

## **Director of Income Tax (Exemption) & Anr. v. D.L.F. Qutab Enclave Complex M ()**

### **INCOME TAX**

**--Charitable trust---**EXEMPTION UNDER SECTION 11(1A)*Capital gains--Premium received on leasing land invested by assessee in fixed deposit in bank--*

#### **Catch Note:**

*The assessee-trust had received premium amounting to Rs. 20,72,500 on leasing a plot of land for a period of 99 years--This amount was duly reflected in the balance-sheet--The assessing officer found that the amount was invested in time deposit with the bank and this, according to him, did not constitute investment in a capital asset--It was, therefore, concluded that the assessee had infringed the provisions of section 11(5) of the Act and was not entitled to any exemption--The matter was carried in appeal by the assessee before the Commissioner (Appeals)--The Commissioner (Appeals) accepted the stand of assessee and held that the trust was entitled to the benefit of section 11, as there was no breach of either section 11(5) or section 11(1A)--The views of Commissioner (Appeals) were accepted by the Tribunal--Justified--Investment for a fixed term in a scheduled bank fulfils conditions provided in section 11(1A), as a fixed term deposit is a capital asset, therefore, premium received on leasing land invested by assessee in fixed deposit in bank was entitled to exemption.*

#### **Held:**

The position is clear from section 11(5)(iii) that deposit in any account with a scheduled bank is also relatable to the forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2). The *Explanation* to the sub-section indicates what are encompassed by the expression "scheduled bank". The view of the assessing officer seems to be that deposit in a time deposit does not constitute a capital asset. The expression "capital asset" is defined in section 2(14) of the Act. It means property of any kind held by an assessee. Certain categories of assets have been specifically excluded from the meaning of capital asset. Deposits in scheduled banks are not one of these enumerated categories excluded from the meaning of capital asset as given in section 2(14). Investment for a fixed term in a scheduled bank fulfils the conditions provided in section 11(1A), as a fixed term deposit is a capital asset. That being the position. the Commissioner (Appeals) and the Tribunal were justified in their conclusions. There is no question of law, much less a substantial question of law, which needs to be adjudicated.

**Application:**

Also to current assessment year.

**Decision:**

In favour of assessee.

**Date of Judgment:**

20 November 2000

**Assessment Year:**

1990-91

**Income Tax Act 1961** s.11(1A)

**Income Tax Act 1961** s.2

**Income Tax Act 1961** s.11

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## **Director of Income Tax (Exemption) & Anr. v. D.L.F. Qutab Enclave Complex Medical Charitable Trust**

In the Delhi High Court Arijit Pasayat, C.J. & D.K. Jain, J.

I.T.A. No. 152 of 2000 20 November 2000 A.Y. 1990-91

**Counsel:** R. D. Jolly with Ms. Premlata Bansal and Ajay Jha, *for the Revenue* None appeared, *for the Assessee*

### **JUDGMENT**

Arijit Pasayat, C.J.

Heard. Questioning the correctness of the conclusions arrived at by the Income Tax Appellate Tribunal, Delhi Bench-D (hereinafter referred to as "the Tribunal"), that time deposits in a scheduled bank are covered by section 11(5) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), this appeal has been filed under section 260A of the Act. The dispute relates to the assessment year 1990-91.

2. The factual position in a nut shell is as follows : The assessee-trust had received premium amounting to Rs. 20,72,500 on leasing a plot of land to Dr. Sachdeva (P) Limited out of the land settled in its favour, measuring 2.77 acres, for a period of 99 years. This amount was duly reflected in the balance-sheet. The assessing officer found that the amount was invested in time deposit with the bank and this, according to him, did not constitute investment in a capital asset. It was, therefore, concluded that the assessee had infringed the provisions of section 11(5) of the Act and was not entitled to any exemption. The matter was carried in appeal by the assessee before the Commissioner (Appeals) (hereinafter referred to as "the Commissioner (Appeals)"). The factual position as highlighted before the Commissioner (Appeals) was to the effect that the assessee-trust was created on 7-12-1987, by the DLF Universal Limited and is registered under section 12A(a) of the Act. The assessee had filed its Form No. 10 and the money received on account of lease of land was invested in a scheduled bank. Therefore, there was no contravention of section 11(5). With reference to the deed of declaration of Medical Charitable Trust as executed on 7-12-1987, more particularly clause 7(iv) of the deed, it was pointed out that the trustees had full power to let out, lease, demise, mortgage the property belonging to the trust for such rent or compensation and on such terms and conditions and for such period as may be deemed proper. The sale proceeds were kept in fixed deposit for construction of hospital at a future date. The trust was created for the said purpose and plots of land were earmarked by the trustees and testator of the trust. The trustees had also the power either to set up or run a hospital, etc., on the same plots to provide medical facilities itself or having it done through any other person by conveying the sites for use for such purposes. The Commissioner (Appeals) accepted the stand and held that the trust was entitled to the benefit of section 11, as there was no breach of either section 11(5) or section 11(1A). The matter was carried in appeal before the Tribunal by the revenue . The Commissioner (Appeals)' views were accepted by the Tribunal.

Learned counsel for the revenue submitted that investment in term deposits was not sufficient compliance with the requirements of section 11(5) of the Act.

3. We find no substance in the plea of the revenue. Section 11 deals with income from property held for charitable or religious purposes. Sub-section (1) of section 11 provides that subject to sections 60 to 63, enumerated incomes shall not be included in the total income of the previous year of the person in receipt of the income. Sub-section (2) deals with accumulation or setting apart either in full or in part seventy-five per cent of the income referred to in clause (a) or (b) of sub-section (1) read with the *Explanation* to that sub-section, which has not been applied or is not deemed to have been applied to charitable or religious purposes, for application to such purposes shall not be included in the total income provided stipulated conditions are fulfilled. The forms and modes of investing or depositing the money referred to in sub-section (2) are provided in sub-section (5). In *CIT (Additional) v. A. L. N. Rao Charitable Trust (1995) 216 ITR 697 (SC)*, it was held that section 11(1) is not in any manner restricted by sub-section (2). The accumulated income which is exempt under section 11(1)(a) is not required to be invested in Government securities. Sub-section (2) relates only to additional accumulated

income beyond twenty five per cent. Sections 11(1), (2), (5) and section 11(1A) so far as relevant read as follows:

"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 twenty-five 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 twenty-five 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.*--For the purposes of clauses (a) and (b),--

(1) in computing the twenty-five 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 the seventy-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 in writing before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income), 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.

11. (2) Where seventy-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the *Explanation* to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely :-

(a) such person specifies, by notice in writing given to the assessing officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years ;

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

*Provided* that in computing the period of ten 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.

11. (5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :-

(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government ;

(ii) deposit in any account with the Post Office Savings Bank ;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

*Explanation--*In this clause, 'scheduled bank' means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) : . . ."

"11. (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."

4. The position is clear from section 11(5)(iii) that deposit in any account with a scheduled bank is also relatable to the forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2). The *Explanation* to the sub-section indicates what are encompassed by the expression "scheduled bank". The view of the assessing officer seems to be that deposit in a time deposit does not constitute a capital asset. The expression "capital asset" is defined in section 2(14) of the Act. It means property of any kind held by an assessee. Certain categories of assets have been specifically excluded from the meaning of capital asset. Deposits in scheduled banks are not one of these enumerated categories excluded from the meaning of capital asset as given in section 2(14). Investment for a fixed term in a scheduled bank fulfils the conditions provided in section 11(1A), as a fixed term deposit is a capital asset. That being the position, the Commissioner (Appeals) and the Tribunal were justified in their conclusions. We find no question of law, much less a substantial question of law, which needs to be adjudicated.

The appeal, being without merit, is dismissed.

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