

(2009) 12 MAD CK 0161

Madras High Court

Case No: Tax Case (Appeal) No. 1007 of 2008

Estate of Raja
Ramasamy Mudaliar
Choultry Trustee

APPELLANT

Vs

The Asst. Director of
Income Tax
(Exemptions)-II

RESPONDENT

Date of Decision: Dec. 15, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 11, 11(2)

Hon'ble Judges: M.M. Sundresh, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: R. Venkata Narayanan, for Subbaraya Aiyar, for the Appellant; Patty B. Jegannathan, for the Respondent

Final Decision: Disposed Off

Judgement

K. Raviraja Pandian, J.

The revenue has come up on appeal against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 15.09.2006 passed in I.T.A. No. 1797/Mds/2003 in respect of the assessment year 2002-2003 by formulating the following substantial questions of law:

(i). Whether the Tribunal was right in law in holding that the conditions stipulated for availing the benefit of accumulation of income u/s 11(2) are not satisfied?

(ii). Whether the Tribunal is justified in law in holding that for the purpose of accumulation of the income as provided u/s 11(2) of the Income Tax Act, it requires specification of the purposes? And

(iii). Whether the Tribunal was right in law in holding that the reasons stated in Form 10 are vague and not specific?.

2. The facts of the case are as follows:

The appellant trust filed its return of income declaring "Nil" income after claiming exemption u/s 11 of the Income Tax Act. The appellant claimed accumulation of the income u/s 11(2) of the Income Tax Act. The appellant filed Form 10 giving reasons for accumulating the income. The assessing officer while deciding the application of income in Form No. 10 found that the purpose of accumulation mentioned therein are vague and not specific and hence declined the benefit of accumulation u/s 11(2) of the Act by following the decision of the Calcutta High Court in the case of DIT (E) v. Trustees of Singhanian Charitable Trust 1999 ITR 819 charitable in nature. Further the trust is under the control of Official Trustee of Tamil Nadu and it has to get the permission from the High Court for spending the amount. The Commissioner of Income Tax (Appeals) rejected the arguments and confirmed the order of the Assessing Officer. Aggrieved by the said order, the appellant filed appeal to the Income Tax Appellate Tribunal and the Tribunal relying on its order in the case of Estate of Maligai Merchant in I.T.A. No. 1524/04 dated 7.6.2005 dismissed the appeal. Aggrieved by the same, the present appeal is filed.

3. The learned Counsel appearing for the appellant as well as the counsel for the respondent submits that the issue involved in this appeal is covered by the decision of this Court in the case of Estate of Kadapakam Charities v. The Asst. Director of Income Tax (Exemptions) II, Chennai-34 T.C.(A) No. 281 of 2004 dated 15.12.2008, wherein it was observed as follows:

...8. The decision of the Calcutta High Court will not strictly apply to this case, since in that case in Form 10, all the objects of the trust had been enumerated and therefore, rejection of Form 10 was not justified. In this case, the purpose has been specified viz., repair and renovation of the building, and the difficulties in immediately starting the renovation have also been brought to the notice of the authorities. But at the same time, we also see that Form 10 has not been duly filled up. Even in the matter decided by the Calcutta High Court, the assessee was allowed to adduce fresh evidence to show the specific purpose for which the trust requires accumulation of the income. In this case too, especially in view of the fact that it is AG & OT who is administering the trust, we feel that the same indulgence could be shown. We are not answering the questions of law raised, however, we remand the matter to the Assessing Officer and the assessee shall specify the purpose in addition to renovation and repair of the building and also the amount and the period for which accumulation is required, and the Assessing Officer shall consider the same in accordance with law....

4. Having regard to the submission made by the counsel on either side, the order of the Tribunal is hereby set aside and the matter is remitted back to the assessing officer in terms of the direction given in the order dated 15.12.2008 made in T.C.(A) No. 281 of 2004 and the tax case is disposed of accordingly.