

Sos Children'S Village Of India Vs. Income-Tax Officer

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Court : Income Tax Appellate Tribunal ITAT Madras

Decided On : May-31-1990

Reported in : (1990)34ITD476(Mad.)

Judge : G Cheriyan, S Vice, M Chaturvedi, J Member

Appellant : Sos Children'S Village Of India

Respondent : Income-Tax Officer

Judgement :

1. This appeal by the assessee is directed against the order of the Appellate Assistant Commissioner, 'D' Range, Madras and relates to the assessment year 1984-85 for which the accounting year ends on 31-12-1983.

2. The appellant is a charitable trust. For the relevant assessment year a return was filed admitting an income of Rs. 5,90,702 from other sources and Rs. 99,883 from sale of new year cards. The assessing officer treated the income from the sale of cards as taxable and accordingly charged income-tax inclusive of surcharge amounting to Rs. 44,501. On that interest under Section 139(8) was charged at Rs. 3,004 and interest under Section 217 was charged at Rs. 18,801. The first appellate authority held that in view of the provisions of Section 11 (4 A) of the IT Act, the income from sale of greeting cards is exigible to tax.

3. Smt. Asha Vijayaraghavan & Shri N. Devanathan, Ld. counsels for the assessee submitted before us that the assessee trust did not carry on any

business activity. Therefore the case does not come within the ken of Section 11 (4 A). According to the learned counsel the main object of the trust is to build, construct, maintain, establish and afford financial help to institutions for taking care of poor children in need of care such as orphans and destitute children irrespective of their caste, creed or religion and to bring them up in modern and healthy surroundings. In order to achieve this objective trust came out with the printing of cards. The theme of the card was "mother and child".

Various cards were placed before us. On the back of the cards it is mentioned SOS Children's Villages of India - Chatnath Homes, Madras.

"Loving home and a secure future for abandoned children in 22 villages all over India". We also find that some cards bear the printed legend IN AID OF SOS CHILDREN'S VILLAGES OF INDIA. All these cards present a portrait of mother and child. Reproductions are from paintings taken from the courtesy of museum and private collections and these paintings include the famous paintings by Ravi Varma, K.C.S. Panikar etc.

According to the Ld. Counsel the intention was to provoke the instincts of piety and benevolence in the mind of the person concerned. The object was not to earn profit. It was purely a fund raising activity which cannot be construed as business activity. A note on the activity, printing and distribution of new year cards was submitted before us. It bears the signature of managing trustee and reads as under: The SOS Children's Villages of India-Chatnath Homes had been established for the important task of looking after destitute and orphaned children. The primary source of income for the institution is in the form of donations, gifts, grants and sponsorships. In order to augment its resources for performing the public charitable object, the institution has been carrying on the activity of printing and distributing new year greeting cards. The surplus from which is purely applied in furtherance of the objects of the Trust.

It would be pertinent to note that the several well-wishers of the Institution contribute to the charitable work of the organisation by taking up these greeting cards. The Trust does not carry out this activity with a motive of profit, but only as a fund raising measure. The proceed realised from the distribution of new year

cards is made possible because of the benevolent attitude of the well-wishers of the Institution.

4. Our attention was invited at the ratio laid down in the case of Religious Tract & Book Society of Scotland v. Forbes (Surveyor of Taxes) 3 Tax Cases 415. In this case the society was founded for the diffusion of religious literature sells Bibles etc. at a depository or shop in Edinburgh and sends out colporteurs, whose duties are to sell Bibles etc. and to act as cottage missionaries. The sales at the Edinburgh shop result in a profit, but the colportage is carried on at a loss. The net result of the whole operations is an annual loss, which is met by subscriptions. It was held that the colportage is not a trade, and that the loss on it cannot, for the purposes of income tax, be set against the profits from the bookseller's business carried on at the shop.

5. The learned counsels also relied on the ratio laid down in Yennarkay Rajaratnam Charities v. ITO [IT Appeal Nos. 1223 to 1225 (Mad.) of 1985]. A xerox copy of the said order was placed before us. The learned counsel invited our attention at para 9 of this order where it is laid down : The fact remains that the assessee is not a trader. It has no intention of doing business of any kind. Trade marks may be commercial assets and its exploitation may be business activity. But in a matter like this, in the hands of a non-business institution, it sheds the character of a commercial asset and becomes only a simple item of corpus of the trust. The form of exploitation may be the same as that of a businessman. But that cannot disentitle the assessee for exemption under Section 11.

The learned counsels further relied on the decision of IT AT, Hyderabad Bench 'A' in the case of S.R.M.T. Staff Association v. ITO [1986] 16 ITD 448. The Tribunal followed the decision of CIT v. Trustees of Visha Nima Charity Trust [1982] 138 ITR 564 (Bom.) and held that the contributions received by way of tickets and for advertisements should be treated as merely voluntary contributions even though the advertisement charges were at prescribed rates and there was also an appeal for advertisements. Hence the impugned amount received by the assessee by way of advertisements in its souvenir should be regarded as voluntary contributions or donations and they could not be treated as trading receipts.

6. Shri Udayakumar, learned Departmental Representative submitted that the case of the appellant is not tenable. The appellant trust had determined to print new year cards and distribute them to the well-wishers and earn net profit of Rs. 99,883 as purely a business activity. The appellant trust incurred an expenditure of Rs. 1,96,515 on the purchase and printing of new year cards and sold them for Rs. 2,80,131. In view of the volume, frequency, continuity and regularity of the transactions in purchase of paper, printing and sale of cards, it is obvious that appellant had actually carried on the business with profit motive. According to the Ld. D.R. the other activities in regard to its charitable objects have no relevance to the activity of printing and sale of new year cards. The income of the trust is therefore exigible to tax by virtue of the provision under Section 11 (4 A) of the I.T. Act.

7. We have heard the rival submissions in the light of material placed before us and precedents relied upon. We have examined the cards. We find that all these cards project the theme "mother and child". We have also gone through the various objects laid down in the trust deed. In our opinion, welfare of the poor and destitute children is the dominant object of the trust. The intention for bringing out these cards was to provoke the hidden instincts of piety and benevolence. The paintings reflected on the face of the cards, demonstrates the dominant object of the society which in practice is to provide separate homes in a village, each under the supervision of a "mother" and play a crucial role in making collection for poor and destitute children. The printing of cards in our opinion is purely a fund raising activity in effect giving thereby a dignity which, collection merely by what may be termed "passing round the hat" would be bereft of exchanging a token or a donation, and cannot be construed a business activity. We therefore direct deletion of the addition made on this count of Rs. 99,883.

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