

**Assistant Commissioner of Vs. Peare Lal Sharma Memorial Trust**

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**Court :** Income Tax Appellate Tribunal ITAT Delhi

**Decided On :** Mar-24-2000

**Reported in :** (2001)77ITD50(Delhi)

**Judge :** M Chaturvedi, R Singh

**Appellant :** Assistant Commissioner of

**Respondent :** Peare Lal Sharma Memorial Trust

**Judgement :**

1. All these appeals by the Revenue rotate around the identical issues.

For the sake of convenience, these are consolidated and disposed of, by a common order.

2. Pt. Peare Lal Sharma was a social reformer, a freedom fighter and an eminent lawyer. He died in jail in 1941. To perpetuate his memory assessee-trust was formed in 1950.

2.1 The objects of the Trust are described in clause (2) of the Memorandum of Association. This reads as under :-- "(a) To perpetuate the memory of the great Indian patriot Pt. Peare Lal Sharma, Meerut.

(b) To educate the Indian public on all subjects of the civic and national interest and generally to create and foster sound public opinion on all subjects of Indian importance on non-communal basis.

(c) To provide a Hall, a Library, a Dispensary, Public Workers' Room and such other amenities as may be desirable and feasible.

(d) To provide facilities for close social and political intercourse and means for promotion of physical and intellectual culture.

(e) To provide for and promote such other activities and objects as may be thought to be feasible and desirable from time to time." 2.2 Initially the objects of the Trust could not be activated. The trust was lying defunct till the year 1983. It moved an application to CIT, Meerut in 1983 under section 12A of the Income-tax Act, 1961 (hereinafter called the "Act" for registration. Prayer for condonation of delay was also made. The assessee-trust, also moved an application for exemption under section 80G of the Act.

2.3 For the assessment year 1934-85 return was filed on 21-8-1984.

Assessment was completed on 19-3-1987 under section 143(3). Assessee claimed exemption under section 11 of the Act. In the return it reflected receipts of Rs. 32,486. Exemption under section 11 was allowed. CIT found assessment erroneous and prejudicial to the interest of Revenue. Therefore, he assumed jurisdiction under section 263 on the ground that the objects and purpose of the trust were not wholly charitable as such the donations received by the trust was exigible to tax. The assessment order was set aside and restored it to the file of the Assessing Officer for framing de novo assessment.

2.4 The Assessing Officer examined the facts. It was found that only two rooms in the building owned by the Trust were being used for public purposes. Later on these rooms were encroached upon by political parties, and Civil Defence authorities. Eviction suit was not filed.

These rooms were occupied adversely. The area of the rooms was under illegal possession. Trust was not in a position to collect rent from them. Besides, the assessee did not incur expenditure on activities related to the object of the Trust. Relying on the order in context of exemption claimed under section 80G, Assessing Officer held that the assessee trust was not a charitable trust. The

amount of donation was not used for the furtherance of the objects of the trust. As such, he denied the benefit claimed under section 11 of the Act. CIT (Appeals) reversed the order of the Assessing Officer. Being aggrieved, Revenue filed appeal before us.

3. Shri Abhay Tayal, the learned Departmental Representative, appeared before us. It was vehemently contended that the objects of the trust were not charitable. As such, the assessee is not entitled to claim the benefit of section 11 of the Act. Our attention was invited on the Memorandum of Association and Rules. It was submitted that the objects are entirely different from each other. It was submitted that the Assessing Officer examined the genuineness of the purpose by analysing the activities of the trust. It was found that the trust was created to promote politics and not for public charity.

3.1 It was further submitted that as the objects were found to be not charitable, therefore, exemption claimed by the assessee under section 80G was also denied.

3.2 Next it was argued that the trust properly was not fully utilised for charitable purposes. It was given over to the politicians. The fact that no suit for eviction was filed amply demonstrate that the property was given over for political reasons and this was done with the consent of the trustees.

3.3 It was further submitted that clause (e) of the object clause was vague. It did not pin point any charitable activity.

3.4 The learned Departmental Representative further supported the order of the Assessing Officer. He relied on the material used in the assessment order.

4. Shri H.G. Malik, learned counsel for the assessee appeared before us. It was vehemently contended that the assessee-trust was created for charitable purposes. Our attention was invited on the various clauses of the Memorandum of Association. It was submitted that there is absolutely nothing to indicate that the assessee was not engaged in the charitable activities.

4.1 Shri Malik, placed before us the sanctioned plan of the building owned by the trust. Our attention was invited in the plan on the hall, library and garden. It was

submitted that all these was constructed in conformity with the objects of the trust set out in Memorandum.

4.2 Shri Malik submitted that the registration under section 12A was granted to the trust by the CIT. The nature of the objects was duly considered, while granting registration. dC hors charitable objects, registration under section 12A is not possible. In short CIT for 12A purposes found objects as charitable. Now it is not open for the Assessing Officer to take a different view in the matter.

4.3 Shri Malik submitted that the Assessing Officer did not indicate any instance to demonstrate that the assessee did incur expenditure on non-charitable activities. Assessing Officer admitted in the order that some portion of the premises was encroached. There is absolutely nothing on record to indicate that such encroachment was with the consent of trustees. A portion of the premises was left out to Mool Chand Sharbati Devi Hospital Trust. The order of the Tribunal in the said case dated 11th August, 1989 in ITA No. 6596 (Del.) of 1988 was brought before us.

4.4 It was further submitted that the expenditure incurred in acquiring capital assets for carrying out the objects of the trust is to be construed as expenditure within the meaning of section 11(1A) of the Act. For this proposition Shri Malik placed reliance on the decision of the Gujarat High Court rendered in the case of Satya Vijay Patel Hindu Dharamshala Trust v. CIT[1972] 86 ITR 683.

4.5 Shri Malik submitted that the connection of the trust with political organisation is not relevant for determining the charitable nature of the Trust. For this proposition reliance was placed on the ratio laid down in the case of Ganga Prasad Varma Memorial Society v. CIT [1982] 134 ITR 421 (All).

4.6 Shri Mailk submitted that to perpetuate the memory of Pt. Pcare Lal Sharma, hall was constructed. This was used for the general public utility. It was for the charitable purpose. Reliance was placed on the decision rendered in the case of Mahakoshal Shaheed Smarak Trust v. CIT [1983] 140 ITR 795 (MP).

4.7 Shri Malik took us through the various precedents to show that the purpose for which the trust was created cannot be construed to be a non-charitable purpose. The income derived from the trust property was used for promoting the objects of the trust. As such it cannot be taxed. For this proposition reliance was placed in the case of *Thiagarajar Charities v. Addl. CIT* [1997] 225 ITR 1010 (SC).

4.8 Commenting on clause 2(e) Shri Malik invited our attention on the dictum of "ejusdem generis". It was submitted that the word "such" as used in clause (e) ought to be construed with reference to the words in the preceding clauses.

5. We have heard the rival submissions in the light of material placed before us and precedents relied upon. From time immemorial, private philanthropy in our country, has been playing a very special and prominent role in enriching our cultural heritage and in catering to the educational, medical, socio-economic and religious needs of our countrymen. In doing so, it has supplemented the work of a welfare state; in turn the state on its part recognised this contribution by giving generous tax concessions to the donations given to philanthropic institutions and also to the income thereof when applied to public religious and charitable purposes.

5.1 The expression "charity" or "charitable purposes" do not admit to rigid definition. In order to understand what these expressions legally convey, one can merely enumerate its various aspects and characteristics as they have been recognised by the laws of a particular country. In common parlance the word "charity" denotes the instincts of piety and benevolence dictated by the desire to do good.

The law recognises no purpose as charitable unless it is of a public character, that is to say, a purpose must, in order to be charitable, be directed to the benefit of the community.

5.2 The objects for which the assessee-trust was created are enumerated in para 2.1 of this order. The dominant object is to educate Indian public on subjects of civic and national interest and generally to create the foster sound public opinion on all subjects of Indian importance on non-communal basis. For the furtherance

of this object clause (c) mentions about providing of a hall, a library, a dispensary, public workers room and such other amenities as may be desirable and feasible. In regard to these two objects, the Department did not raise any objection. There is absolutely nothing in the impugned order to suggest that these objects were of non-charitable nature.

5.3 Adverting to clause (d), we find that it stipulates - "for providing facilities for close social and political intercourse and means for promotion of physical and intellectual culture". The word "political" was found to be noxious by the Department in the context of charity. In the case of Ganga Prasad Varma Memorial Society (supra), it was held that the words "political condition" denote "the raising of moral, intellectual, economic, social and political conditions of the people in general." This was sought to be achieved by the dissemination of knowledge to the people. In the context, the term "political conditions" did not imply advancing of any political party or political leader. The emphasis was on the raising of the tone of the people in general, by raising their moral, intellectual, economic social and political condition.

5.4 The word "political" is a word of wider connotation. In a generic sense it pertains to the exercise of the rights and privileges or the influence by which individuals of State sought to determine or control public policy. As such, the Hon'ble Allahabad High Court in the case cited supra, took it in the given circumstances as an object of advancing of the general condition of the people so as to make them better citizens'. In this case the jurisdictional High Court has held that the entire object including the one which referred to the political condition of the people in general was an object of general public utility.

5.5 The word used in the object clause (d) are : "to provide facilities for close political intercourse and means for promotion of feasible and intellectual culture." It is nowhere suggested that the trust will patronize the political parties. There is absolutely nothing in record to indicate that the assessee-trust did anything to buttress the cause of political parties. Just because some trustees were engaged in the active politics it cannot be concluded that the object of the trust was to promote politics. The intent and purpose which appears from the language is to

awaken the society for political thinking out of the wedlock of sociopolitical sectors, to produce intellectual culture.

5.6 Coming not to clause (e) we find that the words used are "To provide for and promote such other activities and objects as may be thought to be feasible and desirable from lime to time." The word "such" as is used in this clause should be construed with reference to the objects enumerated in the preceding paras. Rule of "ejusdem generis"prescribes that where there are general words following particular and specific words, "the general words must be confined to things of the same kind as those specified. The objection of the Revenue was that by using the words "promote such other activities and objects, trustees may divert the funds to non-charitable purposes also.

In our opinion, there is absolutely no scope for diverting the funds, for non-charitable purposes by invoking these words. The reason is that "such other activities" refer only those activities which are discussed in the preceding paras. It does not give opportunity to the assessee to alter the basic character of the object listed in the memorandum.

5.7 We have meticulously examined the description of the construction of the words "in the object clause". There is absolutely nothing to indicate that the object listed in the preceding paras are of non-charitable nature. As such, in our opinion, the probability of using the object for non-charitable purposes is not there on the basis of such construction.

5.8 The mere fact that section 80-G benefit was denied to the assessee is not a circumstance aliunde to which the claim of the assessee could be rejected under section 11 also. The detailed reasons for rejection of claim under section 80G were not brought before us. There may be various considerations for the rejection of 80G claim. Just because the claim under section 80G is rejected no presumption can be drawn that the assessee-trust is not a charitable trust.

5.9 Similarly just because 12-A registration is granted to the assessee, it cannot be presumed that the assessee trust is a charitable trust. It transpires from the reading of section 12-A that at the stage of filing an application for registration

under section 12-A, the CIT is not supposed to examine the application of income aspect. All that he may examine is whether the application is made in accordance with the requirements of section 12-A read with rule 17-A and whether Form No. 10-A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this stage, it is not a sine qua non to examine the application aspect of income. .

5.10 We have examined the sanctioned plan of the premises. We have noted that the hall, library and garden were constructed in conformity with the objects of the trust. There is no dispute on the fact that some portion of the premises was encroached. But there is absolutely nothing to indicate that such encroachment was with the consent of the trustees. Therefore, the fact of encroachment cannot be used against the assessee for denying the benefit contemplated under section 11 of the Act.

5.11 It was contended before us that the expenditure incurred in acquiring capital assets for carrying out the objects of the trust is to be construed as expenditure within the meaning of section 11(1A) of the Act. The Hon'ble Gujarat High Court in the case of Satya Vijay Patel Hindu Dharamshala Trust (supra) has held that the declaration of the trust must be looked upon as a whole. Utilisation of the net surplus income of the trust properties in the construction of the new Dharamshala even if it exceeded 25 per cent of the net income of the trust properties could not be said to be application to purposes other than charitable purposes of the trust. We find that this decision buttresses the contention raised by Shri Malik.

5.12 In the case of Mahakoshal Shaheed Smarak Trust (supra) the Hon'ble High Court has held as under :-- "It cannot be laid down as an infructuous rule of law that no memorial can be of general public utility. The whole thing depends upon the nature of memorial. If a memorial is stipendous wholly useful for the general public for social and cultural activities or a library, garden and surrendered part for the benefit of the public, it is difficult to hold that the memorial is not of general public utility. In order to take a trust outside section 2(15) the activity for profit must be intertwined or wrapped with or implied for the purpose of the trust or in other words it must be an integral part of such purpose. Where the pre-dominant object

of the activity of the trust, carrying out of the object of general public utility and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity." 5.13 In the present case, we find that the trust was constituted with the object of perpetuating the memorial of Pt. Peare Lal Sharma. The object was to be attained by providing a hall, a library, a dispensary, public workers room and such other amenities as may be desirable and feasible.

To attain that objective the building was constructed. The mere fact that part of that was let out to Mool Chand Sharbati Devi Hospital Trust will not change the character of the trust.

5.14 We have taken into consideration the entire conspect of facts. In our opinion, the assessee can be construed to be a public charitable trust. As such, it is entitled to get the benefit of section 11 subject to the fulfilment of other conditions contained in the section.

Accordingly, we uphold the impugned order.

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