

(1989) 09 BOM CK 0093

**Bombay High Court****Case No:** Income-tax Reference No. 517 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Trustees of Shri Teckchand  
Chandiram TrustRESPONDENT

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**Date of Decision:** Sept. 26, 1989**Acts Referred:**

- Income Tax Act, 1961 - Section 1(1), 1(2), 11, 13, 2

**Citation:** (1989) 80 CTR 161 : (1990) 184 ITR 537**Hon'ble Judges:** T.D. Sugla, J; S.P. Bharucha, J**Bench:** Division Bench

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**Judgement**

S.P. Bharucha, J.

The reference raises two questions at the instance of the Revenue. They read thus :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to the exemption of Rs. 8,910 u/s 11(2) of the Income Tax Act, 1961 ?; and

Whether, on the facts and in the circumstances of the case, the benefit contemplated by section 13(4) was available to the assessee even if the income was brought to tax u/s 13(2)(a) of the Income Tax Act, 1961 ?"

2. The first question relates to the assessment year 1968-69, the previous year whereof ended on March 31, 1968. The assessee which is a charitable trust had accumulated income in the sum of Rs. 8,910. The Income Tax Officer subjected the said amount to tax on the ground that the trustees had not given a notice for accumulation as required by section 11(2) of the Income Tax, 1961. In the appeal filed by the assessee, it was established that the assessee had given this notice on July 17, 1969. The Appellate Assistant Commissioner, however, declined to accept the assessee's contention that the said amount ought not to be taxed, He held that the notice ought to have been given before the close of the accounting year and the accumulated income ought to have been invested in specified securities within four

months of the end of the accounting year. He so held on the strength of rule 17 of the Income Tax Act Rules, 1962. The assessee filed a further appeal to the Income Tax Appellate Tribunal. The Tribunal considered the provisions of section 11(1)(a), the rule 17 and Form No. 10 to which rule 17 referred and held that there was no time-limit either for the making of the application or the investment. It allowed the assessee's appeal.

3. Neither section 11 nor rule 17 lays down any time for the making of the application or the investment in specified securities. Rule 17 however, prescribes that the application has to be made in Form No. 10. Form No. 10 requires the trustees to say that the amount accumulated would be invested in Government securities before the expiry of four months commencing from the end of the previous year and that copies of the annual accounts of the trust along with details of investments of money accumulated would be furnished to the Income Tax Officer before the expiry of four months commencing from the end of the relevant previous year.

4. It is possible to hold that a form can qualify a statutory provision or impose a time-limit which the statute does not provide, this was the view taken by the [Commissioner of Income Tax Vs. Shri Krishen Chand Charitable Trust](#), which decision was followed by the Tribunal. This view was also taken, independently, by the Madras High Court in *Second ITO v. M.C.T. Trust* [1975] 102 ITR 138. The Kerala High Court followed the abovementioned decisions in [Commissioner of Income Tax Vs. Shree Padmanabhaswami Temple Trust](#). We are in respectful agreement with the view expressed by these High Courts and shall answer the first question in the affirmative and in favour of the assessee.

5. The second question arises in relation to the assessment year 1971-72, the previous year whereof ended on March 31, 1971. The Income Tax Officer determined the unspent income of the trust of this year at Rs. 85,433. He found that the trust had advanced during the relevant year the amount of Rs. 1,27,875 at the rate of interest of nine per cent. per annum of Tekchand Pvt. Ltd., a concern wherein the settlor and his relatives has a substantial interest. The Income Tax Officer held that the provisions of section 13(2)(a) were. Consequently, attracted and the trust forfeited the exemption upon its entire income.

6. The Appellate Assistant Commissioner, in the assessee's appeal, noted the provisions of section 13(4) and found that the loan advanced amounted to less than 5% of the capital of Tekchand Pvt. Ltd., which was Rs. 46.40 lakhs. Accordingly, he held that the exemption could be withdrawn only in respect of the amount of the interest earned from Tekchand Pvt. Ltd.

7. The assesses as well as the Revenue preferred appeals to the Tribunal against the Appellate Assistant Commissioner's order. The Tribunal held against the assessee upon its appeal and we are, in this reference, not concerned therewith. In

the Revenue's appeal, the Tribunal upheld the order of the Appellate Assistant Commissioner.

8. Section 11 provides for cases where income from property held for charitable or religious purposes is not includible in the total income. Section 13 makes provisions for cases where section 11 will not apply. Under clause (c) of sub-section (1) of section 13, it shall not apply where the income of a trust for charitable or religious purposes or a charitable or religious institution is. Under stated circumstances, used directly or indirectly for the benefit of a person who is referred to in sub-section (3). The opening words of sub-section (2) are : "Without prejudice to the generality of the provisions of clause (c) of the sub-section (1), the income or the property of the trust of institution or any part of the such income or property shall, for the purposes of that clause. Be deemed to have been used or applied for the benefit of the person referred to in sub-section (3)" in the circumstance then set out Sub-section (4) of section 13 reads thus :

"Notwithstanding anything contained in clause (c) of sub-section (1), in a case where the aggregate of the funds of the trust or institution invested in a concern in which any person referred to in sub-section (3) has a substantial interest. Does not exceed five per cent of the capital of that concern, the exemption u/s 11 or section 12 shall not be denied in relation to and income other than the income arising to the trust or the institution from such investment. By reason only that the funds of the trust or the institution have been invested in a concern in which such person has a substantial interest."

9. It will be seen that sub-section (2) of section 13, which is a deeming provision, mentions clause (c) of sub-section (1). It widens, by legal fiction, the sorts of income of a trust for religious or charitable purposes to which the benefit of the provisions of section 11 will not apply if used directly for the benefit of any person referred to in sub-section (3). Income, though if falls within clause (c) of sub-section (1), is entitled to the benefit of the provisions of sub-section (4). Necessarily therefore, income that falls within sub-section (2), and so under clause (c) of sub-section (1), is entitled to the benefits of the provisions of sub-section (4).

10. We are therefore, in agreement with the view taken by the Appellate Assistant Commissioner and the Tribunal and shall answer the second question in the affirmative and in favour of the assessee.

11. The questions are answered thus :

(1) In the affirmative and in favour of the assessee.

(2) In the affirmative and in favour of the assessee.

12. No order as to costs.