

Gujarat High Court

Commissioner Of Income Tax vs Sheth Manilal Ranchhoddas ... on 26 February, 1992

Equivalent citations: 1992 198 ITR 598 Guj

Author: G Nanavati

Bench: G Nanavati, J Panchal

JUDGMENT G.T. Nanavati, J.

1. The Tribunal has referred the following two questions to this court under section 256(1) of the Income-tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that, while computing income under section 11(1)(a) of the Income-tax Act, 1961, depreciation has to be allowed ?

2. Whether the Tribunal was right in law in holding that, having regard to the Scheme of the Act, 'income' referred to in section 11(1)(a) of the Act is to be computed not in accordance with the provisions of the Act but in accordance with the normal rules of accountancy under which the depreciation has to be allowed while computing such income under section 11(1)(a) of the Act ?"

2. The assessee is a trust registered under the Public Trusts Act. The income of the assessee is mainly from immovable property. In the returns of income filed for the assessment years 1971-72 and 1972-73, the assessee claimed depreciation and calculated its income accordingly. The Income-tax Officer has rejected the claim of the assessee as he was of the view that the income from house property was to be calculated according to section 22 to 27 of the Act. In appeal, the Appellate Assistant Commissioner held otherwise. The Revenue then went to the Tribunal. The Tribunal dismissed the appeal. Same thing happened for the assessment year 1972-73 also. After both the appeals were dismissed, the Revenue applied to the Tribunal for raising the above two questions and referring the same to this Court.

3. What is urged by learned counsel appearing for the Revenue is that section 22 to 27 of the Act are specific provisions providing for computation of income and, therefore, the Tribunal committed an error in holding that the income of the assessee as contemplated by section 11(1)(a) of the Act was required to be computed not in accordance with those provisions but in accordance with the normal rules of accountancy under which depreciation is always taken into account for finding out the real income.

4. Whether depreciation has to be allowed as necessary deduction for computing the income of a charitable institution was the question which came up before the Karnataka High Court in CIT v. Society of the Sister of St. Anne [1984] 146 ITR 28. Noticing the difference between the word "income" and the expression "total income" and the necessity for providing depreciation in order to maintain correct accounts, the High Court held that the amount of depreciation debited to the accounts of the charitable institution has to be deducted to arrive at the income available for application to charitable and religious purposes. Same view has been taken by the Madhya Pradesh High Court in CIT v. Raipur Pallottine Society [1989] 180 ITR 579.

5. In CIT v. Rao Bahadur Calavala Cunnan Chetty Charities [1982] 135 ITR 485, the Madras High Court was required to consider whether, for the purpose of computing accumulation in excess of 25 per cent. as laid down in section 11(1)(a) of the Act, "income" has to be computed under the various heads enumerated in the Income-tax Act. It held that the income from the properties held under trust would have to be arrived at in the normal commercial manner without classification under the various heads set out in section 14. It held that the expression "income" has to be understood in the popular general sense and not in the sense in which the income is arrived at for the purpose of assessment to tax by application of some artificial provisions either giving or denying deduction. It observed that the computation under the different categories or heads arises only for the purposes of ascertaining the total income for the purposes of charge. Those provisions cannot be introduced to find out what the income derived from the property held under trust to be excluded from the total income is, for the purpose of the exemptions under Chapter III.

6. We are in respectful agreement with the view taken by the Karnataka, Madhya Pradesh and Madras High Courts. We, therefore, answer both the question referred to us in the affirmative and against the revenue. No order as to costs.