



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No.383 OF 2008**

% RESERVED ON: MARCH 01, 2011
PRONOUNCED On: MARCH 30, 2011

DIRECTOR OF INCOME TAX . . . Appellant

through : Ms. Prem Lata Bansal, Sr.
 Advocate with Mr. Deepak
 Anand and Mr. Vijay
 Mishra, Advocates.

VERSUS

SHREE RADHA KRISHAN CHARITABLE TRUST . . . Respondent

through: Mr. C.S. Aggarwal, Sr.
 Advocate with Mr. Prakash
 Kumar, Advocate.

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
 HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The aforesaid appeal under Section 260A of the Act arises from an order of the Income Tax Appellate Tribunal ('the Tribunal' for brevity) dated 28.02.2006 and relates to the Assessment Year 1992-93. It was admitted on the following substantial question of law:



“Whether the ITAT was correct in law in holding that the assessee was entitled to exemption under Section 11 & 12 of the Income Tax Act, 1961 despite the fact that it had not disinvested the investment upto 31st March, 1993?”

2. This question of law has arisen in the following circumstances:

The respondent assessee claims to be a charitable trust. For the Assessment Year 1992-93, the assessment was completed under Section 143(3) of the Income Tax Act (hereinafter referred to as ‘the Act’) on 06.03.1995 accepting the declared income as ‘NIL’ giving the benefit to the assessee as charitable under Section 11 and 12 of the Act being trust of charitable character. However, when the Assessing Officer (AO) was finalizing the income tax return for the Assessment Year 1997-98, he noticed that shares acquired by the trust amounting to ₹62.50 lacs were not disposed of within the time and they were hit by the provisions of Section 13(1)(d)(iii) of the Act. He, thus, reopened the assessment by issuing notice dated 20.03.2002 under Section 147/148 of the Act for the Assessment Year 1992-93 after obtaining the approval of DIT (E). In response thereto, the assessee filed revised return maintaining its position. Reassessment order was passed on 26.03.2002. In this order, the AO took note of the plea of the assessee that it had received equity shares of the face value of



₹62.50 lacs of various companies as donation. However, the AO was of the view that it was necessary for the assessee to dispose of the same within one year from the end of the year in which they were received and because of these irregularities committed by the assessee in not disposing the shares within the stipulated period, the provisions of Section 13(1)(d)(iii) were attracted, thereby losing the benefit of Section 11 of the Act. He, thus, denied the exemption to the assessee provided under Section 11 of the Act and computed the income of the assessee @ ₹62,94,750/- (₹44,750/- as donation received and ₹62,,50,000/- as corpus donation received in the form of shares).

3. Feeling aggrieved by this order of the AO, the assessee knocked the doors of the CIT (A) in the form of first appeal. In this appeal, the assessee challenged the assessment of jurisdiction by the AO under Section 147/148 of the Act questioning the validity of the reassessment proceedings. Order was also challenged on merits. The CIT (A) rejected the contention of the assessee in so far as the validity of proceedings under Section 147 of the Act are concerned, but gave relief on merits. Against that order, the Revenue filed the second appeal questioning the order of the CIT (A) on merits.



The assessee did not file appeal before the ITAT questioning the order of the CIT (A) upholding the initiation of proceedings under Section 147 of the Act nor filed any cross objections in the present proceedings.

4. The appeal of the Revenue has been dismissed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') vide impugned orders dated 28.02.2006 which is the subject matter of challenge before us giving rise to the substantial question of law stipulated above.

5. We may record here that submission of the assessee before the CIT (A) was that even after the assessee had contravened Section 13(1)(d)(iii) of the Act, the exemption could be withdrawn only after the expiry of one year from the end of the previous year in which the asset was acquired or with effect from 31.03.2003 whichever is later. This contention of the assessee predicated on the judgment of the Madras High Court in the case of ***Commissioner of Income Tax Vs. Kumudam Endowments*** reported in **242 ITR 159** was accepted by the CIT (A) in the following manner:

“10. I have gone through the case law cited before me and also the observations made by the JDIT in his directions u/s 144A vide para 5.2 on the issue. I am of



the view that the finding recorded by the Hon'ble Madras High Court in the case of the CIT Vs. Kumudam Endowments (supra) has not been followed. The exemption to the trust must not be denied for the period under appeal. Accordingly, I hold that the appellant trust is entitled for exemption u/s 11 & 12 for the period under appeal. I also hold that on this basis, the assessment of income in respect of donates received in the form of equity shares in non-government companies towards corpus being ₹62,50,000/- and general donations of ₹44,750/- is against the law and the same is hereby directed to be deleted."

6. The Tribunal while affirming the aforesaid view taken by the CIT(A) interpreted the provisions of Section 13(1)(d) of the Act in the following manner:

"6. Admittedly, the assessee Trust received as donation certain equity shares during the year under consideration. Such investments were continued to be held by the assessee on the close of the previous year relevant to the assessment year under consideration. This investment was indeed contrary to the pattern envisages u/s 11(5) r/w Section 13(1)(d) which has been inserted by Finance (No.2) Act, with retrospective effect from 1.4.83. In terms of the said proviso, which is applicable for the year under consideration, the assets held by an assessee in the modes otherwise than prescribed u/s 11(5) are to be disinvested upto 31.3.93 or within one year from the end of the previous year in which such asset is acquired, whichever is later. Therefore, for the instant year, since the assessee has time as per the aforesaid provision for disinvestment of impugned investment, therefore, for the year under consideration, the exemption u/s 11 and 12 cannot be denied. Thus, the legal position for the year under consideration is that the assessee was allowed to hold investment contrary to provision of Section 11(5) of the Act under an obligation to disinvest on or before 31.3.93, without losing the benefits of Section 11 and 12 of the Act. This is in line with the parity of reasoning taken by the Hon'ble High Court of Madras in the case of Kumudam Endowments 242 ITR 159 (Mad.). Thus, the holding of such investment for the year under consideration cannot be made the basis to reject the



exemption u/s 11 and 12 of the Act. Thus, the holding of such investment for the year under consideration cannot be made the basis to reject the exemption u/s 11 and 12 of the Act. Thus, the conclusion of the CIT (A) deserve to be affirmed, and we do so."

7. Challenging the aforesaid interpretation given by the two authorities below, submission of the learned counsel for the Revenue before us was that any such corpus donation received by the assessee was to be treated as income as per the provisions to Section 2(24) of the Act, which reads as under:

"Section 2 (24) "income" includes –

(i) profits and gains ;

(ii) dividend ;

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (viia)] of clause (23C), of section 10 or by an electoral trust.

Explanation : For the purposes of this sub-clause, "trust" includes any other legal obligation ;

8. Learned counsel for the Revenue argued that such an income which is exigible to tax under normal provision would be eligible for exemption in case provisions of Section 11 of the



Act were satisfied holding that the income was for charitable or religious purpose. Even if the provisions of Section 11 of the Act are satisfied, the assessee still could be denied the benefit thereof when any of the eventualities provided under Section 13 of the Act occurs inasmuch as Section 13 of the Act mandates that the benefit under Section 11 of the Act would not be applicable. She argued that in this backdrop, provisions of Section 13(1)(d)(iii) of the Act were to be seen. This provision reads as under:

“Section 13. SECTION 11 NOT TO APPLY IN CERTAIN CASES.

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year –

(i).....

(ii).....

(iii) Any shares in a company, other than –

(A) shares in a public sector company;

(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11,

are held by the trust or institution after the 30th day of November, 1983.

Provided that nothing in this clause shall apply in relation to -

(i) Any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973;



(ia) Any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) Any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) Any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) Any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation : Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business."

9. Thus, argument is that any shares in a company held by the trust or institution after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later, the same would not qualify for benefit under Section 11 of the Act.

10. There is no dispute about the aforesaid proposition advanced by the learned counsel for the Revenue. However, as can be seen from the impugned order of the Tribunal extracted above, these shares were to be disinvested upto 31.03.1993 or within



one year from the end of previous year in which they were acquired, whichever is later. Thus, shares could be disinvested by 31.03.1994. We are concerned here with the Assessment Year 1992-93 and therefore, the time allowable by the aforesaid provisions had not lapsed. It is clear from the above that the assessee had the time, as per the aforesaid provisions, for disinvestment of the said shares which were received during the Financial Year 1991-92, i.e. relevant Assessment Year 1992-93 (with which we are concerned, as this case relates to the Assessment Year 1992-93). The question could have arisen, if at all, in the Assessment Year 1993-94.

11. We, thus, agree with the aforesaid view taken by the Tribunal and answer the question in favour of the assessee, thereby dismissing the appeal.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

MARCH 30, 2011

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