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Court : Allahabad

Decided On : Jul-07-1980

Reported in : [1981]131ITR461(All)

Judge : C.S.P. Singh and ;R.R. Rastogi, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 2(15) 11 and 11(1)

Appeal No. : Income-tax Reference No. 286 of 1974

Appellant : Addl. Commissioner of Income-tax

Respondent : Etawah District Exhibition and Cattle Fair Association

Advocate for Def. : R.V. Gupta, Adv.

Advocate for Pet/Ap. : R.K. Gulati and ;A. Gupta, Advs.

Judgement :

Rastogi, J.

1. The Income-tax Appellate Tribunal, ' A Bench ', Allahabad, has referred the following questions for the opinion of this court: At the instance of the department:

' (i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee held property under trust within the meaning of Section 11(1)(b) of the Income-tax Act, 1961, and, if so, whether the assessee was entitled to exemption under Section 11(l)(b) of the Act in respect of amounts actually spent on charities as mentioned in its order ' At the instance of the assessee:

'(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the income of the assessee-association was not exempt under Section 11(1)(a) ?

(ii) Whether, on the facts and in the circumstances of the case, holding of agricultural and industrial exhibitions and cattle fair involved an activity for profit within the meaning of Section 2(15) of the Act '

2. This reference had come up before us for hearing on an earlier occasion and answer was given to the question, referred at the instance of the department. The questions referred at the instance of the assessee were returned unanswered since nobody had put in appearance on its behalf. Subsequently, on an application given by the assessee that decision was recalled by an order made on April 5, 1979, and that is how the reference has come up again for hearing.

3. The reference relates to the assessment years 1963-64, 1964-65 and 1965-66. The assessee is M/s. Etawah District Exhibition and Cattle Fair Association. For all these three years, assessments were made on it in the status of an association of persons. The assessee had claimed that its income was exempt from tax under Section 11(IXa) of the I.T. Act, 1961, hereafter 'the Act'. The ITO repelled that submission and brought the entire income to tax. The main reasons given by the ITO are contained in his order, given for the assessment year 1963-64, and they were:--that the assessee is not registered under the Societies Registration Act; that the assessee does not own any property and, as such, the provisions of Section 11 are not applicable to it, and, lastly, there is no provision in the constitution of the assessee-association making it obligatory on its part to spend the income derived from the holding of exhibition, cattle fair, etc., wholly and exclusively, for the objects of the association, nor is there any provision expressly

prohibiting the distribution of such income among the members of the association by way of dividend. For the other two years for the same reasons the claim of the assessee was rejected and the entire income was brought to tax.

4. The assessee appealed. The AAC took a contrary view and held that in order to entitle an association to exemption from income-tax it is not necessary that it should be registered under the Societies Registration Act, 1960, that the assessee had income-yielding properties and its entire organisation and undertaking also constituted property and, lastly, that some of the objects were undoubtedly charitable and some fell within the category of the 'objects of general public utility that since the business of the assessee involved carrying on of an activity for profit, it did not fulfil the requirements of Section 11(1)(a) and it was not entitled to exemption thereunder. However, the assessee could claim exemption under Section 11(l)(b) in respect of that part of its income, which was actually utilised by it for charitable purposes. The appeals were accordingly allowed in part.

5. Against that decision the department filed three separate appeals while the assessee filed one combined appeal as also three cross-objections to the departmental appeals. The Tribunal found the following facts and there is no dispute about the same. The assessee is an unincorporated association of persons. For the first time it held an agricultural and industrial exhibition and cattle fair in the year 1888 and continued to hold the same every year till 1892. For a few years thereafter no such exhibitioner fair was held. The same was revived in 1910 and continued as an annual feature up till now. The income of the assessee mostly consisted of donations received from various zamindars and income-tax payers. That practice of receiving donations was discontinued from 1935. At the time the assessee was possessed of about Rs. 50,000. It constructed some shops on the exhibition ground. In 1954 it adopted a written constitution.

6. According to the constitution the objects of the association are :

(a) to promote cultural, social and educational developments ;

(b) to encourage development of art, agriculture, horticulture and industry of the district;

(c) to improve the breeding of cattle, sheep, goat, horse and poultry, etc., in the district; and

(d) to promote physical culture, public health, maternity and child welfare.

7. In para. 3 of the constitution it was provided that an agricultural and industrial exhibition and cattle fair will be held annually at Etawah and all necessary and suitable steps will be taken to achieve the aforesaid objects.

8. For the years under consideration the income of the assessee consisted of rents from shops, Tahbazari, cattle registration fees, wrestling matches, music sammelans, etc. The Tribunal found that the holding of the agricultural and industrial exhibition and cattle fair was not the dominant object of the assessee and in fact no particular object of the association could be treated as a dominant object. It also held that the, objects of the association fell under the residuary clause of Section 2(15) of the Act, which position was also conceded before it on behalf of the assessee. The Appellate Tribunal also held that though in the relevant previous year the assessee was not a registered body and did not own any taxable assets yet it could be said that it held property within the meaning of Section 11(1)(b) and was entitled to the exemption under that provision in respect of the amounts actually spent by it on the charitable objects. In its opinion the activity of the assessee of holding an agricultural and industrial exhibition and cattle fair was a means to fulfil its objects and involved an activity for profit.

9. The Appellate Tribunal repelled the contention of the department that because of the fact that the assessee was not a registered and incorporated body, it was not entitled to exemption of its income. The Tribunal also repelled the contention of the department that the assessee did not own any property because the assessee's funds from donations amounted to Rs. 50,000 in 1935 and then from those funds it constructed some shops on the exhibition ground and that it had a right to charge rent from those shops. It also had some balance funds brought forward and thus the assessee-association was possessed of property and its right to receive rent itself was property. In the result the Appellate Tribunal confirmed the order of the AAC and dismissed all the appeals and cross-objections.

10. Clauses (a) and (b) of Sub-section (1) of Section 11 of the Act at the relevant time stood as under :

'(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 for application to such purposes in India, to the extent to which the income accumulated is not in excess of twenty-five per cent of the income from the property or rupees ten thousand, whichever is higher ;

(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 the property held under trust in part. '

(Clause (c) and the Explanation to this sub-section are not necessary for the present purpose).

11. In order to support a claim for exemption of income under the aforesaid provisions the following main conditions must be satisfied: (a) the property from which the income is derived should be held in trust or other legal obligation ; (b) the property should be so held for charitable or religious purposes which enure for the benefit of the public ; and (c) the exemption is confined to only such portion of the trust income as is applied to charitable or religious purposes or is accumulated for application to such purposes within the limits of accumulation provided in Sub-sections (1) and (2) of Section 11.

12. In the present case the Tribunal has, on a review of the material on record, found that the assessee had constructed shops from its own funds and that the

income from these shops could be utilised only for the carrying out of the objects of the association. It could not be distributed amongst the members of the association. It would thus be seen that the shops, etc., owned by the assessee-association are held by it under a legal obligation. The stocks and the organisation will also come within the ambit of property. Hence, the first condition has been satisfied that the assessee-association holds property under a trust or legal obligation.

13. The next question that arises for determination is as to whether the property is so held by the assessee for charitable or religious purposes which enure for the benefit of the public. Section 2(15) of the Act defines charitable purpose as under :

"Charitable purpose ' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.'

14. This definition is inclusive and not exhaustive or exclusive. Under this definition charitable purposes have been categorised under four heads and they are relief of the poor, education, medical relief and, lastly, any other object of general public utility. The restrictive clause 'not involving the carrying on of any activity for profit' qualifies or governs only the last head of charitable purposes and not the earlier three heads. This restrictive clause does not apply in cases-where the purpose of a trust or institution is relief of the poor, education or medical relief as is now well settled as a result of the decision of the Supreme Court in *Dharmadeepti v. CIT* : [1978]114ITR454(SC) . The meaning and scope of this restrictive clause again came up for consideration before the Supreme Court very recently in *Addl. CIT v. Surat Art Silk Cloth Manufactures Association* : [1980]121ITR1(SC) and his Lordship, Bhagwati J., speaking for the majority, has observed:

'It is clear on a plain natural construction of the language used by the legislature that the ten crucial words 'not involving the carrying on of any activity for profit' go with 'object of general public utility' and not with 'advancement'. It is the object of general public utility which must not involve the carrying on of any activity for profit and not its advancement or attainment. What is inhibited by these last ten words is the linking of activity for profit with the object of general public utility and not its

linking with the accomplishment of carrying out of the object. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the newly added words. What these words require is that the object should not involve the carrying on of any activity for profit. The emphasis is on the object of general public utility and not on its accomplishment or attainment. The decisions of the Kerala and Andhra Pradesh High Courts in CIT v. Cochin Chamber of Commerce and Industry : [1973]87ITR83(Ker) and Andhra Pradesh State Road Transport Corporation v. CIT : [1975]100ITR392(AP) , in our opinion, lay down the correct interpretation of the last ten words in Section 2, Clause (15). The true meaning of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit.'

15. It is thus now established that the expression ' not involving the carrying on of any activity for profit' qualifies or governs the fourth category of charitable purposes mentioned in this definition clause, viz., the advancement of any other object of general public utility and further that it is the object of general public utility and not its advancement or accomplishment which must not involve the carrying on of any activity for profit. The objects of the assessee-association have been reproduced in an earlier paragraph and the Appellate Tribunal held and it was also conceded before it on behalf of the assessee that these objects fell in the residuary clause of Section 2(15). In other words, the objects of the assessee-association are objects of general public utility. Further, the Appellate Tribunal has held that the activity of the assessee of holding an agricultural and industrial exhibition and a cattle fair was a means to fulfil its objects and involved an activity for profit. In other words, it has been found that these objects of the assessee involve the carrying on of an activity for profit.

16. It was submitted before us on behalf of the revenue by Sri R. K. Gulati that the objects of the assessee-association included both charitable and non-charitable objects and that being so the assessee would not be entitled to exemption in respect of income derived from the property held by it, and even Clause (b) of

Sub-section (1) of Section 11 would not be attracted. On the other hand, according to the assessee's counsel, Sri R. V. Gupta, the activities of the assessee do not involve carrying on of any activity for profit and the claim was allowable under Clause (a) of Section 11(1) itself. In our opinion, on the facts found by the Appellate Tribunal, which have been mentioned above, the assessee's claim could not be allowed even under Section 11(l)(b). The law is well settled that if there are several objects of a trust or institution, some of which are charitable and some non-charitable and the trustees or the managers in their discretion are to apply the income or property to any of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income would be exempt from tax. If, however, the primary or the dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but just merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or the institution from being a valid charitable trust. Here also the Appellate Tribunal has found that none of the objects of the assessee-association could be treated as a dominant object. In other words, all the objects of the assessee-association stand on the same footing and since the trustees or the managers of the assessee-association in their discretion can apply the income or property to any of those objects, the assessee-association cannot be regarded as charitable and no part of its income would be exempt from tax.

17. In *Dharmaposhanam Co. v. CIT* : [1978]114ITR463(SC) (SC) the objects of 'industries' and 'Common good' were treated as beyond the scope of charitable purposes. In that case it was found that since the objects clause contained some objects which were charitable and some which were non-charitable and all the objects enjoyed an equal status, the entire claim to exemption must fail and it could not be said that any part of the income was exempt from tax. In the present case also Clause (b) of the objects clause of the assessee-association provides for encouragement or development of art, agriculture, horticulture and industry of the district. In Clause (c) also there is a provision for improvement of the breeding of cattle, sheep, goats, horse and poultry in the district. These objects of encouraging industry and improving the breeding of cattle, etc., cannot be described as charitable purposes and since all the objects contained in this clause appear to enjoy equal status and it has been found by the Appellate Tribunal

well that none of the objects is dominant in nature, the entire claim to exemption must fail. No definite part of the business or of its income is related to charitable purposes only.

18. In Dharmadeepti's case : [1978]114ITR454(SC) , on which reliance was placed on behalf of the respondent-assessee, according to Clause 3(a) of the memorandum of association, the main objects for which the assessee was formed were ' to give aid for charity, to promote education '. The objects incidental or ancillary to the dominant and the main objects included the running of chitties business as given in Clause 3(b). It was found that the assessee carried on the business of chitties which was held in trust and since that was incidental to the main objects of charity and education the income proceeding from it was exempt under Section 11(1)(a) of the Act. It would be seen that the decision proceeded on an entirely different set of facts.

19. Before parting with this case we would like to mention that we have taken a view which is different from the view taken by this court in the assessee's own case earlier and which is reported in [1978] UPTC 282 (Addl. CIT v. Etawah District Exhibition and Cattle Fair Association). That order was subsequently recalled on the assessee's application on April 5, 1979, as the assessee was not present when that reference had come up for hearing. The decisions of the Supreme Court in the case of Dharmaposhanam Co. : [1978]114ITR463(SC) was not then brought to the notice of the Bench and further the position has further been set at rest by the latest decision of the Supreme Court in Surat Art Silk Cloth Manufacturers Association's case : [1980]121ITR1(SC) .

20. Our answer to the questions referred, therefore, are:--

Question No. 1 referred at the instance of the department.

On the facts of the instant case the Appellate Tribunal was not justified in holding that the assessee held property under trust within the meaning of Section 11(l)(b) of the Act and in allowing exemption in respect of the amounts actually spent on charities. The question is thus answered in the negative, in favour of the department and against the assessee.

Questions Nos. 1 and 2 referred at the instance of the assessee.

On the facts of the case the Appellate Tribunal was right in holding that the holding of an agricultural and industrial exhibition and cattle fair involves an activity for profit within the meaning of Section 2(15) of the Act and further that the assessee is not entitled to exemption under Section 11(l)(a). Both the questions are answered in the affirmative, in favour of the department and against the assessee.

21. The department is entitled to costs which are assessed at Rs. 200.

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