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

% **Judgment reserved on: 15 March 2024**
Judgment pronounced on: 31 May 2024

\+ ITA 808/2017

COMMISSIONER OF INCOME TAX (EXEMPTIONS)
..... Appellant

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal and Ms. Nupur Sharma, JSCs.

Versus

M/S JAMNALAL BAJAJ FOUNDATION ..... Respondent

Through: Mr. Jehangir Mistry, Senior Advocate alongwith Ms. Vasanti B. Patel, Ms. Praveena Gautam, Mr. Pawan Shukla, Ms. Akanksha Tyagi and Ms. Kanika Kalyan, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

YASHWANT VARMA, J.

1. The **Commissioner of Income Tax (Exemptions)**[1] has preferred the instant appeal assailing the correctness of the view expressed by the **Income Tax Appellate Tribunal**[2] in its judgment dated 30 January 2017. On 16 April 2018 the appeal came to be admitted on the following question of law:

[1] CIT(E)
[2] Tribunal

"Whether on the facts and circumstances of the case, the Ld. ITAT erred in allowing deduction u/s11(1) to the extent of 15% on the deemed income under section 11(3)(c)/l l(3)(d) of the Act?"

2. The essential facts which may be briefly noticed, and which also stand recorded in the Assessment Order dated 19 December 2011 are as follows:

"Return showing nil income accompanied with audit report in Form No.10B was filed on 30.09.2009 which was duly processed u/s 143(1) of the IT Act, 1961. Subsequently, the case was picked up for scrutiny assessment under the Action Plan Guidelines. Statutory notice u/s 143(2) dated 17.09.2010 was issued to regularize the assessment proceeding. On 24.03.2011 Revised Return was filed with fresh computation of income along with reasons of the same. This Return was also selected for scrutiny under CASS and accordingly notice u/s 143(2) of the 'Act' was issued.

Notice u/s 142(1) along with questionnaire was issued. In compliance thereto Mr. M.A. Gohel, FCA and Mr. Parag Bhatia, Honorary Accountant, Authorized Representatives, attended the assessment proceeding from time to time. Filed information/document as called for. Books of accounts along with bills/vouchers regarding expenditures incurred sand evidence for having earned the income form different heads, have been produced which have been test checked w.r.t. information/document produced/filed. Case discussed with the representative/counsel of the assessee.

The main aims and objects of the Trust inter alia are:

1) To organize, sponsor promote, establish, conduct and undertake scientific and industrial research in any manner whatsoever in any area or held and to encourage and faster education of person in pure and applied science:

2) To promote Research and studies in the fields of Social Sciences, Economics, Indian Culture and philosophy and the propagation thereof:

3) Education medical Relief and Relief of the poor;

4) Advancement of any other object of general public utility not involving the carrying on of any activity for profit.

The assessee is registered u/s 12A of the Act vide order No. CIT-lI/IE(21)/76 dated 22.05.1976 and also allowed the benefit of 80G (5)(vi) vide order F. No. DIT(E)2007-08. It has claimed exemption under section 11/12 of Income Tax Act.

The assessee gave the following reasons for filing revised return as under: -

"1. The Return of Income for the above year was filed on 30.09.2009 vide Acknowledgement No. 0000003032. The total income declares in the said Return of Income was Rs. NIL. Subsequently, it has been noticed that during the financial year ended 31st March 2009 a sum of Rs. 20 Crores has been transferred amount accumulated under section II (2) of the Act as explained below, to the Trust Fund Account. The Balance in Trust Fund Account along with the amount transferred from the Income & Expenditure Account was utilized for granting corpus donations to other charitable trusts.

2. During the earlier years, our client had exercised the option for accumulation under section 11(2) of the act and the surplus was accumulated for the charitable objects of the Trust as under:

" **S. No.**	**Assessment Year**	**Amount**
1.	2006-07	4,66,00,000
2.	2007-08	10,50,00,000
3	2008-09	10,00,00,000
Total:		**25,16,00,000**

3. While granting the donations to other charitable trusts, the surplus accumulated under section 11(2) of the Act as discussed above got utilized to the extent of Rs. 20 Crores. Thus, the provisions of Section 11(3)(c)/11 (3)(d) of the Act got attracted.

4. In view of the above, our client has complied a Revised Return of Income and a Revised Statement of Computation of Total Income for the above year had has offered to tax the "Deemed Income" under section 11(3) of the Act in respect of the above. It may be noted that our client has also paid the tax of Rs. 8,14,21,094/- (including refund received under section 143(1) of the Act Rs. 8,25,580) payable as per the said Revised Statement of Computation of Total Income.

> 5. It may kindly be noted that our client has already received a sum of Rs. 19 Crores towards its Corpus before 31st March 2009 itself i.e. within a very short span of time after giving donations to other trusts. In spite of this, this Revised return of Income is being filed out of abundant precaution and without prejudice to the claim of our client that the said sum of Rs. 20 crores is not taxable as deemed income under section 11(3) of the Act.
>
> 6. It may kindly be noted that our client is filing-herewith the Revised Return of Income for the above year, as explained above, on its own accord and voluntarily before receiving any notice in this behalf."

3. Undisputedly the respondent assessee is registered under Section 12-A of the **Income Tax Act, 1961**[3] and has also been extended benefit of Section 80G(5)(vi) of the Act. It had claimed exemption under Sections 11 and 12 of the Act. Although a return for the **Assessment Year**[4] in question, namely, AY 2009-10, had been originally filed on 30 September 2009, the respondent thereafter submitted a revised return of income on 24 March 2011. The reasons assigned for submission of the revised return were stated to be on account of a sum of INR 20 crore which had been set apart as accumulated income under Section 11(2) of the Act during the financial year in question having been utilized to extend donations to other charitable institutions. It was stated that the aforesaid sum though transferred to the Trust Fund Account was utilized for granting corpus donations to other charitable trusts. The accumulation was explained in the shape of a table which is extracted hereinbelow:

S. No.	Assessment Year	Amount
1.	2006-07	4,66,00,000
2.	2007-08	10,50,00,000

[3] Act
[4] AY

3	2008-09	10,00,00,000
Total:		**25,16,00,000**

4. It was asserted that out of the aforesaid accumulated amount, the fund had got utilized to the extent of INR 20 crores while granting donations to other charitable trusts. The **Assessing Officer**[5] took the view that extending donations to other charitable trusts would amount to utilization of the funds for a purpose other than those for which the surplus was accumulated under Section 11(2) and thus being violative of Section 11(3)(c) and Section 11(3)(d) of the Act.

5. Aggrieved by the assessment order, the assessee filed an appeal before the **Commissioner of Income Tax (Appeals)**[6]. The CIT(A) held in favour of the assessee insofar as this issue of accumulation of 15% under Section 11 (2) of the Act is concerned following the view expressed by the Calcutta High Court in **Commissioner of Income Tax Vs. Natwarlal Chowdhury Charity Trust**[7].

6. While dealing with a similar question which arose, the Division Bench of the Calcutta High Court in *Natwarlal Chowdhury Charity Trust* had observed as follows:

> "**2.** The facts found by the Tribunal as stated in the statement of case are as follows:
>
> > The assessee-trust accumulated Rs. 46,184 during the accounting years relevant to the assessment years 1973-74 to 1976-77. During the previous year relevant to the present assessment year, accumulated income ceased to be invested in fixed deposit with the Indian Bank and it was, therefore, deemed to be the income of the trust in the previous year in which it ceased to remain invested or

[5] AO
[6] CIT(A)
[7] (1991) 189 ITR 656

deposited in terms of clause (b) of sub-section (3) of section 11 of the Income-tax Act, 1961. The Income-tax Officer was of the opinion that the assessee was not entitled to accumulate 25% of this deemed income because permitting it to do so would amount to a double benefit to the assessee. He, therefore, assessed the entire deemed income.

3. The Tribunal in agreeing with the decision of the Appellate Assistant Commissioner observed:

> The legal fiction contained in section 11(3) of the Income-tax Act, 1961, should be allowed to play to the fullest extent and there, is no warrant to take a restricted view for denying the exemption which is specifically allowed by the statute. In fact, as per the law as stood from April 1, 1976, charitable trusts are permitted to accumulate up to 25% of their income without complying with any formalities or condition and such accumulation is not included in the total income. Therefore, we uphold the order of the Appellate Assistant Commissioner as it is quite justified in law and the assessee would be entitled to accumulate 25% of the total income of the previous year relevant to the assessment year 1978-79 inclusive of the deemed income under section 11(3) of the Income-tax Act, 1961.

4. Mr. Moitra, appearing on behalf of the Revenue, has failed to show any infirmity in the order of the Tribunal. In fact, he has prayed merely for remand of the case as was done by the Andhra Pradesh High Court in the case of *CIT* v. *Hyderabad Secunderabad Foodgrains Association Ltd.*[1989] 175 ITR 574. The facts in that case were quite different and it was felt by the Andhra Pradesh High Court that it was necessary to remand the case.

5. But, in the instant case, no argument at all has been advanced to show any infirmity in the order of the Tribunal.

6. Since Mr. Moitra has failed to show us any infirmity in the order passed by the Tribunal, the question is answered in the affirmative and in favour of the assessee."

7. Aggrieved by the aforesaid, the appellants approached the Tribunal which affirmed the view taken by the CIT(A) finding that the

issue stood squarely covered in favour of the assessee. The instant appeal came to be preferred thereafter.

8. As would be evident from the preceding discussion, in the course of assessment, the respondent assessee had taken the position that the utilization of the surplus accumulated under Section 11(2) to the extent of INR 20 crores had resulted in the provisions of Sections 11(3)(c) and 11(3)(d) being attracted. While filing a revised return of income, the assessee had also offered the aforenoted deemed income to tax and effected a deposit of INR 8,14,21,094. The aforesaid position, however, was negated by the AO who took the view that the entire deemed income amounting to INR 20 crores was liable to be added to the total income of the respondent assessee and deprived of the exemptions which otherwise imbue the income of charitable trusts under Section 11. The claim of the assessee of being permitted to accumulate 15% of the deemed income was consequently rejected.

9. Before the CIT(A), the stand of the assessee appears to have been as follows. It was firstly asserted that the surplus accumulated income referable to Section 11(2) of the Act and to the extent of INR 20 crores was handed out as donations to other charitable institutions for a temporary period of less than two months. It was contended that since the contravention was for a very short period, the exemption available under Section 11(2) should not be withdrawn and that the deemed income which had accrued owing to the utilization of the accumulated income being deployed for a purpose other than that specified and set apart in terms of Section 11(2) be treated as eligible for appropriate deductions. The assessee consequently prayed for being permitted to allow accumulation to the extent of 15% of the deemed income.

10. It was this plea which came to be allowed by the CIT(A) following the judgment of the Calcutta High Court in *Natwarlal Chowdhury Charity Trust.* In *Natwarlal Chowdhury Charity Trust*, the Calcutta High Court, while dealing with an identical situation had held that the accumulation under Section 11(1)(a) would extend to the deemed income which may arise in terms of Section 11(3).

11. As we view the provisions contained in Section 11, it becomes apparent that in terms of sub-section (1)(a) thereof, the income derived from trust property is firstly liable to be applied for charitable or religious purposes and to the extent of that application is liable to be removed from the total income of the charity. Section 11(1)(a) then proceeds to accord a facility to a charity which may have failed to apply the income derived from property for charitable or religious purposes to accumulate a part thereof, subject to the condition that the income so accumulated or set apart does not exceed 15% of that income. In terms of Section 11(1)(a), therefore, a charity becomes entitled to either employ the entire income derived from trust property for charitable or religious purposes or set apart not more than 15% of that income for charitable or religious purposes. Once an accumulation to the extent of 15% of that income is made, the provisions of Section 11(1)(a) get exhausted.

12. However, and as one proceeds to sub-section (2), it becomes evident that the charitable entity becomes entitled to accumulate 85% of the income referred to in Section 11(1)(a) or (b) and which could not be utilized for charitable or religious purposes. 85% of the income is thus enabled to be accumulated and set apart subject to the fulfilment of the conditions specified in clauses (a), (b), and (c) of Section 11(2). In

terms of the conditions which the statute imposes for the purposes of accumulation of 85% of the income, under clause (a), the charitable institution is required to furnish a statement in the prescribed form, setting out the purpose for which the income is sought to be accumulated or set apart, subject to the condition that the aforesaid accumulation would not exceed five years. In terms of clause (b) of Section 11(2), the money so accumulated is liable to be invested or deposited in accordance with the provisions contained in Section 11(5). The only additional condition which then stands attached to accumulation of 85% of the income is the requirement under clause (c), of the statement spoken of in clause (a) being furnished at least two months prior to the date specified for filing of a return of income in terms of Section 139(1).

13. It becomes pertinent to note that sub-section (3) of Section 11 is concerned with the 85% of income which stands accumulated in terms of the facility provided to charitable institutions by Section 11(2). Section 11(3) prescribes that any income referable to Section 11(2) which is either applied for a purpose other than charitable or religious, or which ceases to be accumulated or set apart, shall be deemed to be the income of the charitable institution of the previous year. The concept of deemed income also stands attracted if the income accumulated or set apart in terms of Section 11(2) ceases to remain invested or deposited in the forms or modes specified in sub-section (5) or if it is not utilized for purposes for which it is so accumulated or set apart during the period referred to in clause (a) of Section 11(2). A similar contingency is then spoken of if the accumulated income under Section 11(2) is credited or paid to institutions registered under

Sections 12-AA and 12-AB and other institutions spoken of in those provisions.

14. The interplay between Section 11(1) and Section 11(2) was succinctly explained by the Supreme Court in **Additional Commissioner of Income Tax Vs. A.L.N. Rao Charitable Trust**[8] when it observed thus:-

> "**11.** A mere look at Section 11(1)(*a*) as it stood at the relevant time clearly shows that out of total income accruing to a trust in the previous year from property held by it wholly for charitable or religious purpose, to the extent the income is applied for such religious or charitable purpose, the same will get out of the tax net but so far as the income which is not so applied during the previous year is concerned at least 25% of such income or Rs 10,000 whichever is higher, will be permitted to be accumulated for charitable or religious purpose and it will also get exempted from the tax net. Then follows sub-section (2) which seeks to lift the restriction or the ceiling imposed on such exempted accumulated income during the previous year and also brings such further accumulated income out of the tax net if the conditions laid down by sub-section (2) of Section 11 are fulfilled meaning thereby the money so accumulated is set apart to be invested in the government securities etc. as laid down by clause (*b*) of sub-section (2) of Section 11 apart from the procedure laid down by clause (*a*) of Section 11(2) being followed by the assessee-Trust. To highlight this point we may take an illustration. If Rs 1,00,000 are earned as the total income of the previous year by the Trust from property held by it wholly for charitable and religious purposes and if Rs 20,000 are actually applied during the previous year by the said Trust to such charitable or religious purposes the income of Rs 20,000 will get exempted from being considered for the purpose of income tax under first part of Section 11(1). So far as the remaining Rs 80,000 are concerned if they could not be actually applied for such religious or charitable purposes during the previous year then as per Section 11(1)(*a*) at least 25% of such total income from property or Rs 10,000 whichever is higher will also earn exemption from being considered as income for the purpose of income tax, that is, Rs 25,000 will thus get excluded from the tax net. Thus out of the total income of Rs 1,00,000 which has accrued to the Trust Rs 25,000 will earn exemption from payment of income tax as per Section 11(1)(*a*) second part. Then follows sub-section (2) which states that

[8] (1995) 6 SCC 625

the ceiling or the limit or the restriction of accumulation of income to the extent of 25% of the income or Rs 10,000, whichever is higher for earning income tax exemption as engrafted under Section 11(1)(*a*) will get lifted if the money so accumulated is invested as laid down by Section 11(2)(*b*) meaning thereby out of the total accumulated income of Rs 80,000 accruing during the previous year and which could not be spent for charitable or religious purposes by the Trust balance of Rs 55,000 if invested as laid down by sub-section (2) of Section 11 will also get excluded from the tax net. But for such investment and if Section 11(1) alone had applied Rs 55,000 being the balance of accumulated income would have been covered by the tax net. <u>Learned counsel for the Revenue submitted that the investment as contemplated by sub-section (2)(*b*) of Section 11 must be investment of all accumulated income in government securities etc., namely, 100% of the accumulated income and not only 75% thereof. And if that is not done then only the invested accumulated income to the extent of 75% will get excluded from income tax assessment. But so far the remaining 25% of the accumulated income is concerned it will not earn such exemption. It is difficult to appreciate this contention. The reason is obvious. Section 11, sub-section (1)(*a*) operates on its own. By its operation two types of income earned by the Trust during the previous year from its properties are given exemption from income tax, (*i*) that part of the income of previous year which is actually spent for charitable or religious purposes in that year; and (*ii*) out of the unspent accumulated income of the previous year 25% of such total property income or Rs 10,000 whichever is higher can be permitted to be accumulated by the Trust, earmarked for such charitable or religious purposes.</u> Such 25% of the income or Rs 10,000 whichever is higher will also get exempted from income tax. That exhausts the operation of Section 11(1)(*a*). <u>Then follows sub-section (2) which naturally deals with the question of investment of the balance of accumulated income which has still not earned exemption under sub-section (1)(*a*). So far as that balance of accumulated income is concerned, that also can earn exemption from income tax meaning thereby the ceiling or the limit of exemption of accumulated income from income tax as imposed by sub-section (1)(*a*) of Section 11 would get lifted if additional accumulated income beyond 25% or Rs 10,000, whichever is higher, as the case may be, is invested as laid down by Section 11(2) after following the procedure laid down therein</u>. <u>Therefore, sub-section (2) only will have to operate qua the balance of 75% of the total income of the previous year or income beyond Rs 10,000 whichever is higher which has not got the benefit of tax exemption under sub-section (1)(*a*) of Section 11</u>. If learned counsel for the Revenue is right and if 100% of the accumulated income of the previous year is to be invested under sub-section (2) of Section 11 to get exemption from income tax then the ceiling of 25% or Rs

10,000 whichever is higher, which is available for accumulation of income of the previous year for the Trust to earn exemption from income tax as laid down by Section 11(1)(*a*) would be rendered redundant and the said exemption provision would become otiose. It has to be kept in view that out of the accumulated income of the previous year an amount of Rs 10,000 or 25% of the total income from property, whichever is higher, is given exemption from income tax by Section 11(1)(*a*) itself. That exemption is unfettered and not subject to any conditions. In other words it is an absolute exemption. If sub-section (2) is so read as suggested by the learned counsel for the Revenue, what is an absolute and unfettered exemption of accumulated income as guaranteed by Section 11(1)(*a*) would become a restricted exemption as laid down by Section 11(2). Section 11(2) does not operate to whittle down or to cut across the exemption provisions contained in Section 11(1)(*a*) so far as such accumulated income of the previous year is concerned. It has also to be appreciated that sub-section (2) of Section 11 does not contain any non obstante clause like "notwithstanding the provisions of sub-section (1)". Consequently it must be held that after Section 11(1)(*a*) has full play and if still any accumulated income of the previous year is left to be dealt with and to be considered for the purpose of income tax exemption, sub-section (2) of Section 11 can be pressed into service and if it is complied with then such additional accumulated income beyond 25% or Rs 10,000, whichever is higher, can also earn exemption from income tax in compliance with the conditions laid down by sub-section (2) of Section 11. It is true that sub-section (2) of Section 11 has not clearly mentioned the extent of the accumulated income which is to be invested. But on a conjoint reading of the aforesaid two provisions of Sections 11(1) and 11(2) this is the only result which can follow. It is also to be kept in view that under the earlier Income Tax Act of 1922 exemption was available to charitable trusts without any restriction upon the accumulated income. There was a change in this respect under the present Act of 1961. Under the present Act, any income accumulated in excess of 25% or Rs 10,000 whichever is higher, is taxable under Section 11(1)(*a*) of the Act, unless the special conditions regarding accumulation as laid down in Section 11(2) are complied with. It is clear, therefore, that if the entire income received by a trust is spent for charitable purposes in India, then it will not be taxable but if there is a saving, i.e. to say an accumulation of 25% or Rs 10,000 whichever is higher, it will not be included in the taxable income. Section 11(2) quoted above further liberalizes and enlarges the exemption. A combined reading of both the provisions quoted above would clearly show that Section 11(2) while enlarging the scope of exemption removes the restriction imposed by Section 11(1)(*a*) but it does not take away the exemption allowed by Section 11(1)(*a*). On

the express language of Sections 11(1) and 11(2) as they stood on the Statute Book at the relevant time no other view is possible.

12. In the light of the aforesaid discussion and keeping in view the illustration which we have given earlier the combined operation of Section 11(1)(*a*) and Section 11(2) as applicable at the relevant time would yield the following result:

(*i*) If the income derived from property held under trust wholly for charitable or religious purposes during the previous year is Rs 1,00,000 and if Rs 20,000 therefrom are actually applied to such purposes in India then those Rs 20,000 will get exempted from payment of income tax as per the first part of Section 11(1)(*a*).

(*ii*) Out of the remaining accumulated income of Rs 80,000 for the previous year, a further sum of Rs 25,000 will get exempted from payment of income tax as per second part of Section 11(1)(*a*). Thus out of the total income derived from property as aforesaid during the previous year, that is, Rs 1,00,000, Rs 45,000 in all will get excluded from the tax net on a combined operation of first and second parts of Section 11(1)(*a*).

(*iii*) The aforesaid ceiling of Rs 25,000 of accumulated income from property of previous year, will get lifted under Section 11(2) to the extent the balance of such accumulated income is invested as laid down by Section 11(2). To take an illustration if, say, an additional amount of Rs 20,000 out of the balance of accumulated income of Rs 55,000 is invested as per Section 11(2) then this additional amount of Rs 20,000 of accumulated income will get excluded from the tax net as per Section 11(2).

(*iv*) The remaining balance of the accumulated income out of Rs 55,000, that is, Rs 35,000 if not invested as per sub-section (2) of Section 11 will be added to the taxable income of the trust and will not get exempted from the tax net.

(*v*) If on the other hand the entire remaining accumulated income of Rs 55,000 is wholly invested as per Section 11(2) the said entire amount of Rs 55,000 will get exempted from the tax net."

15. As the Supreme Court lucidly explains, sub-section (2) of Section 11 extends the limit which would otherwise be applicable to income which could be possibly accumulated under Section 11(1)(a) or Section 11(1)(b). The Supreme Court pertinently observes that both Section 11(1)(a) and Section 11(2) operate independently. It was observed that while a trust may set apart 15% of the income derived from trust property in terms of Section 11(1)(a), sub-section (2) extends to the balance of the income of that year and which may not have been

imbued with the exemption in terms of Section 11(1)(a). It then explains the scheme underlying sub-section (2) as contemplating the balance of accumulated income also not being liable to be taxed provided the charitable institutions were to abide by the conditions prescribed in clauses (a), (b) and (c). It was further observed that the provisions of Section 11(2) in essence lifts the ceiling or the limit of exemption of accumulated income as otherwise applicable by virtue of Section 11(1)(a).

16. The principal dispute which is raised and canvassed in the instant appeal pertains to the deemed income which came into existence by virtue of the donations extended by the respondent assessee to other charitable institutions and whether the same would still fall within the ambit of Section 11(1)(a).

17. The appellants take the position that once sub-clauses (c) or (d) of Section 11(3) were violated, the entire amount diverted ostensibly for a non-charitable purpose would lose the benefit of accumulation. We find ourselves unable to sustain that submission bearing in mind the following facts.

18. It has been repeatedly acknowledged that donations extended to other charitable institutions would meet the test of application of income for charitable purposes. Section 11(3)(c) and (d) essentially deal with situations where the income so accumulated is either not utilized or applied for a charitable purpose. It is only in such a situation that the deemed income would lose the sheen of protection of exemption which would otherwise be applicable by virtue of Section 11.

19. Explaining the scheme of Section 11(3), the Madras High Court in **Commissioner of Income-Tax Vs. M. Ct. Muthiah Chettiar Family Trust & Ors.**[9] had held as under:-

> "**20.** The key words in section 11(3)(c) of the Act are "not utilised for the purposes for which it was so accumulated". In our opinion, clauses (a), (b) and (c) of section 11(3) of the Act have to be read together in a harmonious manner. Section 11(3)(a) of the Act, inter alia, provides that if the income referred to in sub-section (2) is applied to purposes other than charitable or religious purposes, or ceases to be accumulated or set apart for application, then it is deemed to be the income of the trust. Similarly, section 11(3)(b) deals with a case of income which has ceased to remain in Government securities or ceased to be deposited in the deposits referred to in section 11(2) of the Act and in those cases, the income is deemed to be the income of the assessee-trust. In both the situations, the provisions of section 11(3)(a) and (b) of the Act contemplate a positive act on the part of the trustees in applying the income for purposes other than a charitable purpose or ceasing to hold or converting the Government security or deposit. On the other hand, clause (c) of section 11(3) deals with both positive and negative acts of the trustees, namely, (i) the inaction on the part of the trustees to utilise the accumulated income for the purposes for which it was accumulated during the period referred to in section 11(2) or in the immediately following years, and (ii) a positive act on the part of the trustees in applying the income for a purpose other than the purposes for which the income was accumulated. It is, no doubt, true that the accumulated income should be utilised for the purposes for which it was accumulated and the words, and the expression, "not utilised" in section 11(3)(c) have to be read in conjunction with the words that follow the expression, namely, "for the purpose for which it was so accumulated". Though the word, "utilised" has different shades of meaning, in the context of section 11(3)(c) of the Act, in our opinion, it means application of income, that is, where the trustees had not applied the income for the purposes for which it was so accumulated. The later amendment in section 11(3A) of the Act, which was introduced by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976, also gives a clue that the word, "utilisation" in section 11(3)(c) should be interpreted to mean "application", as under section 11(3A) of the Act, it is permissible for the Income-tax Officer to change the purpose of application of income, if the trustees state before the Income-tax Officer that the income accumulated cannot be applied

[9] (2000) 245 ITR 400

for the purposes: due to the reasons mentioned therein. Though the word, "utilisation" in normal connotation would connote spending of money for the purposes for which the income was accumulated, in the context of section 11(3)(c), the more appropriate meaning that can be assigned is that the expression "utilisation" would mean application of the income. As seen earlier, section 11(3), in our opinion, is so designed to take care of different situations; where the trust applies its income for a non-charitable purpose or where the trust converts its securities or deposits before the expiry of the period or where the trust had not applied the amount for the purposes for which it was so accumulated. The section deals with three successive stages in the application of the accumulated income. The first stage is non-application of income and the second stage is conversion of the approved Government securities or deposits, before the period mentioned in section 11(2) and the third stage is the non-utilisation or utilisation of the accumulated income for some other purposes either during or after the expiry of the period mentioned in section 11(2) of the Act. We have seen that the purposes for which the income should be accumulated should be specific and within the scope of the object of the trust, and even where the trust applies its accumulated income for any of its charitable purposes, not mentioned in the notice for accumulation, though within its objects, it would amount to violation of the provisions of section 11(3)(c) of the Act.

21. The intention of the Legislature is to curtail the practices of applying the accumulated income of for non-charitable purposes or for retention of the money even after the period m entioned in section 11(2) of the Act but however, where the trust applies its income for the purposes for which it was accumulated, it cannot be said that there is a violation of section 11(3)(c) of the Act. The emphasis given under the provisions of sections 11(1) and 11(2) is "application of income" for charitable or religious purposes and it is only in this context, the courts have taken the view that the handing over of the money by one trust to another trust having similar objects would amount to application of income. There are no weighty reasons to give a different meaning to the expression "utilised" as "spent" in section 11(3)(c) of the Act and it cannot be assumed that the Legislature has postulated a different test for utilisation of the accumulated income. As observed by the Gujarat High Court in the case of CIT v. Sarladevi Sarabhai Trust (No. 2), [1988] 172 ITR 698, the expression, "utilisation" does not mean that the entire amount has to be spent forthwith. We agree with the above observation of the Gujarat High Court.

22. That apart, the assessee-trust by handing over the money to M. Ct. M. Chidambaram Foundation has completely lost its title and dominion over the accumulated money in question. Further, the

donee trust is also a public trust and it also under the judicial supervision of the High Court and to ascribe the meaning to the expression "utilised" as "applied" in section 11(3)(c) of the Act is also in consonance with the subsequent amendment in section 11(3A) of the Act. We have seen, by the judicial development, the expression "applied" has been construed to include cases of handing over the money by one trust to another public charitable trust. Further, the argument that the view we have taken would encourage tax avoidance by the public trust permitting the trust to hand over the accumulated income to another trust which may hold it for ten years and then transfer to a third trust with an endless, unbroken chain of passing on the money from one trust to another without actual utilisation of the money is unacceptable. That cannot be a ground to give a normal meaning of the word, "utilised." The benefit of accumulation of income is expressly provided by the Legislature as a tax mitigation scheme and when in the view of the Legislature it is not a tax avoidance, it is not possible for the court to hold that it will encourage tax avoidance. Further, it is not the case of the Revenue that the transfer is not real but a sham transfer or the donee trust is not a genuine or real trust. However, the question that has to be examined in each of the cases is whether the trust income was applied for the purposes for which it was accumulated.

23. The trust, in our opinion, would be fulfilling the conditions prescribed in section 11(3)(c) of the Act, either by directly applying or spending the income for the purpose for which the income was accumulated or by handing over the same to an existing institution to be utilised, for the same purpose. But, section 11(3)(c) of the Act cannot be limited to the above two situations. In our opinion, the words in section 11(3)(c) are also apt to cover cases of handing over the accumulated income to another trust having its objects similar to the purposes for which the income was accumulated with directions by the donor trust that the accumulated income should be applied to the purposes for which the income was accumulated. We have seen from the order of the Income-tax Officer, the purposes for which the assessee-trust had been allowed to accumulate its income and we find that the objects of the newly formed M. Ct. M. Chidambaram Foundation would fall within the scope of the purposes for which the income was accumulated. The Supreme Court in the case of S. RM. M. Ct. M. Tiruppani Trust v. CIT, [1998] 230 ITR 636, held that the amount spent for purchase of a property by the trust would amount to application of income as the building was used for charitable purposes. Applying the same ratio, the assessee-trust by handing over the money to the donee trust has directed the donee trust to apply the accumulated income for the purposes for which the

income was accumulated. As a matter of fact, the purposes mentioned include establishment, maintenance and management of hospitals, educational institutions, etc. It also includes rendering financial aid to any existing institution or educational institutions. It is seen that on the facts of the case, the educational institutions are existing institutions. The site for the hospital had been purchased by one of the assessee-trusts. Similarly, one of the purposes is to give substantial donation to any relief fund by way of charity and by handing over the accumulated money to the newly created trust, it cannot be said that the assessee has not utilised the accumulated income for a purpose other than the one for which the income was accumulated. In effect, all the three trusts have pooled their reserves and handed over the entire accumulated income to the donee trust so that the donee trust can carry out the purpose for which the income was accumulated during the course of ten years in an effective manner. Therefore, we are of the opinion that the assessee by this process, had not contravened any of the provisions of section 11(3) of the Act and the Commissioner was not justified in directing the officer to levy the tax on the entire accumulated income as well as income of the assessee in the assessment year in question. We are of the view that the Appellate Tribunal was justified in cancelling the order of the Commissioner."

20. The question of whether donations made to other charitable trusts would be hit by the provisions of Section 11(3) of the Act again arose for consideration of the Allahabad High Court in **Commissioner of Income-tax (Central) Vs. J.K. Charitable Trust**[10]. While answering the aforesaid question, the Allahabad High Court significantly observed as under:-

> **"21.** Now, the question is whether the donations made by the assessee-trust to other charitable trusts are hit by S. 11(3) of the Act. For the sake of convenience, we may set out sub-sec. (3) in full. It reads:—
>
> "(3) Any income referred to in sub-sec, (1) or sub-sec. (2) as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in

[10] (1992) 196 ITR 31

> this behalf 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 so set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid."

22. The Tribunal was of the opinion that contribution to the charitable trusts is within the power and competence of the trustees. It has relied upon sub-clause (k) of CI. (2) of the deed of trust, which, inter alia, empowers the trustees to apply the income of the trust for "the advancement of any other object of general public utility as the trustees may in their absolute discretion deem fit and in such way as they may consider most advantageous to the recipients." We are inclined to agree with-it. A charitable purpose may be served in more than one way. One is to directly contribute for the promotion of that cause; the other Ls to contribute money to another charitable organisation, which advances that cause. In the absence of allegations of device and/or mala fides, the amount contributed to other charitable institutions out of the income accumulated under sub-sec. (2) is outside the mischief of sub-sec. (3) of S. 11. In other words, such contribution does not amount to application of the income for purposes other than charitable or religious.

23. A good amount of controversy, however, raged as to the position where such contributions are made, not out of the income accumulated under sub-sec. (2), but out of contributions received by the assessee-trust. We have already set out S. 12 as it obtained prior to 1-4-1973 and also as it obtained with effect from the said date. Out of the two assessment years, A.Y. 1972–73 is governed by the unamended S. 12, whereas AY. 1973–74 is governed by the amended S. 12. The change in S. 12, however, makes no difference in so far as the facts of the present case are concerned. Under S. 12(1), as it stood prior to 1st April, 1973, the income of a charitable/religious trust, derived from voluntary contributions and applicable solely to charitable/religious purposes, was not liable to be included in the total income of the trust or the trustees as the case may be. It is not the case of the Revenue that the contributions were made to the assessee-trust with a direction to apply them to purposes other from charitable or religious; evidently, the persons/organisations contributing the amounts to the assessee-trust intended them to be applied to charitable or religious purposes. Once we hold that contribution to another charitable trust is an application for charitable purposes, no further question arises. In other words, such contribution to another charitable trust by the assessee-trust cannot be treated as the income of the assessee trust in the year of contribution. Even if we apply S. 12 as it obtains from 1st April, 1973, and applicable to A.Y. 1973–74, the result is not different. According to the amended S. 12, voluntary contributions received by

> a religious/charitable trust shall, for purposes of S. 11, be deemed to be income derived from property held under trust wholly for charitable/religious purposes and the provisions of Ss. 11 and 13 shall apply accordingly. Therefore, so far as A.Y. 1973–74 is concerned, the position (with respect to the amounts contributed by the assessee-trust to other charitable trust from out of contributions received by it) is the same as the one obtaining with respect to income derived by the assessee-trust from the properties held under trust wholly for charitable or religious purposes."

21. While on the subject of a charitable institution making donations to other charitable entities from out of income accumulated in terms of Section 11(2), it would also be apposite to note two Explanations which have come to be inserted in Section 11.

22. Explanation 2 to Section 11(1) reads as follows:-

> "*Explanation 2.*— Any amount credited or paid, out of income referred to in clause (*a*) or clause (*b*) read with *Explanation* 1,[to any fund or trust or institution 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 (23-C) of Section 10 or other trust or institution registered under Section 12-AA[or Section 12-AB, as the case may be], being contribution with a specific direction that it shall form part of the corpus], shall not be treated as application of income for charitable or religious purposes."

23. Explanation 2 came to be inserted by Finance Act, 2017 with effect from 01 April 2018. Although the said provision would have no application to the facts of the present case and which is concerned with AY 2009-10, we thought it fit to take due notice of the same for the purposes of completeness.

24. The donations which are stated to have been made by the respondent assessee in the present case however, would not be hit by Explanation 2, since the same applies only to amounts credited or paid to certain categories of institutions and those being in the nature of a

contribution accompanied by a direction that the amounts extended would form part of the corpus of those entities. As was noticed by us in the preceding parts of this decision, although the donations were made out of the accumulated income, the money was retrieved within two months.

25. In terms of Finance Act, 2002, an Explanation also came to be appended to Section 11(2). The said provision reads as follows:-

> "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 12-AA[or Section 12-AB] 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 (vi-a) of clause (23-C) of Section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter."

26. The said Explanation gets attracted in a situation where income referable to clauses (a) or (b) of Section 11(1) and so accumulated or set apart is credited or paid to institutions specified therein, not being liable to be treated as application of income for charitable or religious purposes. This Explanation too will not taint the donations which were made since, and undisputedly, the donations were made from out of the monies accumulated in terms of Section 11(2). Explanation 1 to Section 11(1), as is evident from a reading thereof applies to situations where the income applied to charitable causes falls short of 85% of the income derived. Section 11(2) on the other hand constitutes a gateway which enables the charity to stave off the spectre of the income which is not applied for a charitable purpose coming to be included in the total income of the assessee.

27. While parting we deem it appropriate to notice two judgments rendered on the subject and which would answer the question that stands posited in favour of the respondent. In **Director of Income-tax (Exemption) Vs. Acme Educational Society**[11], a Division Bench of our Court had held:-

> "**15.** Keeping in view the aforesaid exposition of law, we are of the opinion that interest free loan of Rs. 90,50,000 given by the assessee-society to Nav Bharti Educational Society does not violate section 13(1)(d) read with section 11(5) of the Act, 1961 as the said loan was neither an "investment" nor a "deposit". This is more so as both the societies had similar objects and were registered under section 12A of the Act, 1961 and had approvals under section 80G of the Act, 1961. The fact that the loan was interest free and had been subsequently returned is also significant. In view of the order passed by the Commissioner of Income-tax (Appeals) in the case of Nav Bharati Educational Society, Ms. Bansal's allegation with regard to "entry scam" also does not survive. Consequently, there is no substantial question of law involved in the present appeal and accordingly, the appeal is dismissed but with no order as to costs."

28. The Allahabad High Court in **CIT Vs. Kanpur Subhash Shiksha Samiti**[12] while affirming the view expressed in Acme pertinently observed:-

> "**13.** In the present case, we find that the excess of income over expenditure in the relevant year was less than 15 per cent. of the gross receipts. The loan was not given in the period relevant to the assessment year. It was given between February 20 and February 24, 2003, and was repaid in the year 2009 and further the amount was given by way of loan to a society, which was later on registered under section 12A, with effect from April 1, 2004, to May 25, 2005, with the same objects and purpose as that of the assessee.
>
> xxxx xxxx xxxx
>
> **15.** We are in agreement with the reasoning given by the Delhi High Court in Director of Income-tax (Exemption) v. Acme Educational Society (supra) holding that a loan is neither an investment nor a deposit. Where both the societies have similar

[11] (2010) 326 ITR 146
[12] 2013 SCC OnLine All 14708

> objects and are registered under section 12A and have approvals under section 80G, interest-free loan cannot be treated as deposit or investment so as to attract section 11(5) of the Act.
>
> **16.** For the aforesaid reasons, both the questions are decided against the revenue and in favour of the assessee."

29. In our considered opinion, Section 11(3) and the adverse consequences would have been attracted provided the incomes so accumulated were diverted for a purpose other than charitable or religious, or where it is not utilized for the purpose for which it was so accumulated or set apart during the period of five years contemplated under Section 11(2)(a). This was not a case where a permanent endowment was made or one where the donation stood imbued with some degree of permanency. It also cannot possibly be said that the money was lost or became unavailable to be applied. In our considered opinion, since the donations were in any case reversed and had been advanced only for an extremely short duration, the Tribunal has clearly, and for justifiable reasons, answered the issue in favour of the assessee.

30. While the appellant had sought to draw sustenance from the decision of the Calcutta High Court in **Director of Income-tax (Exemption) Vs. Girdharilal Shewnarain Tantia Trust**[13], we find that the same would have no bearing on the issue which arises since the aforesaid decision was principally concerned with the right of a charitable institution to claim benefit of deduction in terms of Section 80T. It was in that context that the Calcutta High Court had laid emphasis upon the special characteristics of Section 11 and charitable institutions being held liable to adhere to its prescriptions. It further observed that deductions which are otherwise allowable under the Act

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[13] (1993) 199 ITR 215

to a case not regulated by Section 11 would have no bearing upon the percentage of accumulation and application which are otherwise constructed in terms of that provision. That is clearly not the issue which arises here.

31. We accordingly answer the question of law in the negative and against the appellant. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

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