

Commissioner of Income Tax, Rohtak Vs M/s Shri Lalita Ashram Trust

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 6, 2011

Acts Referred: Income Tax Act, 1961 "Section 11, 12A, 260A, 5, 80G

Citation: (2012) 207 TAXMAN 68

Hon'ble Judges: Hemant Gupta, J; G.S. Sandhawalia, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The Revenue is in appeal u/s 260A of the Income Tax Act, 1961 (for short "the Act") against the order passed by the

Income Tax Tribunal, Delhi Bench "G", New Delhi in ITA No.4440/Del/2009 dated 30.04.2010. The Revenue has sought the following substantial

questions of law:

(i) Whether on facts and in circumstances of the case, the Hon'ble ITAT was justified in law in directing the CIT to allow approval u/s 80G(5)(vi)

of the Income Tax Act, when income derived by the applicant trust was includible in its total income as per the provisions of the clause (i) of sub-

section (5) of Section 80G of the Income Tax Act & where expenditure with reference to sub-section (5B) read with explanation 3 of Section

80G of the Income Tax Act exceeded 5% of the total income of the assessee trust?

(ii) Whether on facts and in circumstances of the case, the Hon'ble ITAT was justified in law in directing the CIT to allow approval u/s 80G(5)(vi)

of the Income Tax Act, when income derived by the applicant trust was includible in its total income as per the provisions of the clause (i) of sub-

section (5) of Section 80G of the Income Tax Act & where expenditure with reference to sub-section (5B) read with explanation 3 of Section

80G of the Income Tax Act exceeded 5% of the total income of the assessee trust?

2. The assessee-Trust was constituted on 14.10.1996 and was registered u/s 12A of the Act on 20.01.1987. The assessee-Trust was given

registration u/s 80G of the Act as well. The last renewal was on 26.05.2006 for the period from 01.04.2004 to 31.03.2009. The assessee-Trust

sought renewal of registration u/s 80G(5) of the Act. The subsequent request for renewal of registration was declined by the Commissioner of

income tax inter-alia for the reason that the Trust has incurred an expense of Rs.2,40,167/-on Mandir Pooja, which exceeds 5% of the total

income of the Trust permissible for religious activities. In appeal, the learned Tribunal returned a finding that the amount incurred on Mandir Pooja

- a religious activity is 4.93%, it being Rs.2,40,167/-out of the total income of Rs.48,68,989/-, therefore, the Trust is entitled to registration.

3. Learned counsel for the appellant on the basis of Circular No. 5P (LXX-6) issued by the Central Board of Direct Taxes dated 19.06.1968 and

a judgment of Madras High Court reported as Commissioner of Income Tax Vs. Rao Bahadur Calavala Cunnan Chetty Charities, has vehemently

argued that Section 11 of the Act does not deal with total income, it deals with income and, therefore, the expenditure on religious activity has to

be seen after allowing the expenditure and not on the total income.

4. We find that the argument raised by the Revenue is wholly misconceived. u/s 80G(5B), the expenditure of a religious nature should not exceed

5% of its total income. The relevant clause reads as under:

(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during

any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed

to be an institution or fund to which the provisions of this section

apply.

5. A perusal of above provision would show that the expression used is "total income" and not "income" which falls within the scope of Section 11

of the Act. The income as mentioned in Section 11 is exclusive definition, as certain income is not to be included in the total income in respect of

charitable and religious trusts. The "total income" is defined in Section 5 of the Act. It reads as under:

5. (1) Subject to the provisions of this Act, the total income of any previous year of a person, who is a resident includes all income from whatever

source derived which -

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India during such year;

6. The "total income" as mentioned in sub-clause (5B) of Section 80G of the Act does not mean the "income", as it appears in Section 11 of the

Act. The expression ""total income"" and income have been used differently and has distinct application. The circular dated 19.06.1968 and the

judgment in Rao Bahadur Calavala Cunnan Chetty Charities"s case (supra) is in respect of ""income"" relatable to Section 11 of the Act and not

total income"". Therefore, we do not find any merit in the argument raised by learned counsel for the revenue.

7. Consequently, no substantial question of law arises for consideration by this Court in the present appeal. The same is accordingly dismissed.