

(1988) 11 BOM CK 0072

Bombay High Court

Case No: Income-tax Reference No. 41 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Trustees of Bhat Family Research
Foundation

RESPONDENT

Date of Decision: Nov. 16, 1988

Acts Referred:

- Income Tax Act, 1961 - Section 11, 11(1), 148, 256(1), 60

Citation: (1989) 75 CTR 88 : (1990) 185 ITR 532

Hon'ble Judges: T.D. Sugla, J; S.P. Bharucha, J

Bench: Division Bench

Judgement

S.P. Bharucha, J.

This reference u/s 256(1) of the Income Tax Act, 1961, calls for an interpretation of section 11 thereof as it read at the relevant time. The question that is referred reads thus :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the excess over 25% of the gross income or Rs. 10,000, whichever was higher, was to be invested in Government securities in view of section 11 of the Income Tax Act, 1961, and not the entire amount of accumulation ?"

2. We are concerned with the assessment years 1966-67 and 1967-68. For the assessment year 1967-68, the assessees claimed refund to tax deducted at source. The Income Tax Officer did not dispute that the assessees, as trustees of a charitable trust, were entitled to claim exemption u/s 11. He disputed the contention of the assessees that they had made an investment which was sufficient compliance with the requirement of clause (b) of sub-section (2) of section 11. The assessees had given a notice as required by clause (a) of sub-section (2) and had invested a sum of Rs. 29,055 in Government securities. They contended that this was sufficient compliance on the following basis :

	Rs.
"Gross income	41,513
Less : Expenditure (for the purposes of the trust)	8,150

Surplus	33,363
Less : 25% of the gross income	10,378

Balance required to be invested in Government Securities	22,900"

3. The Income Tax Officer took the view that unless the entire surplus of Rs. 33,363 was invested in Government securities, the assessees were not entitled to the benefit of the exemption given by section 11. He offered the assessee an opportunity to make such investment. When they failed to do so, he rejected the refund application and, after initiating proceedings u/s 148, made an assessment taking the taxable income at Rs. 15,993. This was computed by deducting the permissible accumulation of Rs. 10,000 u/s 11(1) from the unspent surplus of Rs. 25,993. Finding that there was a similar shortfall of investment in Government securities in the assessment year 1966-67 also, the Income Tax Officer subjected to tax the sum of Rs. 22,985, being the difference between the unspent income and the permissible accumulation of Rs. 10,000.

4. The assessees' appeals to the Appellate Assistant Commissioner were rejected. The assessees then went up before the Tribunal. The Tribunal, upon a construction of clause (a) of sub-section (1) of section 11 and clause (b) of sub-section (2) thereof, came to the conclusion that the Income Tax Officer and the Appellate Assistant Commissioner were in error and allowed the appeals.

5. The relevant portion of section 11, as they read at the relevant time, are these :

"(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the Income -

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, 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;.....

(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 accumulate 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 (18 of 1944), or in any other security which may be approved by the Central Government in this behalf..."

6. It is clear from clause (a) of sub-section (1) of section 11 that income derived from property held under trust wholly for charitable or religious purposes shall not be included in the total income to the extent to which it is applied for such purposes in India and, where it is accumulated for such application, to the extent that the accumulation is not in excess of 25% of the income or Rs. 10,000, whichever is higher. The exemption of accumulated income to the extent of 25% or Rs. 10,000, whichever is higher, is unqualified and unconditional. Sub-section (2) of section 11F provides the conditions the satisfaction of which removes the restriction placed by sub-section (1) in regard to accumulation. The conditions relate to the giving of a notice and investment in Government Securities. In the context of the removal of the restriction placed by sub-section (1), the phrase "the money so accumulated" in clause (b) of sub-section (2) must be read as referring only to the accumulation that is made in excess of the already exempted 25%. It is only the excess over 25% of the income which is required to be invested in Government securities.

7. Upon a construction of section 11, therefore, we must hold that the Tribunal was right in the view that it took. We are supported in this by the judgments of five High Courts, viz., Commissioner of Income Tax Vs. Shri Krishen Chand Charitable Trust, Addl. Commissioner of Income Tax, Mysore and Another Vs. A.L.N. Rao Charitable Trust, Mohanlal Hargovinddas Public Charitable Trust Vs. Commissioner of Income Tax, Commissioner of Income Tax Vs. H.H. Marthanda Varma Elayaraja of Travancore Trust and Others, and Commissioner of Income Tax, Tamil Nadu-IV, Madras Vs. C.M. Kothari Charitable Trust.

8. The question is, accordingly, answered in the affirmative and in favour of the assessees.

9. No order as to costs.