

Addl. Commissioner of Income Tax Vs. Etawah District Exhibition and Cattle Fair Association.

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Court : Allahabad

Decided On : Feb-21-1978

Reported in : (1978)7CTR(All)166

Appeal No. : I.T.R. No. 286 of 1974

Appellant : Addl. Commissioner of Income Tax

Respondent : Etawah District Exhibition and Cattle Fair Association.

Judgement :

Satish Chandra, J. - Messrs Etawah District Exhibition and Cattle Fair Association, the assessee, was taxed in the status of an association of persons. For the assessment years 1963-64, 1964-65 and 1965-66 it claimed that its income was exempt from tax under S. 11(1)(a) of the Income Tax Act, 1961. The Income Tax Officer repelled this submission and brought the entire income to tax. The assessee appealed. The Appellate Assistant Commissioner held that -

(a) in order to be entitled for an association to exemption from income tax, it is not necessary that it should be a registered body;

(b) the assessee owned income-yielding properties. Its entire organisation and undertaking also constituted property;

(c) some of the objects were undoubtedly charitable but some were covered by the clause 'object of general public utility' occurring in S. 2(15) of the Act.

Since the business of the association involved carrying on of an activity for profit it was not held to be a charitable trust under S. 11(1)(a). He, however, upheld the claim of the assessee that it was entitled to exemption under S. 11(1)(b) in respect of that part of its income which was actually used for charitable purposes. The appeal was allowed in part.

2. Both the assessee as well as the Department went up in appeal to the Tribunal. The Tribunal found that the assessee association first held Exhibition and Cattle Fair at Aligarh in 1888, and continued to hold it till 1892. The cattle fair was revived in 1910, and since then it has been held every year. The income of the association consisted of donations from zamindars etc. By 1935 the association had accumulated a fund of Rs. 50,000/-. The association constructed some shops on the exhibition ground, which was partly owned by the association. The association adopted a written Constitution in 1954. The association got itself registered under the Societies Registration Act in the year 1970.

3. According to its constitution the objects of the Association were -

(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, oat, fish, horse and poultry etc. in the district.

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

4. Paragraph (3) of the Constitution 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 said objects.

5. The income of the association in the assessment years in question consisted of rent from pucca shops, Tahbazari, cattle registration fees, proceeds of wrestling

matches and music Sammelan etc. received at the annual fair. The Tribunal found that the exhibition and cattle fair was held each year in order to achieve the objects of the association. It held that on a review of the constitution it does not appear that any one of the objects was the dominant object of the association. It found that some of the objects, like objects mentioned in clause (c) are not covered by the first three heads of the definition of a charitable trust, namely, relief of the poor, Education, medical relief; but they are covered by the residuary clause 'advancement of any other object of general public utility'. It, after a review of the material on the record, came to the conclusion that the holding of annual exhibition, in which income was derived by way of rent from shops, wrestling matches, cattle registration fee etc. did involve an activity for profit. On that view it came to the conclusion that the assessee was not a wholly charitable trust so as to qualify for exemption under S. 11(1)(a) of the Act. It then held that the objects of the association are undisputably charitable in part. The case will hence fall under S. 11(1)(a) of the Act and in the income actually applied to the charitable purpose will be exempt from taxation.

6. The Tribunal repelled the submission of the Department that in order to claim exemption the assessee was in law required to be a registered body. It held that the obligations of the association could be enforced, and it can sue and be sued according to the Code of Civil Procedure. It went on to hold that the members of the assessee association could not distribute the income amongst themselves. The association was bound to carry on the objects mentioned in paragraph 2 of its Constitution.

7. The submission of the Revenue that the association did not hold any property in trust was also repelled. It was held that it is in evidence that the association's funds from donations swelled to Rs. 50,000/- in 1935. The association then constructed some shops in the exhibition ground with the help of those funds. It has a right to charge rent in respect of those shops. It could bring forward the balance funds. The right to receive rents was itself a property. The entire organization and undertaking of the association as well as its stocks constituted property. In the result all the appeals were dismissed.

8. At the instance of the assessee the Tribunal has referred the following questions of law for the opinion of this Court :-

1. 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 S. 11(1)(a).

2. Whether on the facts and in the circumstances of the case holding of agricultural and industrial exhibitions and cattle fairs involved an activity for profit within the meaning of S. 2(15) of the Act.

9. At the hearing of the reference no one appeared on behalf of the assessee. We have, therefore, no option but to return these questions unanswered.

10. At the instance of the Department the Tribunal has solicited our opinion on the following question of law :

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 S. 11(1)(a) of the Income Tax Act, 1961, and if so whether the assessee was entitled to exemption under S. 11(1)(a) of the Act in respect of amounts actually spent on charities as mentioned in its order.

11. From the facts found by the Tribunal it is evident that the assessee commenced its activities as an association of some persons but without having any property. No one had in the beginning or subsequently endowed any particular immovable property to the association. It created or acquired immovable properties out of its donation income. These properties, like shops, are being used to fetch income at the annual exhibition and cattle fair. It is clear that the income which is in question is derived by the association from properties owned by itself.

12. The question is whether it can be said that the assessee holds property under trust, within meaning of S. 11(1)(a).

13. The normal manner in which a property is held under trust is that the owner of the property divests his interest and endows the property for charitable purposes.

The property is then said to be held under a charitable trust. The property itself should be made the subject matter of a trust or other legal obligation, and the income must directly and substantially arise from that property.

14. Property acquired by a charitable institution or trust from its own income and utilised for carrying out the objects of the institution or the trust is also property held under trust within meaning of S. 11(1)(a). A property owned by the Trust is held under trust because the trustees of the association are under a legal obligation to achieve the object of the association by any activity including the use of properties.

15. In the present case the Tribunal has, on a review of the materials on the record, found that the assessee constructed the 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. On these findings, it is, in law, implicit that the shops etc. owned by the association were held by it under a legal obligation that it will utilise them for achieving its objects. Properties owned by the assessee including its organisation and stocks were all property held under a trust within meaning of S. 11.

16. The decision of the Bombay High Court in Commissioner of Income Tax vs. Breach Candy Swimming Bath Trust is in point. In 1876 the Secretary of State for India in Council granted a piece of land to the Municipal Corporation of the city of Bombay for construction of a salt water swimming bath on the foreshore at Breach Candy in Bombay. It was provided in the grant that the Corporation shall hold the said piece of land upon trust to be used for construction and maintenance of a public salt water swimming bath. The Corporation constructed the swimming bath from its own resources. The swimming bath was run along with a restaurant where alcoholic drinks were also served. The question was whether the income derived from the admission fee to the bath and the bar and restaurant attached to the swimming bath was exempt. Chagla, C.J. held (at page 292) :-

'Now, it seems to us that S. 4(3)(i) deals with property which is held under trust or other legal obligation from which an income is derived, and the property may be even business which may be settled on trust or which may be an integral part of

the trust.'

The Court held that S. 4(3)(ia) applies to income from property or business which was not part of the property of the trust. But if the trustees were carrying on an activity as part of the trust itself and which activity made profits from the use of the trust properties, it would fall under S. 4(3)(i), namely, property held under trust.

17. Property which is owned by the trust is an integral part of the trust and is held under trust within meaning of S. 11 if it is used for carrying out the objects of the trust.

18. This point also arose in *All India Spinners Association vs. Commissioner of Income Tax*. The assessee was an unregistered association called 'All India Spinners Association' formed for the purpose of hand-spinning and hand-weaving. The Association collected subscription from its members and also donations and invested them in the purchase of raw cotton which was given to various poor people for being spun into yarn, the yarn being woven into cloth, which was then sold and the proceeds appropriated to the funds of the Association for purposes aforesaid. The assessee claimed exemption under S. 4(3)(i) on the ground that its income was derived from property held under trust. The Privy Council, in reversing the decision of the High Court, held that 'the property consisted of the organisation and the undertaking as well as in the fluctuating stock of yarn and cloth' and that the exemption in S. 4(3)(i) applied.

19. It is evident that the fluctuating stock of yarn and cloth was purchased by the association from its income from subscriptions and donations. This income was not specifically endowed or made the subject of any trust.

20. *Coffee Board vs. Deputy Commissioner of Agricultural Income Tax*, is a judgment of the Mysore High Court which is in point. By the Coffee Act of 1942 a Coffee Board was constituted. It had funds called 'General Fund' and 'Pool Fund' constituted under S. 30 of the Act. To these Funds various sums were credited to meet the expenses of the Board and to meet the 'cost of such measures as the Board may consider advisable to undertake for promoting agricultural and technological research in the interest of the coffee industry in India.' The Act

contemplated constitution of research committees. The research committees maintained research stations. The income derived from the research stations was the subject matter of dispute in that case. The Coffee Board claimed that it was exempt under S. 12(f) of the Mysore Agricultural Income Tax Act, 1957, which provided that agricultural income tax shall not be payable on that part of the total agricultural income of a person which is :

'any sum derived from land held under a trust or other legal obligation wholly or partly for public purposes of a charitable or religious nature

S. 12(f) was in pari materia with S. 4(3)(i) of the Income Tax Act, 1922.

21. The High Court held that income derived from the farms maintained by the Board was exempt because it was property held under trust. It will be seen that in this case also the Coffee Board had acquired the farms from its own income. The farms had not been settled with the Coffee Board by their owners to be held in trust.

22. In C.I.T. vs. Andhra Chamber of Commerce, the Chamber of Commerce, from its own funds, purchases, a building, which it altered and improved, moved its offices into that building and let out portions not required for its use to tenants. The question was whether the building was property held under trust and the income from the building was exempt.

23. The Supreme Court held that the objects of the Chamber of Commerce were charitable and so the income from its building was exempt as the building was held under a legal obligation for charitable purposes. At page 729 the Court observed -

'It is true that in this case there is in fact no trust in respect of the income derived from the building owned by the assessee. But the property and the income therefrom is held under a legal obligation, for, by the terms of the permission granted by the Government to the assessee to exclude from its name the use of the word limited, and by the express terms of clause 4 of the Memorandum of Association, the property and its income are liable to be utilised solely for the

purposes set out in the Memorandum of Association'.

24. The true position is : given a trust or institution for charitable purposes, whose income is to be utilized for carrying out its objects, the donations made to it or the income earned by it (in the course of carrying out its objects) are, in law, property deemed to be held under trust or legal obligation that it cannot be lawfully utilised except for achieving its objects.

25. If a trust or institution utilizes such donations or income for acquiring an income-yielding asset, e.g., an immovable property, like the farms in the Coffee Board, case, or a building (as in Andhra Chambers case) or even movables, like yarn or cloth (see All India Spinners Association case), these are all properties, and properties held under trust or legal obligation within meaning of S. 11, Income Tax Act, 1961. The present is also a case of this category.

26. Here the property, namely, the shops owned by the assessee were constructed out of donations received by it, and are utilised in order to carry out the primary objects of the assessee. They as well as income from wrestling matches, music Sammelan etc. are hence held by the assessee under a legal obligation. The Tribunal was justified in holding that the case fell within the purview of clause (b) of S. 11(1) and that the assessee was entitled to exemption under it.

27. In the result the two questions referred at the instance of the assessee are returned unanswered.

28. The question referred at the instance of the Revenue is answered in the affirmative, in favour of the assessee and against the Department.

29. Since no one has appeared on behalf of the assessee, there will be no order as to costs.