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Cit Vs. J.K. Organisation

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Court : Allahabad

Decided On : Dec-01-2004

Reported in : [2005]144TAXMAN560(All)

Appeal No. : IT Reference Nos. 247 and 248 of 1987 1 December 2004

Appellant : Cit

Respondent : J.K. Organisation

Advocate for Pet/Ap. : Shambhu Chopra *for the Applicant* Vikram Gulati *for the Respondent.*

Judgement :
ORDER

R.K. Agrawal, J.

The Income Tax Appellate Tribunal, Allahabad by separate orders has referred the following two questions of law under section 256(2) of the Income Tax Act, 1961, hereinafter referred to as the Act, for opinion to this Court:

'1. Whether, the Appellate Tribunal was justified in holding that the income of the assessee AOP was exempt from tax on the ground of mutuality

2. Whether, the Tribunal was justified in ignoring that the income of the assessee AOP was assessable (sic) business income under section 28(iii) of the Income

Tax Act, 1961 in view of the fact that the assessee AOP was carrying on an organised activity of arranging meetings and conferences for discussing matters of productions, accounts, taxation etc.?'

2. While the Reference No. 247 of 1987 relates to assessment years 197677 to 1978-79, the Reference No. 248 of 1987 relates to the assessment years 1979-80 and 1980-81.

3. Briefly stated that facts giving rise to the present References are that the respondent-assessee, M/s. J.K. Organisation Ltd., Kamla Tower, Kanpur hereinafter referred to as the Organisation, is an Association of Persons. It is registered under the Indian Trade Unions Act, 1926 and its membership is confined to persons whose undertakings in business, trade, industry and agriculture form part of or are connected with the J.K. Group of undertakings or who are trustees under a trust made by any member or members thereof. The main object of the Organisation is to regulate the relations between members and their employees and between members and members. Rule 3 of the Rules and Regulations, which contained objects is reproduced below:

'(i) To promote and protect the trade, commerce, industry and agriculture in which the members of the Association are or may be concerned and to impose restrictive conditions on the conduct of such trade, commerce, industry and agriculture.

(ii) To formulate and recommend to members common administrative policies and to settle questions of common interest and to protect the members of the Association against competition.

(iii) To formulate and regulate terms and conditions of employment of the employees of its members and to start organise, establish and maintain labour relations and labour welfare organisation.

(iv) To consider all questions affecting trade, commerce, industry and agriculture in which members are or may be concerned and to the all necessary actions in connection therewith.

(v) To engage the services of technical and other advisers and experts for the benefit of the trade commerce' industry and agriculture in which the members of the Association are or may be concerned.

(vi) To establish a fund or funds for the purpose of-

(a) Legal assistance.

(b) All activities undertaken for furthering all or any of its objects.

(c) Payment of remuneration to technical or legal experts, secretaries and staff.

(vii) To draw, accept, endorse, discount or otherwise deal with cheques, hundies, bills of exchange and other negotiable instruments and to open and operate account or accounts with any firm or firms, bank or banks in connection with the business of the Association.

(viii) To invest the moneys not immediately required for the purposes of its administration.

(ix) To borrow or raise any moneys required for the purposes of the Association.'

4. Rule 9 of the Rules and Regulations provide for membership fee, which reads as follows:-

'Every member shall pay to the Association such sum or sums on account of his annual subscription and such further sum or sums on account of contribution, as the Central Board may determine from time to time either on the basis of the number of persons employed or on the basis of the total capital employed or on the basis of the turnover or on the basis of the net profits earned or on the basis of the services expected to be rendered by the Association or on the basis of a lump sum or on any other basis or partly on one basis and partly on another or on varying basis in respect of different members.'

5. Rule 17 provides that a General Meeting of the members shall be held in each year (not later than 30th June) at which the subscriptions fixed by the Central Board for the ensuing year and the accounts of the previous year shall be laid on

the table for information. Rule 26(b) provided that all moneys on account of subscriptions, fines or other contributions, which it is obligatory on the members to pay, shall be credited to the General Fund and that no expenditure from such fund shall be made in contravention of section 15 of the Indian Trade Unions Act, 1926 but may be applied towards the carrying out of the objects of the Association. Rule 35 provided that in the event of dissolution, the Central Board shall wind up the affairs of the Association and after all the debts and outstanding of the Association have been satisfied, the balance of the funds of the Association representing accumulated subscriptions and interest of any other assets of the Association shall be distributed amongst the members of the Association as far as possible upon the basis of the scale upon which such members are contributing to the Association at the time of its dissolution. Rule 37 prescribes the procedure for the amendment of the Rules.

6. The Organisation plea that its income could not be assessed on the ground of mutuality. The CIT(A) did not accept the plea. However, the Tribunal after considering the rules and regulations of the Organisation has upheld the claim.

7. We have heard Sri Shambhu Chopra, learned standing counsel appearing for the revenue and Sri Vikram Gulati, learned counsel appearing for the respondent.

8. Learned Standing counsel appearing for the revenue submitted that the respondent does not fulfil the conditions of mutuality and, therefore, its income is liable to tax. In support of the aforesaid plea he has relied upon the following decisions:-

(1) Chelmsford Club v. CIT (2000) 243 ITR 891

(2) Upper India Hire Purchase Co. v. CIT (2001) 251 ITR 6422 (Del)

(3) Haryana State Co-operative Labour& Construction Federation Ltd v. CIT (2001) 252 ITR 2651 .

9. Learned counsel for the respondent, however, submitted that from the perusal of the rules and regulations of the Organisation it is absolutely clear that the object was to confine to looking after the interest and welfare of its members and even

after dissolution the surplus was to be distributed amongst the members. Therefore, the principle of mutuality is fully attracted and the income is not liable to be taxed at all.

10. Having heard the learned counselforthe parties wefind that theobject of the respondent organisation was to promote and protect and to further the interest of its members. In the event of the Organisation being dissolved, rule 35 provided for distribution of the assets amongst the members of the Organization.

11. In the case of Chelmsford Club (supra) the Apex Court has ref erred to its earlier decision in the case of CIT v. Royal Western India Turf Club Ltd. : [1953]24ITR551(SC) , which had quoted with approval the three conditions stipulated by the Judicial Committee in the case of English & Scottish Joint Co-operative Wholesale Society Ltd. v. CAIT (1948) 16 ITR 270 , which establishes the doctrine of mutuality. They are as follows:

'(1) the identity of the contributors to the fund and the recipients from the fund, (2) the treatment of the company, though incorporated as a mere entity for the convenience of the members and policyholders, in other words, as an instrument obedient to their mandate, and (3) the impossibility that contributors should derive profit from contributions made by themselves to a fund which could only be expended or returned to themselves.' (p. 97)

The Apex Court has held that the business of the Chelmsford Club's case (supra) is governed by the principle of mutuality even the deemed income from its property is governed by the said principle of mutuality.

12. In the case of Upper India Hire Purchase Co. (supra) the Delhi High Court has held that where in a case of dissolution the surplus was liable to be distributed amongst even non-members it cannot be held to be a mutual organisation.

13. In the case of Haryana State Co-operative Labour & Construction Federation Ltd. (supra) the Punjab and Haryana High Court has held that where the assessee was under no obligation to return the funds to the contributors, the principle of mutuality is not attracted.

14. Applying the principle laid down by the Apex Court in the case of Royal Western India Turf Club Ltd. (supra) and followed in the case of Chelmsford Club (supra) to the facts of the present case, we find that the Organisation has been formed to promote and protect the interest of its members and it also provided that upon dissolution the surplus shall be distributed amongst the members of the organisation on the basis of their contribution. There is no finding that the respondent-organisation was catering to the need of any outsider. The principle laid down by the Apex Court in the aforementioned cases are fully applicable in the present case.

15. In view of the foregoing discussion, we answer both the questions referred to us in the affirmative L e., in favour of the assessee and against the revenue. However, there shall be no order as to costs.

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