**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

* * *

ITA No.259 of 2019 (O&M)
Date of Decision : 20/3/2020

Maharaja Ranjit Singh War Museum Society, Ludhiana

Appellant

Versus

Commissioner of Income Tax, Jalandhar

Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Deepak Agrawal, Advocate
for the appellant.

* * *

AVNEESH JHINGAN, J.

[1] Appeal under section 260A of the Income Tax Act, 1961 [for brevity 'the Act'] is filed against the order dated 28.08.2018 of the Income Tax Appellate Tribunal, Amritsar [hereinafter referred to as 'the Tribunal'] claiming following substantiation questions of law :-

> *"a. Whether the Ld. ITAT was justified in upholding that the amount give to PSWHMMS is the income of the appellant-society in terms of section 11(3)(d) by holding that the status of the recipient-society is immaterial for the purposes of application of section 11(3)(d), when the departmental circular itself differentiate between the societies as enumerated in section 11(3)(d) and other societies?*
>
> *b. Whether in the present circumstances the Ld. ITAT was justified in rejecting the revision of form No.10 when the calculations have been changed by the authorities below?*

c. Whether in the present facts and circumstances of the case the order of the Ld. ITAT is perverse?"

[2] The relevant facts are that appellant is a Society working under the Government of Punjab, same being principal donor also. The Society is running the Museum by the name of Maharaja Ranjit Singh War Museum and was registered under section 12AA of the Act on 06.08.1998. The object of the Society is to create sense of patriotism and nationality among the citizens; to preserve and display war history of Punjab. For the assessment year 2014-15, the annual receipts of the Society were ₹67,65,299/- and assessee had accumulated sum of ₹1,08,63,246/-. During the relevant year, Rupees one crore was given to Punjab State War Heroes Memorial & Museum Society, Amritsar [for brevity 'PSWHMMS'] on directions of the Government of Punjab. The donee-Society was not registered under section 12AA at the relevant time though subsequently registered. The income tax return was selected for scrutiny, assessment was framed on 19.12.2016. Apart from other additions the amount transferred to PSWHMMS was considered as income of the appellant, holding that there was violation of section 11(2) and 11(3)(d) of the Act. The first appeal filed was partly allowed on 07.07.2017, however the impugned addition was upheld. In further appeal, the Tribunal partly allowed the appeal on 28.08.2018 but the addition in question was sustained.

[3] Though three substantial questions of law have been claimed, the issue involved and pressed is:-

"Whether the impugned transfer to PSWHMMS is deemed income of the Society in the year of transfer or not?"

[4] The relevant portion of section 11 of the Act is reproduced below:-

> ***Income from property held for charitable or religious purposes.***
>
> ***11.*** *(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—*
>
> *(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;*
>
> *(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;*
>
> *(c) income derived from property held under trust—*
>
> *(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and*
>
> *(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:*

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Explanation 1.—For the purposes of clauses (a) and (b),—

(1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason,

then—

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised before the expiry of the time

allowed under sub-section (1) of section 139 for furnishing the return of income, in such form and manner as may be prescribed) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.

Explanation 2.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.

[Explanation 3.—For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".]

(1A) For the purposes of sub-section (1),—

(a) where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the

transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;

(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

(b) where a capital asset, being property held under trust in part only for such purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the appropriate fraction of the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:—

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of the appropriate fraction of such capital gain;

(ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of the transferred asset.

Explanation.—In this sub-section,—

(i) "appropriate fraction" means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes;

(ii) "cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes

of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in sub-clause (b) of clause (1) of section 55;

(iii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

(1B) Where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof—

(a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received; or

(b) in the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived.

(2) Where eighty-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 furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating 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 five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);

(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter. ***(Inserted by the Finance Act, 2002 w.e.f. 01.04.2003)***

(3) Any income referred to in sub-section (2) which—

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5), or

(c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,

(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, ***(Inserted by the Finance Act, 2002 w.e.f. 01.04.2003)***

shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(3A) 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 purpose 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):

Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of section 11 ***(Inserted by the Finance Act, 2002 w.e.f. 01.04.2003)***

Provided further that in case the trust or institution, which has invested or deposited its income in accordance with the provisions of clause (b) of sub-section (2), is dissolved, the Assessing Officer may allow application of such income for the purposes referred to in clause (d) of sub-section (3) in the year in which such trust or institution was dissolved.

[5] The contention raised by learned counsel for the appellant is two-fold:-

- Firstly, that from explanation of section 11(2) and clause (d) in sub-section (3) to Section 11, it is evident that appellant is entitled to pay or credit the accumulated amount to any Trust or institution not specified in the said provisions;
- Secondly, that the aims and objects of the donee-Society and donor-Society were similar hence there is no violation of conditions prescribed under section 11 and amount cannot be treated as income of the appellant-Society during the relevant year, as same was applied through donee.

[6] Before dealing with the issue we take over all view of provisions of section 11(1) to 11(3A) of the Act, relevant for the present appeal. Chapter III of the Act deals with the '*income which do not form*

part of the total income'. Section 11 is for '*Income from property held for charitable or religious purposes'. S*ub-section (1) provides that subject to section 60 to 63 of the Act, incomes mentioned in sub clauses (a) to (d) received in previous year are not to be included in total income. Sub-clause (a) provides that if income derived from the property held under the Trust for charitable or religious purpose is applied for the purpose in India and amount accumulated or set apart for application for the purpose in India is not exceeding 15%; sub-clause (b) deals with the Trust created before the commencement of the Act; sub-clause (c) is with regard to promotion of international welfare in which India is interested and sub-clause (d) includes voluntary contribution given with the specific direction to form part of corpus. The explanations to sub-section (1) are not relevant for the present case. Sub-section (1A) deals with the consideration received from transfer of property held under the Trust; sub-section (1B) is related to income for which option was exercised under clause (2) of explanation to sub-section (1), same is not applied for charitable and religious purpose within the specified time, same shall be deemed to be income of the person in receipt thereof.

[7] Sub-section (2) provides for accumulation out of 85% of the income referred to in sub-section (1) for application for a specified purpose in India. Clauses (a) to (c) provide the conditions. As per clause (a), statement in a prescribed form is to be furnished to the assessing officer mentioning the purpose and the period for which income is being accumulated or set apart. The period shall not exceed five years {earlier it was ten years and was substituted with five years

by the Finance Act, 2015 w.e.f. 01.04.2016; clause (b) provides that the money so accumulated or set apart is to be deposited or invested as per sub-section (5); and clause (c) stipulates the time for filing statement under clause (a). The proviso to sub-section (2) excludes the period of injunction of Court for computing period of accumulation. The explanation to sub section (2) was added by the Finance Act, 2002 w.e.f. 01.04.2003 which states that the amount paid or credited out of the accumulated or set apart amount to a Trust or institution registered under section 12AA or to any fund or any Institution or Trust or any University or Educational Institution or Hospital or Medical Institution referred to in sub clause (iv), (v), (vi) and (via) of clause (23C) of section 10 shall not be considered as application of the income for charitable or religious purposes.

[8] Sub-section (3) provide, in clauses (a) to (d), situations when the amount accumulated or set apart in sub-section (2) shall be deemed to be income of such person in the previous year in which it was to be applied or ceases to be accumulated or set apart. Clause (a) states when the accumulated amount is applied for other than for charitable and religious purposes; clause (b) deals when the amount no longer remain invested as per sub-section (5) of section 11; clause (c) contemplates if the amount is not utilized for the purpose, during the specified period; clause (d) was added by the Finance Act, 2003 w.e.f. 01.04.2003 and it provides that if the accumulated or set apart amount is credited or paid to a Trust or Institution registered under section 12AA of the Act or fund or institution or Trust referred to in clauses (iv), (v), (vi) and (via) of section 10(23C) of the Act.

[9] Sub-section (3A) of section 11 starts with a *non-obstante* clause and authorized the assessing officer that for the reasons beyond the control, purpose for which the amount was accumulated can be changed but the change shall be in conformity with the objects of the Trust. Two provisos were added to sub-section (3A) by the Finance Act, 2002 w.e.f. 01.04.2003. The first proviso restricted the power under sub-section that change would not be for the purpose mentioned in section 11(3)(d); the second proviso provides that in case of dissolution of Trust or institution, the assessing officer can permit the application of the accumulated or set apart income in the year of dissolution for the purposes referred to in section 11(3)(d).

[10] There is fallacy in the contention raised by learned counsel for the appellant. The requirement of section 11 is that atleast 85% of the income is to be applied for religious or charitable purpose in year of receipt and the accumulation cannot be more than 15%. However, sub-section (2) provides for accumulation out of 85% income but the same has to be for a specified purpose and for a specific period. The reasons behind allowing such an accumulation is that in case there is a future project for which larger amount is required, the same may be accumulated and thereafter applied. As a built-in mechanism in section 11 itself, sub-section (3) provides that in case eventualities mentioned in clauses (a) to (d), the income shall be deemed to be income of the person in receipt, in the previous year in which it was to be applied or ceased to be accumulated.

[11] By insertion of explanation to sub section (2) and clause (d) in sub-section (3) by the Finance Act, 2002, the accumulated amount

cannot be transferred to a registered Trust or institution or to the Trust or Institution or funds as specified in sub-clause (iv), (v), (vi) and (via) to section 10(23C). In case of such credit payment, same shall not be treated as application for charitable and religious purpose and further, it would be treated as income of such person i.e. the person who had made the payment.

[12] From sub-section (2) and sub-section (3), it is clear that accumulation has to be for a specified purpose and the same is to be utilized within the time frame.

[13] The aims and objects of the Trust cannot be reproduced as a specific purpose. The purpose must have some individuality, it is so because only from the purpose, the assessing officer would be able to monitor the amount so accumulated.

[14] In the present case, it was not the claim of the appellant that the amount was being accumulated for the payment to PSWHMMS. At this stage, we are not dilating as to whether for such purpose there could be accumulation or not. In such circumstances, there is a clear violation of the conditions referred in sub-section (2) and sub-section (3) of section 11. The amount has been spent for the purpose other than for what it was accumulated, it comes within the mischief of section 11(3)(c).

[15] The second limb of the argument raised is that by adding explanation to sub- section (2) and adding clause (d) to sub-section (3) of section 11 it is rather clarified that the assessees like appellant can pay or credit the accumulated sum to an unregistered or funds or Trust or institution not specified therein.

[16] The argument is not well founded.

[17] The reasons and objects of amendments are reproduced below:-

> *"Sub-clause (c) (ii) seeks to insert an Explanation below sub-section (2) of the said section so as to provide that any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.*
>
> *Thus, payment to other trusts or institutions out of income from property held under trust in the year of receipt will continue to be treated as application of income. However, any such payment out of the accumulated income shall not be treated as application of income and will be taxed accordingly.*
>
> *Sub-clause (d)(i) seeks to insert a new clause in sub-section (3) of section 11 so as to provide that if any income referred to in sub-section(2) of the said section is paid or credited to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, such payment or credit shall be deemed to be the income of the person in receipt of the income from property held under trust of*

> *the previous year in which such payment or credit is made.*
>
> *Sub-clause (d) (iii) seeks to insert the words "paid or credited or," in sub-section (3) of section 11 after the words "set apart or ceases to remain so invested or deposited or". The proposed amendment is of consequential nature."*

[18] From the changes made by Finance Act, 2002 in section 11, it is clear that restrictions have been imposed on transfer of accumulated or set apart amount but the utilization of income received during the year has not been touched. It is settled that income received during the year can be transferred to other Trust or institution for charitable or religious purpose and same shall be held to be application for such purpose.

[19] The argument raised that since there is a restriction only for payment or credit of accumulated amount to a registered Trust or institution recognized under the Act and it would mean that payment can be made to un-registered Trust, institution or to institutions or Trusts not even recognized by the Act as charitable is far-fetched. This would lead to adding words to the provisions of the Statute which is not permissible.

[20] There is another aspect of the matter, it has not been even the case of the appellant that the donee is indulged in charitable or religious purpose what has been stated is that the aims and objects of the donor and donee are similar.

[21] To fortify the second limb of the contention of learned counsel for the appellant places reliance on Circular No.8 of 2002. Relevant clauses 21.1 to 21.4 of the Circular reads as under:-

> ***"Restriction on the application of accumulated income of the charitable or religious trusts.***
>
> ***21.1*** *Through the Finance Act, 2002, an Explanation has been inserted below sub-section (2) of section 11 so as to provide that any amount paid or credited out of income from property held under trust referred to in clause (a) or clause (b) of sub section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub clause (iv) or sub clause (v) or sub clause (vi) or sub clause (via) of clause (23C) of section 10, either during the period of accumulation or thereafter, shall not be treated as application of income for charitable or religious purposes. Thus, payment to other trusts and institutions out of income from property held under trust in the year of receipt will continue to be treated as application of income. However, any such payment out of the accumulated income shall not be treated as application of income and will be taxed accordingly.*
>
> ***21.2*** *Through the Finance Act, 2002, a new clause (d) has also been inserted in sub-section (3) of section 11 so as to provide that if any income referred to in sub section (2) of the said section, is paid or credited to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub clause (iv) or (v) or (vi) or (via) of clause (23C) of section 10, such payment or credit*

> *shall be deemed to be the income of the person making such payment or credit, of the previous year in which such payment or credit is made.*
>
> ***21.3*** *A proviso in sub section (3A) has also been inserted so as to provide that the Assessing Officer shall not allow application of accumulated income by way of payment or credit made for the purposes referred to in clause (d) of sub section (3) of section 11. This takes away the discretion of the Assessing Officer provided in sub section (3A) to allow the trusts to apply the accumulated income for payment or credit to other charitable or religious trusts and institutions.*
>
> ***21.4*** *These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003 2004 and subsequent years."*

[22] The Circular nowhere supports the argument raised by the appellant rather clause 21.1 clarifies that payment to other Trust or institution out of the receipt of the year will continue to be treated as application, however no payment can be made from the accumulated income and the same shall be taxed; clause 21.2 reproduces Section 11(3)(d) stating that transfer shall be deemed to be income or person making such payment or credit.

[23] Learned counsel for the appellant relies upon the decisions of Gujarat High Court in ***Commissioner of Income Tax Vs. Sarladevi Sarabhai Trust No.2*** reported as ***(1988) 172 ITR 0698*** and of Delhi High Court in ***Commissioner of Income Tax Vs. Shri Ram Memorial Foundation*** reported as ***(2004) 269 ITR 0035***. These decisions deal with the application of income under section 11(1)(a) and do not deal with the accumulated income under section 11(2). Moreover, the

decisions are prior to amendment by the Finance Act, 2002 and would have no application in the present case.

[24] Further reliance is placed on decisions of Madras High Court in ***Commissioner of Income Tax Vs. M.CT. Muthiah Chettiar Family Trust & Ors*** reported as ***(2000) 245 ITR 0400.*** This decision also deals with the provisions prior to amendment of 2002, same does not enhance the case of the appellant rather paragraph No.10 of the judgment states that the accumulation has to be for specific purpose and amount cannot be accumulated merely by stating that it is for the aims and objects of the Trust. Paragraph No.10 of the judgment is reproduced as under:-

> *"10. The scheme of s.11 of the Act was examined by the apex Court in S.RM.M.CT.M. Tiruppani Trust vs. CIT (1998) 145 CTR (SC) 176 : (1998) 230 ITR 636 at p.640 (SC): TC S.23.2416 as under:-*
>
> *"Under s. 11(1)(a), income derived from property held under trust for charity, to the extent that such income is applied for charitable or religious purposes will be exempt from income-tax. Where the income or the tnrie income is not so spent, but is accumulation, it will be exempt to the extent of 25 per cent of its total income or Rs.10,000/- whichever is higher. Under s.11(2), if the trust desires to accumulate more than 25 per cent, of its income and wants to claim exemption from income-tax it has to comply with the conditions which are laid down in s.11(2)(a) and (b). The first condition is that a notice in writing should be given to the ITO in the prescribed manner specifying the purpose for which the income is being accumulated and the period for which the income is to be accumulated. The period should not exceed ten years. Rule 17 of the IT Rules 1962, prescribes that the*

notice which is required to be given under s. 11(2)(a) should be in Form No.10. The second condition is that the amount so accumulated has to be invested in any Government security as specified in s.11(2)(b).”

The trust is allowed to accumulate its income for a maximum period of ten years. The condition is that the trust should specify in the prescribed form the purpose for which the income is accumulated or set apart. It is not enough for the trustees to repeat the objects of the trust, but must specify a particular purpose for which the income is being accumulated. We are in agreement with the view of the Calcutta High Court in director o I.T. Vs. Singhania Charitable Trust (1993) 199 ITR 819 (Cal): TC 23 R.1317 wherein the Calcutta High court held that e long-term accumulation should be for a definite and concrete purpose or purposes and the charitable trust cannot use its objects as the purposes for the accumulation of the income under s. 11(2) of the Act. It is only by mentioning the purposes for the accumulation of the income under s.11(2) of the Act. It is only by mentioning the purposes specifically, it accumulated income for the purposes mentioned in Form No.10. Therefore, it is essential that the trust should specify its purposes and the requirement is that the purposes must have some individuality and mere repetition of the objects of the trust would not meet the requirements of s.11(2) of the Act. However, on the facts of the case, it is seen that the assesee-trust had merely repeated its objects when it filed the necessary form No.10 furnished by the assessee, allowed its income to be accumulated for a period of ten years and that it is too late in the date of question the purposes mentioned in Form No.10 and learned senior counsel for the Revenue in his fairness has not disputed that the Department is not in a position how to challenge that the Form No.10 filed is invalid.”

[25] The case before the Madras High Court was factually different. In that case, the amount was accumulated for the specific purpose, since the magnitude of the project was too big to achieve the same expeditiously, a separate Trust was formed. The amounts were transferred with the condition of carrying out the object and utilize the fund for said object and not for any other purpose. At the cost of repetition, it may be stated that the case pertains prior to amendment of 2002 when there was neither explanation to section 11(2) nor 11(3)(d).

[26] In view of above, the addition of amount transferred to PSWHMMS is upheld. The question is answered against the appellant. The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

[AJAY TEWARI]
JUDGE

20/3/2020
pankaj baweja

Whether speaking/reasoned: Yes
Whether reportable: Yes