

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL No.207 of 2000
To
TAX APPEAL No.213 of 2000****For Approval and Signature:****HONOURABLE MR. JUSTICE AKIL KURESHI
HONOURABLE MS. JUSTICE HARSHA DEVANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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A.C.I.T. - Appellant(s)**Versus****STOCK EXCHANGE AHMEDABAD. - Opponent(s)**

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Appearance:

MR MR BHATT, SR. COUNSEL with MRS MAUNA M BHATT for Appellant(s): 1,
MR SN SOPARKAR for Opponent(s): 1,

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CORAM : HONOURABLE MR. JUSTICE AKIL KURESHI**and****HONOURABLE MS. JUSTICE HARSHA DEVANI****Date : 17/07/2012****COMMON ORAL JUDGMENT
(Per : HONOURABLE MS. JUSTICE HARSHA DEVANI)**

1. In this group of appeals the appellant-revenue has challenged the common order dated 28th October, 1999 passed by the Income Tax Appellate Tribunal in M.A. No.87 to 93/Ahd/99.

2. The assessment years are 1989-90 to 1995-96 respectively. The respondent-assessee is a non-registered association of members. It appears that the assessee had claimed that its income was liable to be exempted under section 11 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") which came to be allowed up to assessment year 1983-84. For assessment year 1984-85 to 1988-89, exemption under section 10(23C)(iv) was allowed. The assessee made an application for renewal of exemption under section 10(23C)(iv) of the Act for the subsequent years, that is, assessment years 1989-90 to 1992-93 but the same came to be rejected. Against the order of rejection, the assessee filed a writ petition before this court which came to be disposed of with a direction to the Central Government to reconsider the assessee's claim. After reconsideration, the Central Government by an order dated 7th March, 1997 held that the assessee was not entitled to the benefit of section 10(23C)(iv) of the Act. The assessee did not make any application under section 10(23C)(iv) for assessment year 1993-94 and onwards. It appears that in the original returns of income, the assessee had claimed exemption under section 10 of the Act. However, subsequently, on 17th January, 1996, the assessee filed revised returns for five assessment years, that is, assessment year 1989-1990 to 1993-94 claiming exemption under section 11 of the Act. The Assessing Officer was of the view that as there was no notification under section 10(23C)(iv), the claim of the assessee was required to be

examined only under the provisions of sections 11, 12 and 13 of the Act. He, however, did not accept the assessee's claim for exemption under section 11 of the Act, inter alia, on the ground that the assessee was required to make an application for accumulation of income within the prescribed time, but for the aforesaid five assessment years, applications in Form No.10 were not filed in time and that the same were filed alongwith the fresh return of income.

3. Being aggrieved, the assessee went in appeal before the Commissioner (Appeals), who by a common order dated 4th February, 1999 in respect of the aforesaid five assessment years, rejected the said ground of appeal. Against the said common order, the assessee preferred appeals before the Tribunal. It appears that in respect of the subsequent two assessment years, that is, assessment year 1994-95 and 1995-96 also the claim for exemption under section 11 of the Act had been disallowed by the Assessing Officer and the appeals against the same came to be dismissed by the Commissioner (Appeals) against which separate appeals came to be preferred before the Tribunal. All the seven appeals came to be consolidated together and by a common judgment and order dated 24th June, 1999, the Tribunal allowed the appeals. However, while disposing the said appeals, the Tribunal did not consider the ground raised by the assessee in all the seven appeals against the disallowance of the claim for accumulation of income as per the provisions of section 11(2) of the Act. The assessee had filed applications in the prescribed form No.10 before the completion of the assessments intimating the Assessing Officer regarding accumulation of income in terms of section 11(2) of the Act. As noted earlier the Assessing Officer

rejected the applications on the ground that the same were not filed within the prescribed period and had not been furnished with the returns of income. While filing the appeals before the Commissioner (Appeals) as well as the Tribunal, specific grounds had been raised against rejection of the application under section 11(2) of the Act. The assessee, therefore, moved miscellaneous applications before the Tribunal submitting that the Assessing Officer had rejected the applications on the ground that the applications had not been filed within the prescribed time and that the same had not been furnished alongwith the return of income. The assessee, accordingly, contended that this specific ground of appeal taken for each of the assessment year under appeal had not been adjudicated by the Tribunal.

4. The Tribunal, after considering the facts and circumstances of the case, observed that there was an apparent mistake in the order of the Tribunal as the ground relating to maintainability of the application for accumulation of the income filed by the assessee under the provisions of section 11(2) for the assessment years under reference had not been adjudicated even though the ground had been specifically raised in the memorandum of appeal and argued during the course of hearing of the appeals. On merits, the Tribunal held thus:

“6. Section 11(2) of the Act enlarges the scope of exemption and removes the restrictions relating to accumulation of income subject to fulfilment of conditions laid down in sec. 11(2). Section 11(2) allows accumulation of income of the trust for specified

purposes for a maximum period of 10 years on the condition that the trust specifies, by a notice in writing to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the money so accumulated or set apart is invested or deposited in the form or modes specified in section 11 (5). The provisions of section 11(2) do not prescribe any time limit by which a notice in writing should be given by the trust nor does it prescribe any time limit by which the money so accumulated or set apart should be invested or deposited in the prescribed mode. In rule 17 of the I.T. Rules it is provided that the notice under section 11(2) shall be in Form No.10 and the same shall be filed before the A.O. within the time specified for making a return of income. It has been held by various High Courts that since in the statute itself there is no prescribed time limit for furnishing the prescribed form No.10 or for making investment in the prescribed securities, the time limits laid down under the rules are ultravires the Act. In any case such time limits are to be treated as directory in nature."

The Tribunal after referring to various decisions in this regard, and keeping in mind the preponderance of judicial authorities cited before it was of the opinion that the assessee had duly complied with the requirements of the section 11(2) of the Act for the assessment years under consideration, and, therefore, the Assessing Officer was not justified in denying the claim for exemption on this ground.

5. While admitting the appeals, this court had framed

the following substantial question of law:-

“Whether, the Appellate Tribunal is right in law and on facts in holding that the time limit prescribed for filing Form No.10 under Rule 17 of the Rules read with Section 11(2) of the Income-tax Act is ultra vires the Act and in the alternative directory?”

6. Assailing the impugned order, Mr. M.R. Bhatt, Senior Advocate, learned counsel for the appellant drew the attention of the court to the provisions of rule 17 of the Income Tax Rules, 1962 (hereinafter referred to as “the Rules”) which lays down that 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. It was argued that the language of the rule is couched in mandatory terms and as such, it was mandatory for an assessee claiming exemption under section 11 of the Act to file the prescribed Form No.10 under rule 17 of the Rules within the specified time limit. The Tribunal, therefore, was not justified in holding that the time limit prescribed for filing Form No.10 under rule 17 of the rules is directory in nature. In support of the said submission, reliance was placed upon the decision of the Supreme Court in the case of **Commissioner of Income-Tax vs. Nagpur Hotel Owners' Association**, (2001) 247 ITR 201 (S.C.).

7. On the other hand, Mr. S.N. Soparkar, Senior

Advocate, learned counsel for the respondent invited the attention of the court to the facts of the case to submit that undisputedly the assessee had furnished Form No.10 under rule 17 of the Rules alongwith the revised return, that is, prior to the completion of the assessment. Referring to the decision of this court in the case of **Commissioner of Income-Tax v. Mayur Foundation**, (2005) 274 ITR 562, it was submitted that this court, in a case where the requirements of rule 17 of the Rules had been complied with at the stage of appeal before the Tribunal, had held that the Tribunal was well within its jurisdiction to entertain a new ground by which the assessee claimed the benefit under section 11(2) of the Act and adjudicate the tax liability of the assessee. It was submitted that the court had considered the decision of the Supreme Court in the case of C.I.T. vs. Nagpur Hotel Owners' Association (supra) and had held that the Apex Court had stated that the details have to be furnished before completion of the assessment proceedings and any information supplied subsequent to the completion of assessment cannot be taken into consideration. It was pointed out that in the facts of the said case, the court had held that even at the stage of appeal, the assessment proceedings could be said to be pending and as such, the details could be furnished even at the stage of appeal, to submit that in the present case, the assessee stands on an even stronger footing inasmuch as the necessary information had been supplied before the completion of the assessment by the Assessing Officer. It was, accordingly, submitted that the controversy involved in the present case, stands concluded by the above referred decision of this court.

8. From the facts and contentions noted hereinabove,

the sole question that arises for consideration is whether the Tribunal was justified in holding that the time limit prescribed for filing Form No.10 under rule 17 of the Rules read with section 11(2) of the Act is directory. In the present case, it is an admitted position that the assessee had filed Form No.10 as required under rule 17 of the Rules alongwith the revised returns filed in respect of all the assessment years under consideration. Thus, admittedly, the forms had been submitted before the assessment came to be completed. At this juncture reference may be made to the decision of the Supreme Court in the case of **Commissioner of Income-Tax vs. Nagpur Hotel Owners' Association** (supra) on which reliance had been placed by the learned counsel for the revenue, wherein it has been held thus:

“6. It is abundantly clear from the wordings of sub-section (2) of Section 11 that it is mandatory for the person claiming the benefit of Section 11 to intimate to the assessing authority the particulars required, under Rule 17 in Form 10 of the Act. If during the assessment proceedings the Assessing Officer does not have the necessary information, question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from Section 11 and is subject to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, in our opinion, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules even then, in our opinion, it is reasonable to presume that the intimation required under Section 11 has to be furnished before the assessing authority completes the assessment concerned

because such requirement is mandatory and without the particulars of this income the assessing authority cannot entertain the claim of the assessee under Section 11 of the Act, therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of Section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such reopening of the assessment. In the case in hand it is evident from the records of the case that the respondent did not furnish the required information till after the assessments for the relevant years were completed. In the light of the above, we are of the opinion that the stand of the Revenue that the High Court erred in answering the first question in favour of the assessee is correct, and we reverse that finding and answer the said question in the negative and against the assessee."

9. Examining the facts of the present case in the light of the principles enunciated in the above decision, as noticed earlier, the assessee filed Form No.10 under rule 17 of the Rules at the time of filing revised returns in respect of each of the assessment years under consideration. Thus, evidently, the requirements of section 11(2) of the Act had been complied with before the completion of the assessments. Therefore, while completing the assessments for the assessment years under consideration, the Assessing Officer had the necessary information in respect of the claim for exemption under section 11 of the Act made by the assessee before him. Thus, this is not a case where information in respect of the claim of the assessee for giving benefit of section 11 of the Act was furnished after the assessments for the relevant assessment years were completed. Under the circumstances, the present case is squarely covered by the aforesaid decision of the

Supreme Court. The assessee was, therefore, entitled to the benefit of section 11 of the Act on the basis of the information supplied by it prior to framing of the assessment orders.

10. It may also be noted that this court in the case of **C.I.T. v. Mayur Foundation** (supra) has held that the assessment proceedings cannot be said to be complete and are pending till the appeal is heard and disposed of by the Tribunal and accordingly held that the Tribunal was justified in considering a new ground by the assessee claiming benefit under section 11 of the Act during the course of the appeal. As rightly urged by the learned counsel for the assessee, in the present case, the assessee stands on an even stronger footing inasmuch as the particulars in Form No.10 under rule 17 of the Rules had been furnished alongwith the revised return before the assessment came to be completed.

11. In the light of the above discussion, it is not possible to state that there is any legal infirmity in the impugned order of the Tribunal in holding that rule 17 of the Rules is directory in nature and in holding that the assessee had duly complied with the requirements of sub-section (2) of section 11 of the Act.

12. The question is answered accordingly. The appeals are, accordingly, dismissed with no order as to costs.

(Akil Kureshi, J.)

(Harsha Devani, J.)

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