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Sir Sobha Singh Public Charitable Trust Vs. Assistant Director of Income Tax (Exemption)*

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Court : Delhi

Decided On : Jun-28-2001

Reported in : (2001)72TTJ(Del)1007

Appeal No. : ITA No. 2524/Del/1996 28th June 2001 A.Y. 1992-93

Appellant : Sir Sobha Singh Public Charitable Trust

Respondent : Assistant Director of Income Tax (Exemption)*

Advocate for Pet/Ap. : Ajay Vohra, for the assessed;P.K. Gupta; & B.D. Mishra, for the Revenue

Judgement :

ORDER

Miss Moksh Mahajan, A.M.

These two appeals filed by the assessed as well by the revenue are consolidated and disposed of by a single order as common issue is involved in both the appeals.

2. Taking up the assesses appeal filed in ITA No. 2524/Del/1996 first, Shn Ajay Vohra, the learned authorised representative submitted that the assessed is a charitable trust. The aforesaid trust was started in 1961 by Late Sir Sobha Singh. It

has been accepted as a charitable trust right till assessment year 1991-92. The objects of the trust have been listed in clause 30 of the trust deed (p 60 of the paper book). There are as many as 19 objects listed on pp 6 and 7 of the aforesaid trust deed. As per the provisions of section 11(2) of the Act, The assessed is allowed to accumulate 75 per cent of the income, subject to certain conditions. It has to give a notice in writing to the officer in the prescribed manner specifying 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, not exceeding however 10 years. Secondly, that the money so accumulated or set apart is to be invested or deposited in the forms or modes specified in sub-section (5) (sic of s.11) of the Act. The assessed passed a resolution in a meeting held on 26-3-1992, resolving that the funds of the trust available at the end of the current financial year ending on 31-3-1992, be accumulated up to a period of 10 years, i.e. till 31-3-2002 (p 32 of the paper book). In pursuance of this resolution, the assessed addressed a letter to the Assistant Director of the Income-tax (Exemption) in the form of the notice as prescribed in Form No. 10 intimating its decision for accumulation of funds. The purposes for the aforesaid funds were given in the notice. As would be evident, accumulation was for the purposes of fulfilling 6 objects out of 19 objects as listed in the trust deed. The assessing officer after holding that the accumulation of surplus funds was not for specific purpose denied, the benefit to the assessed. The learned Commissioner (Appeals) concurred with the finding of the assessing officer. While doing so, he relied on the decision of the Calcutta High Court in case of Director of Income-tax (Exemption) v. trustees of Singhanian Charitable Trust : [1993]199ITR819(Cal) . As per the reasoning given, there has to be a specific purpose for accumulation and the objects of the trust cannot be listed for the purpose of accumulation. Citing certain observations of their Lordship of Calcutta High Court, it was held that the assessed was not entitled to the benefit under section 11(2) of the Act.

3. According to the learned authorised representative the facts as available in the case of Trustees of Singhanian Charitable Trust (supra) are different. In the aforesaid case, all the objects as listed in the trust deed were cited in the notice given in Form No. 10. It is not so in the case of the assessed. Out of 19 objects, only 6 were listed. It is not the case of the revenue that more than 1 object cannot

be specified in the notice has to be given in Form No. 10. This proposition is also supported by the observations of the Lordships which run as under :

'Plurality of the purposes for accumulation may not be precluded but it must depend on the exact and precise purposes for which the accumulation is intended for the statutory period of 10 years. The generality of the objects of the trust cannot take the place of the specificity of the need for accumulation.'

What was meant by them was that in order to be entitled to benefit under section 11(2) of the Act, the objects have not to be vague and general. Support was derived from the following decisions :

(i) Income Tax Officer v. CSI Technical & Vocational Training Trust (1986) 24 TTJ (Mad) 266;

(ii) Indian National Theatre Trust v. Income Tax Officer , -and

(iii) Jaipur Stock Exchange Ltd. v. Income Tax Officer (1995) 53 TTJ Qp 667 : (1995) 541 TTJ (jp) 589 .

Without prejudice to this, it was argued that in any case, since the Calcutta High Court is not the jurisdictional High Court, its decision is not binding on the Delhi Bench. Reliance was placed on the decision of Karnataka High Court in case of Patil Vijay Kumar & Ors. v. Union of India & An.r., S. Krishnamurthy & Ors. v. Union of India & Anr., S. Viswanathan & Ors. v. CIT : [1985]151ITR48(KAR) and others as under :

(i) CIT v. Ved Prakash .

(ii) Consolidated Pneumatic Tool Co. (India) Ltd. v. CIT : [1994]209ITR277(Bom) ;

(iii) Geoffrey Manners & Co. Ltd. v. CIT : [1996]221ITR695(Bom) ;

(iv) Gedore Tools (India) (P) Ltd. v. L4C .

4. The learned departmental Representative on the other hand supported the order of the learned Commissioner (Appeals). It was submitted that accumulation

of surplus funds should be seen in the background of the scheme under which the aforesaid provisions was brought in on the statute. Essentially there is no difference between the facts available in the case of Singhania Charitable Trust (supra) and that of the case of assessed. As regards the other plea, reliance was placed on the decision of Ahmedabad Bench in Nandlal H. Ramani v. Income Tax Officer wherein it was noted that the decision of any High Court is to be followed in comparison to the decision of Tribunal. In the circumstances, argued the learned departmental Representative the order of the learned Commissioner (Appeals) needs to be upheld.

5. We have carefully considered the rival submissions gone through the material placed on record to which our specific attention was drawn and the decisions cited on both sides. As per the provisions of section 11 of the Act, the income applied for charitable or religious purposes is not taxable. This is subject to certain conditions laid down therein. The income so applied is to be for the purposes or objects the trust has. The trust is allowed to accumulate part of its income both under section 11(1)(a) as well under section 11(2) of the Act. Under section 11(1)(a) or (b) accumulation is to be 25 per cent of the income and under section 11(2) it is to be 75 per cent uncapped income as referred to, in clause (a) or clause (b) of sub-section (1) read with the Explanationn therein. In case of former, the accumulation is for a short period i.e., not beyond the year next succeeding and in case of latter, it can be for 10 years. While in case of former, no conditions are prescribed under the Act, in case of latter, the person has to specify both the purpose as well the period for which the income is to be accumulated. Further the money so accumulated or set apart is to be invested or deposited in forms or modes as specified in sub-section (5) of section 11 of the Act. Rule 17 of IT Rules prescribes the notice as mentioned in sub-section (2) of section 11 of the Act. Form No. 10 prescribes the format of a notice to be given to the prescribed authority conveying the intention and purposes for which the income is to be accumulated or set apart. The aforesaid format makes a reference to the resolution passed by the trustees to accumulate the surplus funds. Space has also been provided for indicating purposes/objects for which accumulation is sought. From the aforesaid format it is clear that the setting apart of the income could be for more than one purpose. As per language used in clause (a) of sub-section (2)

of section 11, the purpose for which the income is being accumulated or set apart has to be specific. The expression specific as commonly understood is something which is contrary to what is general and vague. As per the meaning given in the Random House Dictionary of the English Language (the Unabridged Edition), the expression specific connotes having a special application explicit, or definite, to state ones specific purpose. As against this, the expression general has been defined as pertaining to all persons or things belonging to the group or category common to most prevalent or usual not limited to one class, field, product, service, etc. Thus, the purpose has to be a definite and precise one. The expression specific has to be read in the context and the text in which it has been used. Since the same has been used in the context of purpose, the same has to be definite and concrete one in distinction to general or vague one.

At the same time, it could not be for all the purposes as given in the trust deed which would make the provisions of sub-section (2) of section 11 as meaningless. As held in the case of Singhanian Charitable Trust (supra), the requirement of specification of purpose predicates that the purpose must have an individuality. The aforesaid interpretation also stands to reason when seen in the background that the legislature in its wisdom has provided for accumulation of surplus funds to the trust, both under section 11(1)(a) or (b) and 11(2) of the Act. There is both a distinction and the purpose behind the aforesaid two provisions. While in case of section 11(1)(a) of the Act, the accumulation could be for such purposes (not specific) it is not so under section 11(2) of the Act. The trust must communicate in specific terms the purpose or purposes for which it wants to accumulate or set apart the income. The concession as allowed in the Act is perhaps to meet a contingency where the fulfillment of a project requires heavy outlay and calls for accumulation of funds, as observed in the case of Singhanian Charitable Trust (supra). The language of section which is clear and unambiguous could not be interpreted in any other manner than what has been conveyed in case of Singhanian Charitable Trust.

6. Examining in the light of the aforesaid proposition we find that in the notice given in Form No. 10, the assessed has mentioned 6 objects for which the accumulation of funds was to be made. This is against 19 objects as mentioned in

the trust deed. These are as under :

- '1. To start schools, colleges and other cultural and educational institutions for providing physical, mental and moral instructions and training;
2. To set up libraries, reading rooms and places for meetings and get together for holding cultural discussions and discourses;
3. To start hostels for boy and girls who are either studying at a school or college or are in service;
4. To start health centre and to impart instructions in the art of healthy living;
5. To establish hospitals, dispensaries, nursing homes, maternity centre, nature cure and yogic health homes in India;
6. To construct Dharamasalas or Sarais in and around hospitals in Delhi or New Delhi to accommodate poor patients and their attendants.'

The above would clearly show that the purpose mentioned are specific and concrete ones. It is for setting educational institutions, libraries, starting hostels for boys and girls, health centres, establishing hospitals and dispensaries etc. and construction of Dharamasalas in and around hospitals to accommodate poor patients. There are concrete proposals having definiteness about them. There is no impreciseness or vagueness in them. By no means they can be described as general objects. Since accumulation was sought for 10 years, it stands to reason that the assessed specified more than one purpose for application of funds. It had to keep options open in case one specific object is not achieved for some unforeseen reasons.

7. Coming to the distinction drawn between the purpose and object we find that these are not defined. In common parlance, the expressions are used interchangeably. Thus it is the natural and ordinary meaning which is to be given to the words. So the user of expression object in the letter of the assessed would not by itself mean that the purposes for which accumulation was sought were not definite.

8. As regards the alternative plea of the assessed that the decision of a High Court other than that of jurisdictional High Court is not binding on the court, we find that there is a divergence of view on the issue. While the Karnataka High Court in case of Vijay Kumar & Ors (supra), Punjab & Haryana High Court in the case of CIT v. Ved Prakash (supra), Bombay High Court in the case of Consolidated Pneumatic Tool Co. (India) Ltd. v. CIT (supra). Goeffly Manners & Co. Ltd. v. CIT (supra) have taken a view that the decision of the High Court is binding on the Tribunal within its territorial jurisdiction, it cannot be construed as to mean that the judgment of the High Court other than that of jurisdictional one is to be ignored. In fact as held by their Lordship of Supreme Court in case of Union of India v. Kamlakshi.Financial Corporation Ltd. : AIR 1992 SC710 the decision of the High Court has to be followed in comparison of the decision of the Tribunal Benches regardless of the fact that matters have not been thrashed at length by High Courts (Nandlal H Ramani v. Income Tax Officer) (supra). The message is clear that it has to be taken into consideration. Thus, in the light of discussion as held above, we hold that assessed is entitled to approval under section 11(2) of the Act for accumulation of funds.

9. The second ground of appeal relates to the confirmation of order of the assessing officer in treating the accumulated amount of Rs. 3,30,000 as not applied for the objects of the trust. It was stated by Shri Ajay Vohra, that during the assessment year 1992-93, the assessed had to apply surplus funds in respect of which accumulation was allowed in the assessment year 1982-83. The funds were to be utilised for running a school for the purpose of which the assessed was allotted land by the DDA. As per letter dated 12-5-1988 (p 2 of the paper book), the assessed was allotted on perpetual leasehold basis a plot of land measuring J.0134 acres for running senior secondary school at Vasant Kunj. The land was allotted @ Rs. 8,00,000 per acre. In pursuance of the aforesaid letter, the assessed was to deposit Rs. 12,30,001 on account of cost of land and Rs, 30,000 on account of ground rent for the period of one year. The assessed also prepared a site plan and deposited 12,30,001 as is evident from the letter addressed to Dy. Director Vikas Sadan on p 5 of the paper book, He accordingly, requested for possession of land vide his letter dated 28-7-1988 (p 6 of the paper book). The plan and the model of the proposed school building was discussed with the

trustees of the trust. It was however found that there were certain encroachments on the land for which necessary correspondence was done with Addl, Commissioner, Delhi Development Authority, vide letter dated 3-11-1988, Subsequently in the year 1988, the DDA increased the cost of land to Rs. 28,50,000 per acre with effect from 1-4-1987. The assessed was required to deposit the difference in rates amounting to Rs. 31,51,874. The assessed lodged a protest against the aforesaid increase and as the concerned authority did not agree, the assessed requested for refund of the amount. This was allowed vide letter dated 11-7-1989. Subsequently, the assessed made efforts to acquire the land at Chandigarh. The matter was taken up with the educational institution in the State of Punjab. The Punjab Government agreed in principle to allot land measuring 7.7 acres in Sector 61 at S.A.S, Nagar (Mohali) for the setting up of a school. The provisional reserve rate was quoted at Rs. 155 per sq, yd. which was likely to be revised to Rs. 300 per sq. yd. The matter was discussed with the Director, Housing and Urban Development, Government, of Punjab and the assessed requested for reduction of rate of land from Rs. 155 per sq. yd, to Rs. 62 per sq. yd. Certain other transactions relating to adoption of land for the purpose were cited, Subsequently, the deal fell through and the assessed was refunded the money which was given to the Government. Since the assessed failed to locate some suitable site for establishing a school it made an application under section 11(3A) of the Income Tax Act to the Asstt. Director of IT (Exemption) for allowing it to use the funds for planting a small commemorative forest in Himachal Pradesh. This was with the aim of improving the environment and developing the economy of the area. The approval of the department was sought. In its letter dated 2-12-1991 (p 25 of the paper book) it requested the ADI (Exemption) to allow the trust to apply its funds for the purpose of clause (viii) of the objects which is to participate and contribute to schemes of economic and cultural development of the country started or sponsored by the Government. As per the Samriti Vatika Scheme approved by the Himachal Government, plants were to be planted which would have generated employment to the people around the place. The assessed gave Rs. 3,30,000 towards the aforesaid scheme. However, despite the dialogue held with the department till date, no permission was granted by it. Reference was made to the various letters addressed by the assessed to the ADI (Exemption)

drawing his attention towards the assesses application and requesting for action thereon. It is true, submitted the learned authorised representative that certain queries were raised which were also replied to by the assessed, yet no approval had been allowed till date.

10. On the facts as mentioned, it was the plea of the learned authorised representative that since till date, no action has been taken through a period of seven years had elapsed. Further, it should be deemed that approval stand allowed to be assessed, Reliance was placed on the following decisions :

(i) Harman fit Trust v. CIT ;

(ii) Mahila Sidh Nirman Yojna v. L4 C ;

(iii) Lachman Chaturbuj Java v. R. G. Mtsure & Ors. : [1981]132ITR631(Bom) ,

(iv) CIT v. Bishwanath Khirwal (1986) 51 CTR (Pat) 329 : (1987) 161 ITR 382 ;
and

(v) Rajasthan Financial Corporation v. Dy. CIT (1998) 61 M Qp 273,

11. The learned departmental Representative on the other hand heavily relied on the order of the learned Commissioner (Appeals) and submitted that no doubt there has been a lapse on the part of the department same has been the case with the assessed too. The assessed has also sought adjournments for furnishing information as required by the ADI. The assesses conduct is such that it is not entitled for approval of the purpose for which the income was sought to be applied for. The fact that for the last 30 years, it has not been able to find a land for the purpose of setting up a school, speaks volume for the same. In the circumstances no approval can be given to the assessed for the purpose for which it was sought,

12. We have carefully considered the rival submissions. The issue raised relates to a situation where after having had the approval for accumulation of funds under section 11(2) of the Act, the assessed fails to apply the same for the purpose for which the funds were accumulated. In terms of section 11(3) of the Act, the aforesaid accumulation is to be deemed to be the income of such person in a year

in which it ceases to be so accumulated or immediately following the expiry of the period aforesaid, Vide sub-section (M) of section 11 of the Act, the assessed is allowed an opportunity to apply to the assessing officer to allow him to utilise such income for such other charitable or religious purpose as specified in the application and in conformity with the objects of the trust. The aforesaid sub-section reads as under :

'Notwithstanding anything contained in sub-section (3), where due to circumstances beyond the control of the person in receipt of the income, any income invested or deposited in accordance with the provisions of clause (b) of sub-section (2) cannot be applied for the purposes for which it was accumulated or set apart, the assessing officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in India as is specified in the application by such person and as is in conformity with the objects of the trust, and thereupon the provisions of sub-section (3) shall apply as if the purpose specified by such person in the application under this sub-section were a purpose specified in the notice given to the assessing officer under clause (a) of sub-section (2).

The essential characteristics of the aforesaid sub-section are :

- (a) person in receipt of income cannot apply it for the purpose for which it was accumulated;
- (b) this is for circumstances beyond the control of the person;
- (c) application to be made to the assessing officer specifying the purpose for which the application of funds is to be made;
- (d) the purpose is to be of charitable and religious nature in conformity with the objects of the trust.

There is no express provision in regard to the time by which the assessed is required to move an application before the assessing officer and the time by which the assessing officer is required to render its decision. Reference made to the relevant provision viz., sub-section (2) read with sub-section (M) of section 11

would show that the assessed can submit application by the end of the period for which the funds were required to be set apart. Similarly, as the funds are deemed to be the income of the year in which funds are not applied or of the previous year immediately following the expiry of the period aforesaid, the decision by prescribed authority should normally be rendered within the reasonable time to enable the assessed to apply funds for the purpose for which accumulation is made. While the onus is on the assessed to prove that the funds could not be applied for purpose/purposes because of circumstances beyond its control, the assessing officer while rendering the decision on the issue has to act in a judicious manner, keeping in mind the purpose for which the provision was brought on the statute.

13. On going through the decisions relied upon by the assessed in support of its contention, we find that they relate to non-communication of decision on the applications filed for seeking extension of time to file the return under section 139 of the Act or continuation of registration filed along with the delayed return. Since the latter is linked with the belated return, the basic issue reverts to the non-communication of the decision on the application filed for seeking extension of time for filing the return. On comparison of the provisions relating to filing of return and seeking approval under section 11(3A) of the Act, we notice that in both the cases, the discretion lies with the assessing officer to either accept or reject the assesses request. In both the cases, the assessed is vested with adverse consequences in the eventuality of rejection of the application. However, there is vital difference between the two. In the case of penalty livable for late filing of return, the assessed has to satisfy the assessing officer that there was a reasonable cause which prevented him to file the return in time. In case of approval under section 11(3A) of the Act, the assessed has to show that there were circumstances beyond his control because of which the funds could not be applied for the purposes for which they were set apart. The expression circumstances beyond the assesses control is more rigid in its comprehension. In case of extension of time for filing the return, while the revenue foregoes the penalty which is in addition to tax payable by the assessed, in the case of grant of approval under section 11(3A) of the Act, it is the tax itself. Further the assessing officer has to satisfy himself that there existed reasons beyond assesses control because of which the funds could not be applied for the purpose for which

approval was given. The changed purpose for which approval is sought has to be in conformity with the objects of the trust. For this too, the assessed has to satisfy the assessing officer. In the case of assessed, it is noted that there are a number of objects specified for which the approval is being sought. The question whether the application of income already made falls in the specific object listed therein is a matter which needs to be examined at the end of the assessing officer. In the circumstances, the provisions relating to approval of the purpose under section 11(3A) of the Act cannot be treated on par with the one seeking extension of time for filing the return.

14. Coming to the decision cited in the case of Rajasthan Financial Corporation v. Dy. CIT (supra), we find that in the aforesaid case, the issue pertained to approval of gratuity fund for which the application was made 20 years back. The learned Members noted that in the earlier assessment years, the deduction on the aforesaid account stood allowed by the department itself. On the facts as available in the case, the decision was rendered. The ratio of the aforesaid case cannot be applied to the case under consideration again for the reasons as discussed above.

15. In view of the above, we are of the considered view that the assessee's contention that application for approval should be deemed to have been accepted cannot be accepted. We would however direct the assessing officer to dispose of the application within a reasonable time after hearing the assessed in this regard. On the limited issue, the matter stands restored to the file of the assessing officer.

16. In ITA No. 3443/Del/1996, the ground taken by the department is as under : 'On the facts and in the circumstances of the case, the Commissioner (Appeals) has erred in allowing benefit of section 11 of the Income Tax Act 1961, even though there is violation to provisions of section 13(1)(c) of the Income Tax Act.

As accepted by the Income Tax Officer in his order, the issue has since been decided in favor of the assessed and matter is, pending before the High Court. In the circumstances, the learned Commissioner (Appeals) has held that the action of the Income Tax Officer in refusing exemption on the ground that the assessed has violated provisions of section 13(1)(c) of the Act is not correct. We would endorse his view following the earlier order of the Tribunal as referred to in the order.

17. While the assesses appeal is allowed in part for statistical purposes, that of the revenue stands dismissed.

U.B.S. BEDI, J.M.

29th April, 1999

I have gone through the proposed order of learned A.M. and so far as order with respect to assesses appeal is concerned, I concur with the findings and conclusions as arrived at by her with respect to all the grounds except ground Nos. 1 and 2 for which I record my dissent and reasons for doing so are given in following paragraphs. So far as departmental appeal is concerned, I fully concur with the conclusions and findings of learned A.M.

2. The facts relating to ground Nos. 1 and 2 of assesses appeal for the assessment year 1992-93 against the order of Commissioner (Appeals)-XVI, New Delhi dated 11-3-1996, as emerging from the record are like this that assessed is a charitable trust and same was started in 1961 by late Sir Sobha Singh. It has been accepted as charitable trust right till assessment year 1991-92. The object of the trust has been listed in clause 30 of the trust deed (p 60 of the paper book). There are as many as 19 objects listed on paras 6 and 7 of the aforesaid trust deed. It was submitted that as per provisions of section 11(2) of the Income Tax Act, the assessed is allowed to accumulate 75 per cent of the income subject to certain conditions as laid down in the said provision. First condition is that it has to give a notice in writing to the officer in the prescribed manner specifying the purpose for which income is being accumulated or set apart and the period for which is to be accumulated or set apart, not exceeding 10 years. Secondly, that the money so accumulated or set apart is to be invested or deposited in the forms or modes specified in sub-section (5) of section 11 of the Income Tax Act. The assessed passed a resolution in a meeting held on 26-3-1992, resolving that the funds of the trust available at the end of the current financial year ending on 31-3-1992, be accumulated up to a period of 10 years, i.e. till 31-3-2002. In pursuance of this resolution, the assessed addressed a letter to the ADI (Exemption) in the form of a notice as prescribed in Form No. 10 intimating its decision for accumulation of funds. The purposes for the aforesaid funds were given in the

notice. It was further submitted that accumulation in this case was for the purposes of fulfilling 6 objects out of 19 objects as listed in the trust deed. The assessing officer after holding that the accumulation of surplus funds was not for specific purposes denied the benefit to the assessed.

3. assessed aggrieved by this action of assessing officer preferred an appeal before the first appellate authority who concurred with the finding of assessing officer and while doing so relied upon the decision of the Calcutta High Court in the case of Director of Income-tax (Exemption) v. Trustees of Singhanian Charitable Trust : [1993]199ITR819(Cal) . As per the reasoning given there has to be a specific purpose for accumulation and all the objects of the trust cannot be listed for the purpose of accumulation. While citing certain observations of their Lordships of the Calcutta High Court, it was held by the Commissioner (Appeals) that assessed was not entitled to the benefit of section 11(2) of the Income Tax Act,

4. assessed in further appeal has pleaded before the Tribunal that facts as available in the case of Singhanian Charitable Trust (supra) are different. In the above said case, all the objects as listed in the trust deed were cited in the notice given in Form No. 10 whereas it is not so in the case of the assessed because out of 19 objects only 6 were listed. It was also submitted that it is not the case of the revenue that more than one object cannot be specified in the notice to be given in Form No. 10. This proposition is supported by the observation of Calcutta High Court as relied upon by the Commissioner (Appeals). Then it was pleaded that what was meant by their Lordships that in order to be entitled to the benefit under section 11(2) of the Act, the objects have not to be vague and general. Support was derived from the following decisions :

(1) In the case of Income Tax Officer v. CSI Technical & Vocational Training Trust (1986) 24 TTJ (Mad) 226;

(2) Indian National Theatre Trust v. Income Tax Officer ; and

(3) Jaipur Stock Exchange Ltd, v. Income Tax Officer (1995) 53 TTJ (Qp) 667 : (1995) 54 1M 589 .

5. In addition to this it was argued that in any case since the Calcutta High Court is not the jurisdictional High Court, its decision is not binding on the Delhi Bench. Reliance was placed on the decision of the Karnataka High Court in the case of Patil Vilay Kumar & Ors. v. Union of India & Anr., S. Kishnamurthy & Ors. v. Union of India & Anr., S. Vishwanathan & Ors. v. CIT (1985) 48 CTR (Kar) 41 : (1985) 151 ITR 49 . Reliance was also placed on CIT v. Ved Prakash , Consolidated Pneumatic Tool Co. v. CIT : [1994]209ITR277(Bom) , Geoffrey Manners & Co, Ltd. v. CIT : [1996]221ITR695(Bom) , Gedore Tools (India) (P) Ltd. v. L4C (1988) 25 ITI 193 and it was pleaded that assessed is entitled to be allowed to accumulate 75 per cent of the income as all the conditions as laid down in the Act and Rules have been fulfilled and case law as cited fully supports the case of the assessed.

6. The learned departmental Representative on the other hand, supported the order of the learned CIT and further submitted that accumulation of surplus funds should be seen in the background of the scheme under which the aforesaid provision was brought in on the statute book. Since there is no difference between the facts available in the case of Singhania Charitable Trust (supra) and that of the case of the assessed, appeal of the assessed does not merit acceptance. As regards other pleas as taken by assesses counsel reliance was placed on decision of Ahmedabad Bench in Nand Lal H. Ramani v. Income Tax Officer wherein it was noted that the decision of any High Court is to be followed in comparison to the decision of Tribunal i.e. what learned Commissioner (Appeals) has done while upholding the action of assessing officer. So it was rightly argued that order of the Commissioner (Appeals) needs to be upheld because assessed had listed number of objects which are not actually six numbers but more than that and same makes the objects to be vague and general. The generality of the objects of the trust cannot take the place of the specificity of the need for accumulation, therefore, assessing officer was very much justified in not allowing such accumulation and Commissioner (Appeals) was further justified in not accepting the appeal of the assessed. It was thus pleaded for confirmation of order of authorities below.

7. After having carefully considered the rival submissions, going through the material placed on record to which attention of the Tribunal was drawn and the decision cited on both the sides it is found that as per provisions of section 11 of

the Income Tax Act, the income applied for charitable or religious purposes is not taxable subject to certain conditions laid down therein. The income so applied is to be for the purposes of objects of the trust. However, the trustees were allowed to accumulate part of its income both under section 11(1)(a) as well as under section 11(2) of the Income Tax Act. Under section 11(1)(a) or (b) accumulation is to be 25 per cent of the income under section 11(2) it is to be 75 per cent of the unapplied income as referred to in clause (a) or clause (b) of sub-section (1) read with the Explanationn therein. In the former case, the accumulation is for a short period i.e. not beyond the year next succeeding and in the case of latter, it can be for 10 years. While in the case of former, no conditions are prescribed under the Act in the case of latter, the person has to specify both the purpose as well as the period for which the income is to be accumulated. Further to this, the money so accumulated to set part is to invested or deposited in forms or modes as specified in sub-section (5) of section 11 of the Act. Rule 17 of IT Rules prescribes the notice as mentioned in sub-section (2) of section 11 of the Act. Form No. 10 prescribes the format of a notice to be given to the prescribed authority conveying the intention and purposes for which the income is to be accumulated or set apart. The said format makes a reference to the resolution passed by the trustees to accumulate the surplus funds. In the said format space has also been provided for indicating purposes objects for which accumulation is sought. As per language used in sub-section (2) of section 11 of the Act, the purpose for which the income is being accumulated or set apart is to be specific. As per section 11(2) of the Income Tax Act, the trust must communicate in specific terms the purpose for which it want to accumulate or set apart the income. The concession as allowed in the Act is perhaps to meet a contingency where the fulfillment of a project requires heavy outlay and calls for accumulation of funds. The language of section which is clear and unambiguous and only be interpreted in the manner for which it is meant.

8. In this case the assessed has mentioned following six objects for which accumulation of funds was to be made :

(a) To start schools, colleges and other cultural and educational institutions for providing physical, mental and moral instructions and training;

(b) To set up libraries, reading rooms and places for meetings and get together or holding cultural discussions and discourses;

(c) To start hostels for boys and girls who are either studying at a school or college or are in service;

(d) To start health centre and to impart instructions in the art of health living;

(e) to establish hospitals, dispensaries, nursing homes, maternity centre, nature cure and yogic health homes in India;

(f) To construct Dharamasalas or sara is in and around hospitals in Delhi or New Delhi to accommodate poor patients and their attendants.

9. As it would appear from these objects and cannot be said to be concrete as having definiteness about that. There is vagueness in these as much as object No. (e) as above makes mention of establishing hospitals, dispensaries, nursing homes, maternity centre and also nature cure and jogging homes in India. Similarly, object No. (a) makes mention to start schools, colleges and other cultural and educational institutions for providing physical, mental and moral instructions and training. While examining distinction between purposes and objects, it is found that these are not definite and specific objects and each one of these six objects listed above has very many others in these which makes the objects to be vague and general. Section 11(1) itself provides for marginally setting apart and accumulation in excess of 25 per cent of the income of the trust. It is only such accumulation which can be taken for the broad purpose of the trust as a whole that the statute does not require specification of purpose. Such setting apart for any of the purposes of the trust is, however, a short-term accumulation not beyond the year next succeeding. It is sub-section (2) which provides for long-term accumulation of the income. Obviously, such long-term accumulation should be for a definite and concrete purpose or purposes. What the assessed has sought to be permitted to do here is to accumulate not for any determinate purpose or purposes but for the objects as enshrined in the trust deed in a blanket manner. Accumulation in such a global manner is definitely not in the contemplation of section 11(2) when it is construed in its setting. The assesses

contention that saving and accumulation of income for future application of same is for the purpose as listed from (a) to (f) as above (which means not only six but very many other purposes as these purposes have so many other purposes embodied in these). In the widest term so as to embrace so many of the objects which would render the requirement of specification of the purpose for accumulation in that sub-section redundant. The purposes to be specified cannot, under any circumstances, tread beyond the objects clause of the trust. The legislature could not have thought of the need of specification of the purpose if it did not have in mind the particularity of the purpose or purposes falling within the ambit clause of the trust deed when sub-section (2) of 11 requires specification of purpose, it does so having in mind a statement of some specific purpose or purposes out of the multiple purposes for which the trust stands. Were it not so, there would have been no mandate for such specification. For, a charitable trust, in no circumstances, can apply its income, whether current or accumulated, for any purposes other than the objects for which it stands. The very fact that the statute requires the purpose to be accumulation to be specified implies such a purpose to be concrete one, an itemised purpose or a purpose instrumental or ancillary to the implementation of its object or objects. The very requirement of specification of purpose predicates that the purpose must have an individuality. In my view, the provisions of sub-section (2) is a concession provision to enable a charitable trust to meet the contingency where the fulfillment of any project within its object or objects needs heavy outlay to call for accumulation to amass sufficient money to implement it. thereforee, specification of purpose as required by section 11(2) admits of no amount of vagueness about such purpose.

10. Similar type of situation arose before Calcutta High Court in the case of Director Income-tax (Extension) v. Trustees of Smghama Charitable Trust (supra) and it was opined as under :

'It was contended that one purpose is interlinked with the other and, thereforee, the mention of all the purposes does not make any difference and satisfies the requirement of sub-section (2) of section 11. We are unable to accept this contention having regard to the broad nature of the purpose being all the objects mentioned in the deed of the trust. Doubtless, it is not necessary that the assessed

has to mention only one specific object. There can be setting apart and accumulation of income for more objects than one but whatever the objects or purposes might be, the assessee must specify in the notice the concrete nature of the purposes for which the accumulation is being made. Plurality of the purposes for accumulation may not be precluded but it must depend on the exact and precise purposes for which the accumulation is intended for the statutory period of ten years. The generality of the objects of the trust cannot take the place of the specificity of the need for accumulation.

We are, therefore, of the view that the Tribunal was not right in allowing the benefit of the accumulation without first ascertaining whether the purpose has been precisely specified or not.'

11. Since Form No. 10 dated 21-10-1992, which is a notice of the assessing officer under section 11(2) of the Income Tax Act for accumulation, it has been stated as per resolution passed by trustees on 26-3-1992, the surplus of this year should be accumulated up to 31-3-2002, for carrying out above noted objects from (a) to (f) and after going through these objects it is clear that accumulation of surplus for this year is not for any specific purposes. therefore, action of assessing officer for not allowing such accumulation as provided under section 11(2) of the Income Tax Act is very much legal and Commissioner (Appeals) is also justified in confirming the action of assessing officer. While upholding the action of authorities below, I dismiss ground Nos. 1 and 2 of assessee's appeal.

6th May, 2001

Reference Under section 255(4) of the Income Tax Act, 1961

Since in the above captioned appeals we have difference of opinion on the following issue, the matter is submitted to the Honble President for reference to the Third Member :

'Whether on the facts and in the circumstances of the case, the assessee's claim for accumulation of income under section 11(2) of the Act is not admissible on the alleged ground that application in Form No. 10 for accumulation of income was not

for specific purpose.'

R.M. Mehta, V.P. (As Third Member)

28th June, 2001

On a difference of opinion between the Members constituting the Division Bench the following point was referred to me for my opinion under section 255(4) of the Income Tax Act, 1961 :

'Whether, on the facts and the circumstances of the case, the assesses claim for accumulation of income under section 11(2) of the Act is not admissible on the alleged ground that application in Form No. 10 for accumulation of income was not for specific purposes.'

2. The facts of the case are adverted to at length in the separate orders passed by the learned Members of the Division Bench but for purposes of disposing of the present reference I need to summarise these as follows :

3. The assessed-trust was started in 1961 by Late Sir Sobha Singh and it is a matter of record that the same has been accepted as a charitable trust in all these years up to assessment year 1991-92. As per the trust deed there are 19 objects. As per provisions of section 11(2) of the Act a charitable trust is entitled to accumulation of 75 per cent of its income subject to certain conditions and these being

(1) It has to give a notice in writing to the assessing officer in the prescribed manner specifying the purpose for which the income is being accumulated or set apart and the period for which the income is to be so accumulated or set apart not exceeding 10 years.

(2) The money so accumulated or set apart is to be invested/deposited in the forms of modes specified in sub-section (5) of section 11 of the Act.

4. In a meeting held on 26-3-1992, a resolution was passed to the effect that the funds of the trust available at the end of the financial year ending on 31-3-1992, were to be accumulated for a period of 10 years i.e. till 31-3-2002. In pursuance of

the said resolution of the assessed addressed a letter to the ADI (Exemption) in the form of a notice as prescribed in Form No, 10 intimating its decision for accumulation of funds. The purposes for which the accumulation had been sought were given in the said notice and it was evident that the assessed desired to accumulate funds for purposes of fulfilling the following six objects out of the 19 objects as listed in the trust deed :

- '1. To start schools, colleges and other cultural and educational institutions for providing physical, mental and moral instructions and training;
2. To set up libraries, reading rooms and places for meetings and get together for holding cultural discussions and discourses.,
3. To start hostels for boys and girls who are either studying at a school or college or are in service.,
4. To start health centre and to impart instructions in the art of healthy living;
5. To establish hospitals, dispensaries, nursing homes, maternity centre, nature cure and yogic health homes in India;
6. To construct Dharamshalas or sarais in and around hospitals in Delhi or New Delhi to accommodate poor patients and their attendants.

5. The assessing officer however, held that the accumulation of surplus funds was not for specific purposes and he proceeded to deny the necessary benefits to the assessed. On further appeals the Commissioner (Appeals) agreed with the view taken by the assessing officer and in doing so he relied on the judgment of the Honble Calcutta High Court in the case of Director of Income-tax (Exemption) v. Trustees of Singhanian Charitable Trust : [1993]199ITR819(Cal) . According to the Commissioner (Appeals) the assessed was to list out specific purposes for accumulating the funds and listing of the objects of the trust could not be treated in the same category.

6. Being aggrieved with the order passed by the Commissioner (Appeals), the assessed came up in appeal before the Tribunal. At this stage, the decision of the

Honble Calcutta High Court (supra) relied upon by the Commissioner (Appeals) was sought to be distinguished primarily on the ground that in the aforesaid case all the objects of the trust deed were listed in the notice given in Form No. 10 whereas in the case of the assessed only six were listed out of a total of 19. The further submission was to the effect that it was not a case of the revenue that more than one object could not be specified in the notice to be given in Form No. 10 and this was sought to be supported by the observations in the same judgment and which were to the effect :

'Plurality of the purposes for accumulation may not be precluded but it must depend on the exact and precise purposes for which the accumulation is intended for the statutory period for 10 years. The generality of the objects of the trust cannot take the place of the specificity of the need for accumulation.'

7. The plea before the Tribunal was that what was required by law was that the objects listed in Form No. 10 were to be specific and not vague and general. In support of the various arguments reliance was placed on the following decisions of the Tribunals :

(i) Income Tax Officer v. CSI Technical & Vocational Training Trust (1986) 24 ITJ (Mad) 266

(ii) Indian National Theatre Trust v. Income Tax Officer -and

(iii) Jaipur Stock Exchange Ltd. v. Income Tax Officer (1995) 53 TTJ Qp 667 : (1995) 54 (Jp) 589 ,

8. Without prejudice to the aforesaid arguments it was submitted that the judgment of the Honble, Calcutta High Court was not binding on the Delhi Bench of the Tribunal it not being the jurisdictional High Court. Reliance for the aforesaid submission was placed on the judgment of the Honble Karnataka High Court in the case of Patil Vijay Kumar & Ors. v. Union of India & Anr. (1985) 48 CTR (Kar) 41 : (1985) 151 ITR 49 as also the following decisions :

(i) CIT v. Ved Prakash ,.

(ii) Consolidated Pneumatic Tool Co. (India) Ltd. v. CIT : [1994]209ITR277(Bom) ,

(iii) Geoffrey Manners & Co. Ltd. v. CIT : [1996]221ITR695(Bom) ,-and

(vi) Gedore Tools (India) (P) Ltd, v. L4C .

9. On behalf of the revenue , the learned departmental Representative supported the order of the Commissioner (Appeals) contending that the accumulation of surplus funds should be examined in the background of the scheme under which the provision in question was brought on the statute. According to the learned departmental Representative there was no difference between the facts as prevailing in the case of Singhania Charitable Trust (supra) and those in the case of the assessed. As regards the plea raised on behalf of the assessed about the judgment of the Honble Calcutta High Court (supra) not being one of the jurisdictional High Court reliance was placed on the decision of the Ahmedabad Bench of the Tribunal in the case of Nandlal H. Ramani v. Income Tax Officer wherein a view had been taken that judgment of the High Court wherever located was to be followed as against the decision of any other Bench of the Tribunal.

10. The learned A.M. who passed the order discussed at length the scheme of the Act with reference to the income applied for charitable or religious purposes opining at the outset that income so applied was not taxable and thereafter proceeded to discuss the provisions of section 11(1)(a) as read with section 11(2) of the Act whereby accumulation up to a given extent was permissible. It was observed that as per section 11(1)(a) or (b) accumulation up to 25 per cent of the income was permitted whereas under section 11(2), it was permitted up to 75 per cent the former without any condition and that also for a short period not beyond the year next succeeding and in the case of the latter up to a maximum period of 10 years. It was noted by the learned A.M. that under section 11(2) the charitable entity had to specify both the periods as well as the purpose for which the income was to be accumulated and further the money so accumulated or set apart was to be invested/deposited in the forms or modes as specified in sub-section (5) of section 11 of the Act. Thereafter a reference was made to r. 17 of the IT Rules prescribing the notice to be given for accumulation and it was to be in Form No. 10. It was observed that the format of the notice made a reference to the

resolution passed by the trustees to accumulate the surplus funds and necessary space had been provided for indicating the purposes/objects for which accumulation was sought. In considering the aforesaid facts, the learned A.M. concluded that setting apart of the income could be for more than one purpose bit vis-a-vis the language used in clause (a) of sub-section (2) of section 11 the purpose for which the income was being accumulated or set apart had to be specific. According to the learned (AM) the expression Unspecified as commonly understood was something which was contrary to what was 'general' and 'vague'. A reference was also made to the use of the term in the Random House Dictionary of the English language (the Unabridged Edition). The learned A.M. was of the view that the purpose had to be definite and precise and the expression 'specific' had to be read in the context and the text in which it had been used. It was observed that since the term had been used in the context of purpose, the same had to be definite and concrete in distinction to a general or vague purpose but, at the same time, it could not be for all the purposes as given in the trust deed which in turn would make the provisions of sub-section (2) of section 11 as meaningless.

11. The learned A.M. also drew a distinction between the provision of S. 11(1)(a) and those of section 11(2) in the sense that the case of the former, the accumulation could be for purposes which were not specific whereas in respect of the latter the trust was to communicate in specific terms, the purpose or purposes for which it wanted to accumulate or set apart its income. The learned A.M. was of the view that this concession was allowed probably to meet a contingency where the fulfillment of a project required a heavy outlay and call for accumulation of funds as observed in the case of Singhanian Charitable Trust (supra). It was further observed that the language of the section was clear and unambiguous and the same could not be interpreted in any other manner than what had been conveyed in the case of Singhanian Charitable Trust (supra).

12. On examining the facts of the assessee's case with reference to the legal propositions aforesaid, the learned A.M. observed that in Form No. 10 the assessee had mentioned those 6 objects for which the funds were being accumulated as against a total of 19 objects as mentioned in the trust deed. According to her, this clearly showed that the purposes mentioned were specific

and concrete since they pertained to the setting up of educational institutions, library, constructing hostels for boys and girls, health centres, hospitals and dispensaries, etc. and the construction of Dharamshalas in or around hospitals to accommodate poor patients and their attendants. It was the observation that these were concrete proposals having definiteness about them and these were not imprecise and vague in any manner. It was also the view of the learned A.M. that since accumulation of funds was sought for 10 years it stood to reason that the assessed specified more than one object for application of funds as it had to keep its options open in case one specific object was not achieved for some unforeseen reasons.

13. A further distinction was drawn between the terms 'purpose' and 'object' observing that these were not defined and in common parlance the expressions were used interchangeably and, therefore, it was the natural and ordinary meaning which was to be given to the words. The view, in other words, was that the user of expression 'object' in the letter of the assessed would not by itself mean that the purposes for which accumulation was sought were not definite.

14. As regards the alternative plea of the assessed about the decision of the High Court other than that of the jurisdictional High Court being not binding on the Tribunal the learned A.M. discussed the matter in para 8 of her order to ultimately come to the conclusion that the judgment of a High Court other than that of the jurisdictional High Court had to be considered. In the final analysis, she held that the assessed was entitled to the approval under section 11(2) of the Act for accumulation of funds.

15. The learned J.M., however, did not subscribe to the view expressed by the learned A.M. and held considering the same set of facts as also the arguments advanced by both the parties that the objects set out in Form No. 10 seeking accumulation of funds were general and not concrete and having definiteness about them. According to him, there was vagueness in the objects since each of them listed many others and which by itself made the objects as vague and general. The learned J.M. drew a distinction between the two sets of provisions which provided accumulation of funds up to 25 per cent on a short-term basis

where specifics were not relevant and those provisions which required specifics to be stated and where the accumulation could be up to 75 per cent and the period being up to 10 years. The learned J.M. was of the view that what the assessed had sought was accumulation in a blanket manner which was not in contemplation of section 11(2).

16. The further observations were to the effect that the trust could not go outside the ambit of the objects stated in the trust deed but where the purposes for which accumulation had been sought were of a multiple nature then these could not be treated as defining specific objects for which accumulation had been asked for. In coming to the aforesaid conclusions and in forming an opinion contrary to the one expressed by the learned AM, the learned J.M. relied heavily on the same Judgment of the Honble Calcutta High Court i.e. Singhania Charitable Trust (supra) which had also been relied upon by the Commissioner (Appeals) and thereafter by the learned A.M. The following observations at p 823 of the report were referred to, to ultimately come to the conclusion that the Commissioner (Appeals) was justified in confirming the action of the assessing officer in not allowing the assessed to accumulate the funds :

'It was contended that one purpose is interlinked with the other and, therefore, the mention of all the purposes does not make any difference and satisfies the requirement of sub.s. (2) of section 11. We are unable to accept this contention having regard to the broad nature of the purpose being all the objects mentioned in the deed of the trust. Doubtless, it is not necessary that the assessed has to mention only one specific object. There can be setting apart and accumulation of income for more objects than one but whatever the objects or purposes might be, the assessed must specify in the notice the concrete nature of the purposes for which the accumulation is being made. Plurality of the purposes for accumulation may not be precluded but it must depend on the exact and precise purposes for which the accumulation is intended for the statutory period of 10 years. The generality of the objects of the trust cannot take the place of the specificity of the need for accumulation.

17. Before me, the learned counsel for the appellant reiterated the arguments advanced before the Division Bench referring at length to the order passed by the learned A.M. which had taken the view that accumulation was to be permitted. It was reiterated by the learned counsel that the judgment of the Honble Calcutta High Court (supra) was distinguishable in the sense that in that case all the objects of the trust were mentioned in the application seeking accumulation whereas in the assessee's case only six out of 19 objects had been mentioned. On a query from the Bench, the learned counsel stated that the trust had existed in the same form during the last 30 years or so and there had been no change at any point of time in the object of the trust as set out in the said trust deed appended at p 60 of the paper book. He also invited my attention to the copy of Form No. 10 appended at p 61. As regards the fulfilling of the objects of the trust for which accumulation had been sought, the learned counsel stated that the trust was in dialogue with the Delhi Government for acquiring land for setting up Dharamshalas in and around the hospitals and which was one of the objects set out in the application. The learned counsel vehemently supported the order of the learned A.M. contending that the six objects set out in the application were precise and specific and these could be classified broadly under two heads of charity i.e. education and medical aid. The further submission of the learned counsel was to the effect that in the past accumulation of funds on identical facts, had been allowed by the Commissioner (Appeals) and confirmed by the Tribunal in the assessment year 1983-84 by rejecting the appeal of the department. He referred to the copies of the orders placed at pp 52 and 53 of the compilation. He also placed reliance on the various judgments of the Tribunal which had been adverted to by the learned A.M. in accepting the assessee's stand. A reference was also made at this stage to the judgment of the Calcutta High Court in the case of Singhanian Charitable Trust (supra) contending that even the Honble High Court had not rejected the assessee's claim in toto since no answer was given by their Lordships to question No. 1 which was as follows :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that there is nothing illegal on the part of the assessee in giving notice to the Income Tax Officer in Form No. 10 listing all its objects for the purpose of accumulation of income as provided in section 11(2) of the Income Tax

Act, 1961, which requires specification of the purposes?'

18. It was pointed out by the learned counsel that the High Court had remanded the matter back to the Tribunal allowing liberty to the assessed to adduce fresh evidence whether in the form of any resolution or otherwise showing the specific purpose for which the trust required the accumulation of the income and if such evidence was placed before the Tribunal then the Tribunal would consider whether the assessed was entitled to accumulate its funds vis-a-vis section 11(2) of the Income Tax Act, 1961.

19. The last argument of the learned counsel was that this being the case of a charitable trust which was rendering yeoman service for the last three to four decades, the claim could not be rejected on technical grounds more so, when subsequent events showed that the assessed had pursued the matter and negotiations were on with Government authorities for acquiring land for setting up Dharamshalas,

20. As against the aforesaid submissions of the learned counsel for the assessed, the learned departmental Representative vehemently supported the order passed by the learned J.M. placing reliance on the judgment of the Honble Calcutta High Court in the case of Singhanian Charitable Trust (supra). According to the learned departmental Representative the objects for which the accumulation were sought, were not specific and these were vague and general in the sense that the type of college or other educational institution or for that matter the type of hospital or any other medical institution which were to be set up, were not at all specified. It was the view of the learned departmental Representative that the exact type of college and the courses which were to be conducted in the said college or for that matter the medical institution, say a hospital which was to be set up and what was the type of treatment which was to be provided were required to be indicated. In concluding, it was urged that the view taken by the learned J.M. be approved.

21. In a short reply, the learned counsel for the appellant stated that one could not be specific in the sense that was being urged on behalf of the revenue since a long period of 10 years had been given for accumulating the funds and it was not possible or feasible or practicable to indicate on day one as to what type of

institution whether for imparting education or for treating patients was to be set up. In reply to another submission of the learned departmental Representative that the assessed had not done anything for the last nine years or so and it was only recently that it had entered into negotiations with the Government authorities for acquiring land, the learned counsel for the assessed stated that this was not relevant for deciding the issue in question since the funds if not utilised during the period for which accumulation had been sought could be subjected to the relevant provisions of the Income Tax Act and consequences thereto would follow.

22. I have examined the rival contentions and have also perused minutely the orders passed by the learned Members constituting the Division Bench. Both the learned Members have set out at length the facts of the case as also the scheme of the Act vis-a-vis the point under consideration, There is definitely a distinction between the two relevant provisions of the Act-one allowing accumulation up to 25 per cent of the income where the objects do not have to be specific and the other allowing accumulation up to 75 per cent of the income and the period of accumulation being as long as 10 years but setting out specific objects, In the present case, the assessed while applying for accumulation in Form No. 10 mentioned six objects out of 19 and a minute perusal of these shows with reference to p 7 of the order of the learned A.M. that the first three broadly pertained to education since they mention about setting up of schools, colleges, libraries, reading rooms and hostels for boys and girls studying in school and colleges, etc. The next three objects i.e. 4, 5 and 6 are in the field of medical education and medical aid since these pertain to the setting up of health centres, nursing homes, maternity centres as also construction of Dharamshalas or Sarais in or around hospitals in Delhi or New Delhi to accommodate poor patients and their attendants. The setting out of six objects in the application for accumulation indicates due application of mind on the part of the trustees since they decided to confine themselves to two important aspects of charitable activities i.e. education and medical aid whereas in the trust deed there were 19 objects, some quite unconnected with the two categories in which the six objects can be categorised. In the judgment of the Calcutta High Court (supra) heavily relied upon by the revenue all the objects of the trust were mentioned in the application in Form No. 10 and their Lordships considering this aspect of the matter took the view that

there was no preciseness or definiteness or specifics about the objects and these were general and vague. Their Lordships, however, did not rule out the plurality of the purposes for which accumulation was intended. In the present case, the learned A.M. has rightly held after considering the provisions of law, facts of the case, the decisions cited, and lastly the judgment of the Honble Calcutta High Court itself in the case of Singhanian Charitable Trust (supra) that the assessed was entitled to accumulate the funds as provided under section 11(2) of the Act since the application in Form No. 10 did mention specific objects/purposes for which the accumulation had been requested for. The learned counsel for the appellant, in my opinion, has rightly contended that it is not possible to specify the type of educational institution or medical institution which would be set up during the period of 10 years following and the assessed would be quite justified in making up its mind during the said long period and deciding at whatever stage it was feasible or practicable to work out the modalities vis--vis the type of institution which it wanted to set up and the nature of charitable activities which it wanted to engage itself in. It has been noted by both the learned Members of the Division Bench and on which there is no difference that the concession was provided by the Act :

'Perhaps to meet the contingency where the fulfillment of a project requires heavy outlay and calls for accumulation of funds as observed in the case of Singhanian Charitable Trust. '

23. I would like to add further to this that a charitable institution which wants to accumulate its income for a long period of 10 years to carry out the charitable objects as set out in the trust deed does require time to think, time to plan and time to garner its resources, etc. to fulfill those objects for which it has sought accumulation of funds and the legislature in its wisdom has allowed a long period of 10 years and I, therefore, really cannot appreciate the arguments of the learned departmental Representative on behalf of the revenue that even when the application for accumulation is filed the applicant trust must mention the type of institution medical or educational which it will set up as also the type of education or medical treatment which it will impart. This, in my opinion, was never the intention of the law-makers when the provision in the form of a concession was

introduced whereby a charitable institution need not pay any tax on its income earned for a good period of 10 years provided it carried out charitable activities with a view to fulfilling the specific objects mentioned in the application seeking accumulation.

24. In the final analysis, I am of the view that the decision of the Honble Calcutta High Court (supra) relied upon by the department does not advance the revenue s case on the facts of the present case but the same in turn supports the viewpoint canvassed on behalf of the assessed. No other decision was relied upon by the learned departmental Representative during the course of the hearing of the present reference as against which the learned counsel for the assessed reiterated reliance on certain decisions of the Tribunal which do advance the viewpoint canvassed. The current negotiations with the Delhi Government for acquiring land to set up Dharamshalas although a subsequent event does come in the period of 10 years for which accumulation was sought and even going by the argument of the learned departmental Representative that the assessed has woken up towards the fag end of the decade stipulated my view is that this is not strictly relevant to the point at issue and if there is a violation of law on the part of the assessed, the same can be taken care of by other provisions of the Income Tax Act, 1961. In conclusion, I agree with the view expressed by the learned A.M.

25. The matter may now be placed before the Division Bench with a view of passing an order in conformity with the majority opinion.

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