

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 377/Rjt/2018
Assessment Year 2015-16**

Shri Prabhas Patan Jain Swetambermurti Pujak Sangh, 129 Bazar Gate Street, 1 st Floor, Maharashtra PAN: AABTS0095C (Appellant)	Vs	The ITO(Exemption), Ward-2 Rajkot (Respondent)
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**ITA No. 216/Rjt/2019
Assessment Year 2016-17**

Shri Prabhas Patan Jain Swetambermurti Pujak Sangh, 129 Bazar Gate Street, 1 st Floor, Maharashtra PAN: AABTS0095C (Appellant)	Vs	The ITO(Exemption), Ward-2 Rajkot (Respondent)
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Assessee by: Shri G.R. Sanghavi, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.

Date of hearing : 07-02-2023
Date of pronouncement : 22-02-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

These two appeals filed by the assessee for A.Y. 2015-16 & 2016-17, arise from order of the Id. Commissioner of Income Tax (Appeals)-3, Rajkot dated 01-09-2018 & 30-07-2019, in proceedings under section 250 of the Income Tax Act, 1961; in short “the Act”.

2. Since common issues are involved in both the years under consideration, the same are being taken up together. We shall first discuss assessment year 2015-16 and our observations therein shall apply to assessment year 2016-17 as well.

3. The assessee has taken the following grounds of appeal:

Assessment year 2015-16

“1. That the Learned CIT(A)-3 Rajkot has grievously erred in contending that the deemed income arising u/s 11(3) of the Act is to be ignored for the purpose of computing income in accordance with Sec. 11(1)(a) or Sec. 11(2) of the Act.

That the appellant craves for leave to add, amend and/or modify the ground of appeal.”

Assessment year 2016-17

“1. That the Learned CIT(A)-3 Rajkot has grievously erred in contending that the deemed income arising u/s 11(3) of the Act is to be ignored for the purpose of computing income in accordance with Sec. 11(1)(a) or Sec. 11(2) of the Act.

2. That the appellant craves for leave to add, amend and/or modify the ground of appeal.”

4. The brief facts of the case are that the assessee is a public charitable trust and for the year under consideration, assessee filed its original return of income declaring “Nil” taxable income. During the course of assessment, the AO assessed the returned income of “Nil” declared by the assessee at ₹ 5,05,737/- containing the deemed income u/s 11(3) of the Act amounting to ₹ 39,04,142/- on the ground that the same cannot be subject to provisions of section 11(1)(a) of the Act. The basic contention of the AO was that the assessee has already claimed deduction of the said deemed income in the assessment year in which such amount was computed under section 11(2) of the Act. The amount accumulated had to be spent within a period prescribed the Act. Therefore, bringing the deemed income under the fold of income

eligible for deduction under section 11(1)(a) of the Act would tantamount to double deduction.

5. The assessee filed appeal against the order before Ld. CIT(Appeals), who dismissed the appeal of the assessee with the following observations:

“5.0 Decision :-

I have carefully considered the submission of the appellant and perused facts of the case in A.O's order.

5.1 Having considered the facts and circumstances of the case I find that only issue for consideration is whether the deemed income u/s 11(3) would be eligible for 15% accumulation u/s 11(2). In this regard the assessee placed reliance on decision of Calcutta high Court stating that there is no decision of any other High Court on this issue and therefore the decision of Kolkata High Court in favor of the assessee should be followed. In this regard it would be reproduced here the following circular:-

I find this issue has been examined in [Circular No. 29; R. No. 20/22/69-IT(AI), dated 23.08.1969; and [Circular 5P (LXX-6) of 1968 dated 19.06.1968 referred to above]. In the former Circular it is categorically mentioned that when the amounts are taxed u/s 11(3) the benefit which would have been available to trust in respect of 25% of its income or Rs. 10,000/- u/s 11(1)(a) would also be lost. In the later circular issue has been re-examined and legal position has been clarified stating that only the income disclosed in the account will be eligible for exemption u/s. 11(1) and will be eligible for permitting accumulation of 25%. It is categorically explained that deemed income charged u/s 11(3) is in excess of income shown in its account.

5.2 Thus, from both these circulars it can be seen that the exemption u/s 11(1) are not available for the deemed income u/s 11(3). In the judgment of Hon Kolkata High Court there is no reference to these circulars which directly address the issue at hand and therefore in my considered opinion the decision of Hon. Calcutta High Court is distinguishable on the facts. The contentions of the assessee are

therefore rejected. Action of AO calls for no interference. Grounds of Appeal is rejected.”

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). The basic contention of the assessee before us is that if the public charitable trust is unable to spend the accumulated income at the end of the fifth year, then in accordance with section 11(3) of the Act, such amount shall be deemed to be income of the previous year in which it ceases to be so accumulated. Therefore, the counsel for the assessee submitted that once subsection (3) of section 11 stands attracted, such unapplied accumulated amount becomes “deemed income” of the year in which it ceases to be so accumulated. Therefore, since nothing more is provided under the Act and therefore once the unapplied accumulated amount becomes deemed income of the year in which it ceases to be so accumulated, then all the provisions of the Act would be applicable to such income i.e. it would be eligible for exemption under sections 11(1)(a) and 11(2) of the Act, especially when there is no embargo under the Act. Accordingly, such income would be eligible to claim of deduction under section 11(1)(a) and 11(2) of the Act. The counsel for the assessee in support of his contention relied on the decision of Gujarat State Lion Consideration Society v. DCIT in ITA number 69/Rjt/ 2017 and also on the Kolkata High Court decision the case of CIT v. Natwarlal Chowdhury Charitable Trust 189 ITR 656 which held that deemed income under section 11 (3) would be subject to the computation provisions of section 11 of the Act.

7. In response, DR relied upon the observations made by Ld. CIT(Appeals) and AO in their orders.

8. We have heard the rival contentions and perused the material on record. After giving a thoughtful consideration to the facts before us and the issue for consideration, we are unable to accept the contention of the counsel for the assessee, for the following reasons:

8.1 Firstly, in the judicial precedents on which the counsel for the assessee has placed reliance, the Circular No. 29 [F. No. 20/22/69-IT(A-I)], dated 23-8-1969 was not brought to the attention of the Honourable High Court of Calcutta for its consideration. We observe that the language of the Circular is plain and unambiguous, which is being produced below for reference:

1. Attention is invited to the Board's Circular Nos. 5-P(LXX-6) of 1968 and 12-P(LXX-7) of 1968 [Clarification 2] which had been duly endorsed to all Chambers of Commerce. References are still being received from the public seeking clarifications regarding the taxability of income under the provisions of sections 11(1) and 11(2).

2. The legal position is clarified as under :

- Under section 11(1)(a), a trust claiming exemption is allowed to accumulate 25 per cent of its income or Rs. 10,000, whichever is higher. Thus, if a trust accumulates a larger income than the limits*

prescribed for exemption, what would be chargeable to tax is the excess over the exempted limit, and not the entire accumulation including the exempted portion.

- *Section 11(2), however, provides that if the conditions laid down in the sub-section are satisfied, restrictions as regards accumulation or setting apart of income shall not apply for the period during which the conditions prescribed therein remain satisfied. To avoid taxation under section 11(1)(a), investment in Government securities as prescribed in section 11(2), has to be made, not only in respect of excess amount which is chargeable under section 11(1)(a) but of the entire unspent balance including the exempted portion.*

- *Subsequently, if it is found that the provisions of section 11(2) have been violated and the income has been applied to purposes other than charitable or religious, or the amounts cease to be accumulated or set apart, the entire accumulation covered by section 11(2) will be subjected to tax under section 11(3).*

3. Thus, while under section 11(1)(a), the tax will be levied in the year to which the income relates, under section 11(3) the income would be chargeable in the year in which the amounts cease to be accumulated for the specific purpose mentioned. Thus, when the amounts are taxed under section 11(3), the benefit which would have been available to a trust in

***respect of 25 per cent of its income or Rs. 10,000 under section 11(1)(a)
would also be lost.***

8.2 Therefore, in view of the express language of the Circular referred to above, the intention of the Act is quite clear that when the unapplied amount is deemed to be the income of the assessee under section 11(3) of the Act, then the benefit of section 11(1)(a) of the Act would be lost. We observe that the above rulings on which reliance has been placed by the counsel for the assessee did not consider the above Circular i.e. the above Circular was not brought to the notice of the Court/ITAT for their consideration. Accordingly, we are unable to place reliance on the judicial precedents relied upon the counsel for the assessee on this issue. If the Natwarlal Chowdhury (cited supra) judgment is to be followed, it will result in undue benefit to the trusts and will defeat the legislative intent of section 11.

8.3 Secondly, in our considered view, there is a specific reason why this Circular was introduced and the purpose of introduction of the same is that the assessee should not be eligible to claim double deduction in respect of the same income i.e. recycle the same income, which remained unapplied after the end of the fifth year. Therefore, if exemption under section 11(1)(a) is allowable in respect of the deemed income under section 11(3), then exemption under section 11(2) is also allowable in respect of such deemed income as sub-section (2) of section 11 refers to the income referred to in section 11(1)(a). It would be useful to reproduce sub-section (2) of section 11 of the Act, to better understand the issue:

"Income from property held for charitable or religious purposes.—(1)

(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1)...."

8.4 If exemption under section 11(1)(a) and 11(2) are allowed in respect of the “deemed income” under section 11(3), then it will result in unintended benefits to the assessee. This can be better understood through the following example. If for instance, during the year under consideration, no fresh income has been received by a Charitable Trust and the entire income consists of “deemed income” u/s 11(3) of the Act, which remained unapplied at the end of the fifth year. For simplicity, let us take this income to be ₹ 1 lakh. Then, if we were to accept that such “deemed income” is eligible for deduction u/s 11(1)(a) and 11(2) of the Act in absence of any express embargo to the same under the Act, then the assessee can claim 15% deduction in respect of such “deemed income” under section 11(1)(a)(i.e. ₹ 15,000/- is exempt u/s 11(1)(a)) and for the remaining ₹ 85,000/- the assessee may either furnish a statement to AO stating the purpose for which it is being set apart under sub-section (a) to section 11(2) or may invest a part thereof under sub-section (b) to section 11(2) of the Act. Therefore, in the above example, the assessee may furnish a statement to AO in respect of a sum of ₹ 30,000/- giving the purpose why this amount has been set apart under sub-section (a) to section 11(2) and for the balance ₹ 50,000/-, the assessee may make investment thereof sub-section (b) to section 11(2) of the

Act. Therefore, the entire amount of ₹ 1 lakhs would not be subject to tax, which was “deemed income” of the assessee u/s 11(3) of the Act. The assessee can then repeat the whole process again in respect of the income which remains unapplied at the end of fifth year and becomes “deemed income” of the assessee u/s 11(3) of the Act. Clearly, in our considered view, such a practise cannot be accepted and any reading of the provisions of law, which may perpetuate such a practise cannot be accepted by us as well.

8.5 Thirdly, the Mumbai ITAT in the case of **The Trustees, The B.N. Gamadia Parsi Hunnarshala [2002] 77 TTJ 274 (Mum.)** held that exemption under section 11 is available only on ‘income’ within meaning of section and not on ‘deemed income’ and, therefore, an assessee cannot claim benefit or accumulation with respect to ‘deemed income’. The ITAT in the above case distinguished the decision of Natwarlal *supra* with the following observations:

11. In the case of CIT v. Natwarlal Chowdhury (cited supra), the Hon’ble High Court, with due respect, has not analysed this section in the correct perspective. In our humble opinion the different expressions i.e., ‘income derived from property’ and ‘income’, used by the legislation under sections 11 and 12 of the Act missed the attention of their Lordships or the impact of the difference in the expressions were not brought to their Lordships notice. In fact, a different view was expressed by the Hon’ble Calcutta High Court in [1993] 199 ITR 215 (Cal.) (supra) in a later decision. Under these

circumstances, and in the light of the decision of the Hon'ble Bombay High Court in the case of CIT v. Thane Elec. Supply Co. [1994] 206 ITR 727 (Bom.) at 738 we hold that the assessee is not entitled to the benefit of accumulation of deemed income which is taxable under section 11(3) of the Act.

8.6 Fourthly, our view is also supported by Form No. 3A of the Income-tax Rules, 1962. Clause No. 10 of Part I of Form No. 3A prescribes the “deemed income” under section 11(3) to be added to the income arrived at **after** claiming exemption under section 11(1)(a) and 11(2). The form does not allow the assessee to claim exemption under sections 11(1)(a) and 11(2) in respect of deemed income under section 11(3).

8.7 In view of the above observations, we are of the considered view that the assessee Trust is not eligible to claim exemption under Section 11(1)(a) and Section 11(2) of the Act in respect of “deemed income” under section 11(3) of the Act.

9. In the result, the appeal of the assessee is dismissed for assessment year 2016-17. Since common facts and issues for consideration are involved for both the years under consideration i.e. assessment year 2015-16 and assessment year 2016-17, the appeal of the assessee is dismissed for assessment year 2016-17 as well, in light of the above observations.

10. In the combined result, both the appeals of the assessee for assessment years 2015-16 and 2016-17 are dismissed.

Order pronounced in the open court on 22-02-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 22/02/2023

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot