Thiagarajar Charities Vs. Additional Commissioner of Income-tax

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Court : Chennai

Decided On : Dec-23-1977

Reported in : [1978]114ITR699(Mad)

Judge : P. Govindan Nair, C.J. and ;A. Varadarajan, J.

Acts : Income Tax Act, 1961 - Sections 2(15) and 11

Appeal No. : Tax Case Nos. 182 and 252 of 1974 (Reference Nos. 58 and 128 of 1974)

Appellant : Thiagarajar Charities

Respondent : Additional Commissioner of Income-tax

Advocate for Def. : A.N. Rangaswamy and ;Nalini Chidambaram, Advs.

Advocate for Pet/Ap. : K.R. Ramamani, Adv.

Judgement :

Varadarajan, J.

1. The identical questions referred by the Income-tax Appellate Tribunal, 'A' Bench, Madras, for the opinion of this court in these two cases are the following :

T.C. No. 182 of 1974.

'Whether, on a proper construction of the trust deed dated June 4, 1962, the Tribunal was right in holding that the objects of the trust are not (for) charitable purposes within the meaning of the said expression as defined in Section 2(15) of the Income-tax Act, 1961, and that consequently its income for the assessment years 1964-65 and 1965-66 is not exempt from tax under Section 11 of the Income-tax Act, 1961 ?'

T.C. No. 252 of 1974.

'Whether, on a proper construction of the trust deed dated June 4, 1962, the Tribunal was right in holding that the objects of the trust are not (for) charitable purposes within the meaning of the said expression as denned in Section 2(15) of the Income-tax Act, 1961, and that consequently its income for the assessment year 1966-67 is not exempt from tax under Section 11 of the Income-tax Act, 1961 ?'

2. The assessee as the same in both the cases. The questions relate to the assessment years 1964-65 to 1966-67. The objects of the trust, according to the trust deed dated June 4, 1962, are :

(a) To establish, maintain, run, develop, improve, extend, grant donations for and to aid and assist in the establishment, maintenance, running, development, improvement and extension of elementary schools, secondary schools, high schools, colleges, universities, workshops, weaving, industrial, technological and other art, craft and science institutes, schools and institutions of Tamil or Sanskrit learning, hostels for the benefit of students and generally all kinds of educational institutions, whethergeneral, technical, vocational, professional or of other description what soever for the welfare and uplift of the general Indian public and to instituteand award scholarships in India for study, research, apprenticeship for allor any of the said purposes.

(b) To establish, maintain, run, develop, improve, extend, grant donations for and to aid and assist in the establishment, maintenance, running, development, improvement and extension of libraries, reading rooms, recreation centres and all other facilities as are calculated to be of use in imparting education to the Indian public.

(c) To establish, maintain, run, develop, improve, extend, grant donations for and to aid and assist in the establishment, maintenance, running, development, improvement and extension of hospitals, clinics, dispensaries, sanatoria, maternity homes and all similar institutions as will afford treatment, cure, rest, recuperation and other allied advantages in the way of alleviating the sufferings of humanity.

(d) To build, erect and construct and to aid and assist in the building, erection and construction of houses, tenements and places of residence for the poor, needy and defectives and to afford them all comforts and conveniences.

(e) To conduct poor feeding and generally to give food and clothing to the poor, needy and defectives and to afford relief to people in distress and affected by earthquake, flood, famine, pestilence and other accidents and conduct or grant donations for the support of the inmates of orphanages.

(f) To help, assist and give aid to the fathers, or, other natural guardians, or near relatives of indigent and unmarried girls for the marriages of such girls.

(g) To engage in, carry on, help, aid and assist and promote rural reconstruction work, cottage industry and all other matters incidental thereto in India.

3. According to Sub-clause (h) of Clause 1 of the trust deed the above objects are independent of each other and the board of trustees have liberty from time to time to apply the trust properties for carrying out all or any of the objects of the trust. According to Clause 2, the properties of the trust include any business undertaking held or carried on by the trust.

4. The trustees resolved on June 6, 1962, to undertake and carry on the business of purchasing and selling cotton, cotton yarn and cloth or other fibres, wholesale and retail, and to appoint one T. V. Krishnamoorthi as the manager of the trust and the business and authorise him to enter into contracts for the purchase and sale of cotton, cotton yarn and cloth or other fibres for both ready and future delivery.

5. The assessee filed nil returns for the assessment years 1964-65 to 1966-67 on the basis that it is exempt from tax under Section 2(15) of the Income-tax Act, 1961. After perusing the trust deed, the Income-tax Officer proposed to treat the assessee as a non-charitable trust and invited objections, which were submitted in the assessee's letter dated March 27, 1969. The Income-tax Officer found that the objects (d), (f) and (g) are not 'education' or 'medical relief' and can be considered, if at all, to be only 'relief of the poor' or 'object of general public utility' and that since the objects are independent of each other and the trustees are entitled to apply the trust properties to any of these objects and they could confer the benefits of the trust on selected individuals, it would not be a 'charitable purpose' within the meaning of Section 2(15) of the Act. Accordingly, he held that no part of the income of the trust is exempt from tax under Section 11 of the Act and that it was liable to tax and interest thereon.

6. On appeal, the Appellate Assistant Commissioner differed from the assessing officer and held that the assessee is entitled to exemption for all the three years on the ground that the fact that the trustees could choose some only of the beneficiaries mentioned in the trust deed for relief, does not take away the object from being 'relief of the poor', that even if the object is 'advancement of any other object of general public utility', it is not enough if the trust engages in any activity which results in profit and that exemption could be denied only where the activity for profit is the main or essential ingredient of the object of the trust and not where the profit is merely a by-product of the activity of the trust.

7. The department took up the matter in appeal before the Tribunal. The Tribunal found that the objects mentioned in Clauses (a) and (b) would fall under the head 'education', the objects mentioned in Clause (c) would fall under the head 'medical relief' and those mentioned in Clauses (d), (e) and (f) would fall under the head 'relief of the poor' and that the department does not dispute that the objects mentioned in Clauses (a), (b), (c) and (e) fall under the aforesaid heads. But in view of Clause (g), which provides for the trust carrying on cottage industries and the absence .of anything in the trust deed to show that there is no profit motive, profit motive, on the other hand, being implied if the funds of the trust are to be invested in cottage-industries, the Tribunal held that there is involvement in activity

for profit and, therefore, the income derived from the business of purchase and sale of cotton, though held in trust, is not exempt from tax under Section 11 of the Act. The Tribunal allowed the appeals and set aside the orders of the Appellate Assistant Commissioner and restored those of the Income-tax Officer.

8. On facts it has been found by the Tribunal that the objects mentioned in Clauses (a) and (b) would fall under the head 'education', the objectsmentioned in Clause (c) would fall under the head 'medical relief' and that those mentioned in Clause (d) would fall under the head 'relief to the poor' and these are not disputed by the department, and that the objects mentioned in Clauses (f) and (g) also would fall under the head 'relief to the poor'. We agree with the Tribunal that the objects mentioned in Clauses (a) and (b) would fall under the head 'education', the objects mentioned in Clause (c) would fall under the head 'medical relief' and the objects mentioned in Clauses (d), (e) and (f) would fall under the head 'relief to the poor'. But Clause (g) provides for the trust carrying on cottage industries and there is nothing in the trust deed to show that there is no profit motive. The Supreme Court has observed in Sole Trustee, Loka Shikshana Trust v. Commissioner of Income-tax : [1975]101ITR234(SC) , that 'ordinarily, profit motive is a normal incident of business activity and if the activity of a trust consists of the carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming, in the absence of some indication to the contrary, that the object of the trust involves the carrying on of an activity for profit'. As a matter of fact, the trustees in the present case have resolved on June 6, 1962, to undertake and carry on the business of purchasing and selling cotton, cotton yarn and cloth or other fibres, wholesale and retail, and to appoint one T. V. Krishnamoorthi as the manager of that trust and the business and authorise him to enter into contracts for the purchase and sale of cotton, cotton yarn and cloth or other fibres for both ready and future delivery, as stated above. We are, therefore, of the opinion that the object of the trust is also carrying on an activity for profit. A Full Bench of the Kerala High Court in Commissioner of Income-tax v. Dharmadeepti : [1975]100ITR375(Ker) , to which one of us was a party, has observed:

'In view of the altered definition of the term 'charitable purpose', the question whether an object of a company is a main object or is only an incidental object loses much of its significance. We say so because we conceive that even in cases where a business is conducted not. in carrying out the objects of the company but only in aid of achieving the objects of the company if that business is so linked or connected with the objects of the company and, if the objects are such that it will fall only under 'objects of general public utility', the charitable purpose will cease to be a charitable purpose as defined in the Act. And if the incidental object or even the purpose 6f the company is business, as conducting kuries is, the income or at least a specified part of it must be exclusively applicable to charitable purposes in order that income or the specified part thereof could be exempted from tax. A complete discretion in the directors to apply the funds to charitable and non-charitable purpose (which in this case would include business) would make the trust a non-charitable trust.'

9. In that case, the main objects of the assessee-company were, inter alia, (1) to give, charity, (2) to promote education, and (3) to establish associations, etc., with the object of promoting charity or education, etc. The objects incidental or ancillary to the attainment of the above main objects were to run kuries or chitties, and the other objects were to establish, promote and carry on any other business. The assessee's claim to exemption under Section 11 was disallowed by the court in that case. In the present case, the object mentioned in Clause (g) is one of general public utility and it involves the carrying on of activity for profit, namely, the business of purchasing and selling cotton, cotton yarn and cloth and other fibres, wholesale or retail, which necessarily implies a motive for profit. It would not fall within the meaning of 'charitable purpose' mentioned in Section 2(15) of the Income-tax Act, 1961. In the present case, the trustees have absolute discretion to utilise the funds of the trust to the one or the other of the several objects of the trust. Therefore, following the aforesaid Full Bench decision of the Kerala High Court, we hold that the trust in the present case is a non-charitable trust and that the income realised by the trust from its business in cotton, cotton yarn, cloth, etc., in the assessment years 1964-65 to 1966-67 is not exempt from tax under Section 11 of the Income-tax Act, 1961. We, accordingly, answer the questions referred for our opinion against the assessee and in favour of the revenue. The assessee will

pay the costs of the revenue in both the cases. Advocate's fee Rs. 250. One set.