



3. Whether, on the facts and in the circumstances of the case, the ITAT was correct in law in treating a sum of Rs.50,000/- deposited with Shriram Centre for Art and Culture as application of income whereas it was a loan to the said concern?"

2. The Assessee Trust was created on 15th February, 1978 by the Indian National Theatre, a society registered under the Societies Registration Act, 1860. The objects of the Trust are, inter alia, to promote artistic and cultural expression through drama, music and to undertake activities conducive to the aforesaid objects and purposes.

3. The Assessee Trust's application for registration under Section 12 of the Act was granted by the Commissioner of Income Tax ['CIT']. The Assessee Trust was also recognised as a charitable trust for the purposes of Section 11 of the Act.

4. The Assessee placed a sum of Rs.1 lakh in a fixed deposit with the Grindlays Bank on 17th May, 1976. On 29th December, 1979 the Assessee placed another deposit with the same bank in the sum of Rs.80,000/-. On the same day, that is, on 29th December, 1979 the Assessee placed a further sum of Rs.2 lakhs in a fixed deposit with the State Bank of Bikaner & Jaipur



5. The accounting period of the Assessee ended on 30th June, 1979 and the year of assessment with which we are concerned is 1980-81. The Assessee filed its return of income on 30th June, 1980. Four days prior thereto, that is, on 26th June, 1980 the Assessee wrote to the Income Tax Officer ('ITO') exercising its option in Form 10 read with Rule 17 of the Income Tax Rules, 1962 to accumulate a sum of Rs.3,78,397/- for the purposes of the Trust. It was further pointed out that during the period of six months commencing from the end of the year, the amount accumulated had been invested in government securities or with the banks in the form of three fixed deposits in the total sum of Rs.3,80,000/- including Rs.1 lakh placed with the Grindlays Bank on 17th May, 1996.

6. The ITO, while computing the assessment for the Assessment Year 1980-81 by his assessment order dated 4th August, 1983 rejected the contention that the accumulated amount had been set apart by way of investments in the manner indicated in Section 11(2) (b) of the Act. The ITO held that the Assessee had invested only Rs.2,80,000/- during the period 1st January, 1979 to 31st December, 1979. He allowed the accumulation only to that extent while finalising the assessment. Further he held that



held to be an application of the income of the Trust for the purposes of the Trust.

7. The appeal filed by the Assessee was dismissed by the CIT(A) who concurred with the ITO on this ground. It was held that the reference in Section 11(2) of the Act to accumulation of income and the condition for investment of 75% of such income in Government securities could only refer to income generated during the previous year and would “by definition preclude a consideration of investment made even before the commencement of such previous year.” Therefore while the CIT(A) was of the view that the ITO was in error in proceeding on the basis that only investments made in between 1st January, 1979 and 31st December, 1979 would fulfill the requirements of proviso (b) to Section 11(2), there was no error in excluding the deposit made on 7th May, 1976 which was two years prior to the commencement of the previous year on 1st July, 1978.

8. The further appeal by the Assessee was allowed by the Tribunal by its judgment dated 16th January, 1985. The Tribunal referred to the letter whereby an option was exercised by the Assessee in regard to accumulation



construing this letter to be vague and imprecise. It was held that the option exercised by the Assessee should be regarded to have been given with reference to sum of Rs.1,81,509/- and therefore the requirement of Section 11 should be held to have been complied with. The shortfall computed for the year in question as regards investment was Rs.81,509/-. The Tribunal observed as under:

“Without going into the merits whether the fixed deposit of Rs.1 lakh could be regarded as having accumulated out of the present year's income or not, if that amount of Rs.1 lakh also is regarded as a shortfall, then the total amount of Rs.1,81,509/- should be deemed to be the amount in respect of which the option was exercised.”

9. The Tribunal further held that the amount of Rs.50,000/- which was advanced as a loan to Shriram Centre for Art and Culture, was an application of the income of the Trust for the purposes of the the Trust and therefore should be construed as such for the purposes of the exemption under Section 11 of the Act.

10. The questions as framed for our opinion, which have been set out hereinabove require us to examine three specific issues. The first is whether the Assessee had at all exercised an option for accumulation of income within the meaning of Explanation 1 to Sub-Section 1 of Section 11 of the



17th May, 1956 could be treated as part of the accumulation of income for the Assessment Year 1980-81 and whether it would qualify for the 75% deduction allowable under Section 11(2) of the Act. Thirdly whether the sum of Rs.50,000/- loaned to Shriram Centre for Art and Culture could be construed as an application of the income of the Assessee Trust.

11. As far as the third question is concerned, on examining the orders passed by the authorities, in which the objects of both the Assessee Trust as well as the Shriram Centre for Art and Culture have been discussed, we are of the considered view that the Tribunal was correct in its conclusion that the sum of Rs.50,000/- deposited with Shriram Centre for Art and Culture should be treated as an application of the income of the Trust. The word “application” has to be given a wider interpretation keeping in view the purpose for which the provision has been introduced. Also, the tax effect on this sum is insubstantial. We are therefore not inclined to interfere with this part of the order of the Tribunal. We accordingly answer question No.3 in the affirmative, that is, against the Revenue and in favour of the Assessee.

12. That bring us to the first two questions. As regards the issue whether



the Tribunal that the wording of the letter dated 26th June, 1980 cannot be said to be vague. The letter in fact says that the accumulation was being made “in order to enable the trustees to accumulate sufficient funds for carrying out the following purposes of the trust....”. However, we are unable to read the letter to mean that the Assessee had exercised the option in relation to a sum of Rs.1,81,509. The Tribunal has held that “even though it was said in the letter that it was only in regard to Rs.81,509”, it should be construed as if the option had been exercised for accumulation of Rs.1,81,509. This to our mind is a conjecture unsupported by the record. If therefore the shortfall was only to the extent of Rs.81,509/- then the question of construing the deposit of Rs. 1 lakh made in 1976 as meeting such shortfall cannot arise. Therefore, we answer question No.1 in the negative, that is, in favour of the Revenue and against the Assessee, in so far as the Tribunal has held that the option was exercised by the Assessee in relation to Rs.1,81,509.

13. The third question concerns the deposit of Rs.1 lakh made with Grindlays Bank. The relevant portion of Section 11(2) applicable at that point of time reads as under:



Explanation to that sub-sections not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income provided the following conditions are complied with namely:

- (a) such person specifies, by notice in writing given to the Income-tax Officer in the prescribed manner, the purpose for which the income is being accumulated 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 or deposited in the forms or modes specified in sub-section (5).”

14. The above portion in turn refers to Section 11(1)(a) and (b) which read as under:

“11. Income from property held for charitable or religious purposes. (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 or set apart for application to such purposes in India, to the extent to which the income so



the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of [fifteen] per cent of the income from such property”

15. The Tribunal, was of the view that even the deposit of Rs.1 lakh made with the Grindlays Bank more than two years prior to the previous year in question could qualify as accumulation of income for the purposes of availing of the exemption. We are unable to agree with this conclusion. It is one thing to say that the requirement of investment is deemed to have been satisfied if the investment was made in the year in which income was received, although such income was not necessarily received in the very year in which the accumulation was sought to be made. However to stretch it to include the investments made in years even earlier to the previous year in question is not warranted on a plain reading of the Section. There seems to be considerable force in the submission of the learned for the Revenue that the express wording of the provision indicates that in order to satisfy the



of the current year's income. An investment made in the past obviously cannot satisfy this requirement. There is no occasion to take a different view given the purposes and object of such a provision. It is not the Assessee's case that the deposit with the Grindlays Bank matured during the Assessment Year in question and was renewed soon thereafter. It appears that the fixed deposit already made with the Grindlays Bank more than two years earlier was simply continued. In those circumstances it cannot be said that there was an application of the income of the Assessee Trust. In the circumstances, the Tribunal, in our view, erred in observing that the amount constituting the deposit with the Grindlays Bank "was free and available for being invested in the Assessment Year in question." We are unable to concur with the view expressed by the Tribunal on question No. 2. Question No. 2 is answered in the negative, that is, in favour of the Revenue and against the Assessee.

16. The reference is disposed of accordingly.

S. MURALIDHAR, J

MADAN B. LOKUR, J

NOVEMBER 13, 2007

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