

The Cotton Textiles Export Vs. the Ito (Exemptions), Range 1(1)

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Oct-11-2007

Judge : K Singhal, V Gupta

Appellant : The Cotton Textiles Export

Respondent : The Ito (Exemptions), Range 1(1)

Judgement :

1. These are the cross appeals filed by the assessee as well as the Revenue, pertaining to assessment year 2001-02. Both the appeals have been heard together and are being disposed off by the common order for the sake of convenience.

2. The first and main issue arising from the appeal of the assessee is whether the Assessing Officer was justified in denying the claim of the assessee for accumulation of its income Under Section 11(2) of Income-tax Act, 1961 (the Act).

3. Briefly stated, the facts are that the assessee is a body established as a non-profit making organisation for the promotion and regulation of export of cotton textiles and incorporated as a company Under Section 25 of the Companies Act. The activities of the assessee, admittedly, are entitled to the benefit of Section 11 of the Act. It filed its income-tax return for the year under consideration on 24th October, 2001, declaring nil income after claiming exemption Under Section 11 of the Act. The return was accompanied by the audit report in Form No. 10B, audited accounts and computation of income. In the course of the assessment

proceedings, it was found by the Assessing Officer that the total receipts including entrance fees amounted to Rs. 11,68,05,181/- while the expenditure towards the charitable objects amounted to Rs. 7,95,10,244/-. In view of the same, he was of the view that the assessee could not apply 75% of income towards charitable purposes. However, the assessee sought the accumulation of income Under Section 11(2) of the Act. The same was denied by the Assessing Officer on the ground that statutory Form No. 10 and copy of Resolution in this regard had not been filed by the assessee along with the return of income or during the course of the assessment proceedings.

Consequently, accumulation was allowed only to the extent of Rs. 2,92,01,295/- being 25% of the total receipts and thus the total income was computed at Rs. 1,04,78,949/-.

4. The matter was carried in appeal before the CIT(A), before whom it was submitted that copy of the Resolution along with the prescribed Form No. 10 had been filed along with the return of income for the assessment year 1992-93 and therein it has been clearly specified that the appellant could accumulate such income as would be available at the previous year ending on 31.3.1992 and for 9 subsequent previous years ending on 31.3.2001. According to the assessee it constitutes sufficient compliance with the relevant procedure prescribed and there was no need to file Form No. 10 for each and every assessment year.

5. However, the CIT(A) was not satisfied with the submissions made on behalf of the assessee. According to him, Section 11(2) comes into operation only when there is short application of income towards object of a charitable or religious trust. Therefore, unless the income of every assessment year is worked out and the said income is not applied to the object of the appellant trust to the prescribed extent, Section 11(2) cannot come into play. Consequently, as per Rule 17 of the Income-tax Rules, 1962, Form No. 10 has to be filed before the expiry of the time allowed for filing the return Under Section 139. Therefore, the intention of accumulating income Under Section 11(2) has to be communicated to the Department every year and, therefore, one time filing of Form No. 10 will not automatically entitle the assessee to claim the said benefit for succeeding assessment years. The CIT(A)

has also examined the contents of Form No. 10 filed by the assessee along with the return of income for the assessment year 1992-93. According to him, neither the amount of income nor the percentage of income to be accumulated was mentioned. Thus the Form No. 10 did not contain the complete information. Accordingly, Form No. 10 filed in assessment year 1992-93 was defective. For the reasons mentioned above, the CIT(A) confirmed the order of the Assessing Officer denying the accumulation Under Section 11(2) of the Act. Aggrieved by the same, the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee Mr. Mistri has contended before us that there is no requirement that notice for accumulation of income is required to be submitted to the Assessing Officer every year. He drew out attention to the relevant provisions of Section 11(2) as well as the contents of Form No. 10 in support of his contention. It was pointed out by him that in Form No. 10 the notice can be given not only for the relevant previous year but also in respect of subsequent previous years. If the filing of Form No. 10 was mandatory for each and every previous year then there was no need to include the subsequent previous year in the notice in Form No. 10 itself. According to him, the provisions of Section 11(2) are beneficial provisions and, therefore, the same should be construed reasonably and liberally so as to achieve the object behind the Legislature. The Department cannot be said to be prejudiced by giving notice in advance. It was also submitted by him that accumulation is subject to the conditions prescribed in Section 11(5) and in any case if the assessee fails to comply with the conditions and then its income would be chargeable to tax. On the other hand, the learned DR has strongly supported the order of the CIT(A) by contending that Section 11(2) only refers to the income of the current previous year, 75% of which is required to be applied for charitable purposes. Unless the income is determined and the application of such income is ascertained, the provisions of Section 11(2) cannot be applied. Consequently, the provisions of accumulation would apply to the current previous year only. Therefore, in the absence of filing of Form No. 10 along with the Resolution would disentitle the assessee to the benefits of accumulation of Under Section 11(2) of the Act.

7. Rival submissions of the parties have been considered carefully. The question for our consideration is whether the notice in Form No. 10 can be given by the assessee in respect of subsequent years also in order to claim accumulation of income under Sub-section (2) of Section 11 of the Act. In order to appreciate the controversy between the parties, it would be appropriate to refer to the relevant provisions i.e., Sub-section (2) of Section 11, Rule 17 of Income-tax Rules, as well as Form No. 10 prescribed under Rule 17. The same are being reproduced below:

[(2) [Where seventy-five per cent of the income referred to in Clause (a) or Clause (b) of Sub-section (1) read with the Explanation to that sub-section is 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 [Assessing 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)]] 17. The notice to be given to the Assessing Officer or the prescribed authority under Sub-section (2) of Section 11 or under the said provision as applicable under Clause (21) or Clause (23) of Section 10 shall be in Form No. 10 and shall be delivered before the expiry of the time allowed under Sub-section (1) of Section 139, for furnishing the return of income.] Notice to the Assessing Officer/Prescribed Authority under Section 11(2) of the Income-tax Act, 1961 I...on behalf of (name of...the trust/institution/association) hereby bring to your notice that it has been decided by a resolution passed by the trustees/governing body, by whatever name called, on...(copy enclosed) that, out of the income of the trust/institution/ association for the previous year(s) relevant to the Assessment Year 20... 20... and subsequent previous...year(s), an amount of Rs...per cent of the income of the trust/institution/association/such sum as is available at the end of the previous year(s) should be accumulated or set apart till the previous year(s) ending.... In order to enable the trustees/governing body by

whatever name called, to accumulate sufficient funds for carrying out the following purposes of the trust/association/institution: 2. Before expiry of six months commencing from the end of each previous year, the amount so accumulated or set apart has been/will be invested or deposited in any one or more of the forms or modes specified in Sub-section (5) of Section 11.

trust/institution/association along with details of investment (including deposits) and utilization, if any, of the money so accumulated or set apart will be furnished to you before the expiry of six months commencing from the end of each relevant previous year.

4. It is requested that in view of our complying with the conditions laid down in Section 11(2) of the Income-tax Act, 1961, the benefit of that section may be given in the assessments of the trust/exempting the income in respect of the trust/institution/association in respect of the incomes accumulated or set apart as mentioned above.

8. The perusal of Section 11(2) reveals that in order to claim exemption Under Section 11(1), the assessee must apply 75% of its income towards the charitable purposes or religious purposes, as the case may be. In case, where assessee is unable to apply 75% of such income to the charitable or religious purposes but is accumulated or set apart either in whole or in part for application such purposes then such income so accumulated or set apart is not to be included in the total income of the previous year. However, this benefit is available if two conditions are satisfied viz., (i) that a notice in writing is given to the Assessing Officer in the prescribed manner, and (ii) the money so accumulated or set apart is invested or deposited as per the requirement of Sub-section (5) of Section 11. At this stage it may be mentioned that accumulation can be made only for a period of 10 years.

9. If the above provisions are read in isolation then one can reasonably interpret in the manner in which the CIT(A) has interpreted the provisions. However, in our opinion, the entire scheme of the Act read with the Rules made thereunder and the contents of the prescribed form should be read as a whole and in a harmonious manner. If two interpretations are possible, then the one which achieves the object should be preferred as against the interpretation which frustrates the intent of the

Legislature. No doubt, the assessee can file notice in Form No. 10 in respect of each year along with the return of income whenever the assessee is unable to apply its income to the extent of 75% to the charitable or religious purposes. But there is nothing in the provisions which prohibits the assessee to file the notice in Form No. 10 for more than one year. There may be cases where the assessee may intend to apply its income towards construction of huge building to be used for the charitable or religious purposes and considering the quantum of expenditure, the income of one year may not be sufficient.

In such an event, the assessee may be required to accumulate its income for various years for future application towards construction of such building. In such an event, the Department cannot be said to be prejudiced if the assessee gives a notice in writing that it would accumulate or set apart the income relating to the current previous year, as well as the subsequent previous years. The rule making authority must have visualised such situation and, therefore, in order to avoid the multiplicity of the applications, it has been provided in Form No. 10 itself that an assessee can give notice in writing not only for the current year but also for the subsequent previous years. The emphasis has been supplied by us by underlining the relevant portion of Form No. 10. Form No. 10 clearly provides that notice can be given not only for the current previous year but also for subsequent previous years. If the contents of Form No. 10 are to be read along with the provisions of Section 11(2) then, in our humble opinion, the only conclusion which can be arrived at is that the assessee can give notice in writing for more than one year and the claim of the assessee cannot be denied merely on the ground that in the subsequent year no further notice is given by the assessee. Once the rules are framed and form to be submitted is prescribed for the benefit of the assessee, then the tax authorities cannot be permitted to contend that the rules are contrary to the provisions of the Act. The rigour of the provisions of the Act can always be relaxed in favour the assessee either by Board circular or by enacting suitable rules. Therefore, if the Form No. 10 prescribed under the rules permit the assessee to give notice for subsequent year or years then claim of assessee cannot be denied ignoring the contents of Form No. 10.

10. In the present case there is no dispute that Form No. 10 along with the copy of the Resolution was filed along with the return of income pertaining to assessment year 1992-93. We have also gone through the Form No. 10 filed by the assessee along with the return for assessment year 1992-93. The perusal of the same clearly shows that notice was given in respect of 10 previous years commencing from assessment year 1992-93 and the income was sought to be accumulated for the period ending 31st March, 2001. Further the objects for which the accumulation was sought have already been specified in the said form which are mentioned below: (i) acquiring and/or constructing building for the purpose of the Council.

(ii) setting up of Research facilities for carrying out research activities, to promote, support, maintain and increase the export of cloth, yarn and madeup and/or to contribute sums to other organisation for setting up research facilities having objects similar to that of the Council.

(iii) administrating the affairs of the Members of the Council and promoting and exports of cloth, yarn and madeup of all kinds.

11. In our opinion, all the conditions set out in Section 11(2) have been complied with by the assessee. Consequently, the lower authorities were not justified in denying the benefit of accumulation for the year under consideration. However, the Assessing Officer would be at liberty to examine whether the provisions of Section 11(5) have been complied with by the assessee or not. If the income so accumulated is ultimately either found to be not applied to charitable purposes or not invested as per Section 11(5), then the same may be included in the total income of the assessee in accordance with the provisions of Sub-section (3) of Section 11. Subject to these observations, the order of the CIT(A) is set aside and consequently, the Assessing Officer is directed to allow the accumulation Under Section 11(2) of the Act.

12. The next issue arising in the appeal of the assessee relates to disallowance of 3% of total expenses. The assessee has claimed expenditure on the charitable objects to the tune of Rs. 7,95,10,244/- However, the Assessing Officer on verification of the details was of the view that entire expenditure could not be said

to have been incurred wholly and exclusively for charitable objects. Accordingly 3% of the total expenses was disallowed on ad-hoc basis. The CIT(A) following his earlier order, confirmed the disallowance. Still aggrieved, the assessee is in appeal before the Tribunal. After hearing both the parties, we find that this issue is covered by the order of the Tribunal dated 4th April, 2007, in assessee's own case for the assessment year 2000-01 wherein the matter has been remitted to the file of the Assessing Officer for fresh adjudication. Therefore, following the same, the order of the CIT(A) is set aside on this issue and consequently, the matter is remitted to the file of the Assessing Officer for fresh adjudication in the light of the order of the Tribunal for assessment year 2000-01.

13. Now we take up the Revenue's appeal. The only issue arising in this appeal is whether the entrance fees received by the assessee can be excluded from the income of the assessee. The Assessing Officer was of the view that the entrance fee could not be considered as voluntary contribution with specific direction to form part of the corpus.

Accordingly, the same was included in the total income of the assessee.

The CIT(A) following the decision of the Tribunal in assessment year 1992-93 held that the entrance fees could not be treated as income of the assessee. Aggrieved by the same, the Revenue is in appeal before the Tribunal. After hearing both the parties, we do not find any merit in the appeal of the Revenue, since the decision of the CIT(A) is in accordance with the order of the Tribunal. The order of the CIT(A) is, therefore, upheld on this issue.

In the result, appeal of the assessee is allowed protanto. The appeal of the Revenue is dismissed.

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