary now to decide the point, as

it is possible to consider it in the reference, about which directions have been given to the Tribunal in the petitions filed u/s 256 of the Act.

40. In the result, we agree with the learned judge in holding that paragraph 2 of Form No. 10 was not validly prescribed. Paragraph 4 of Form

No. 10 would also have to be struck down as ultra vires, as the prayer contained therein is made conditional on the assessee complying with the

time limit prescribed in paragraph 2. The appeals are dismissed with costs in W. As. Nos. 167 to 169 of 1972. There will be no order as to costs

in W. A. No. 170 of 1972. Counsel's fee Rs. 250 in each.