
(2002) 04 DEL CK 0134

In the Delhi High Court

Case No : CWP 129, 131, 133 and 134 of 1982

Anand Charetable Trust and Dharam Chand Charitable Trust APPELLANT
Vs

Commissioner of Wealth Tax and Others and Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Companies Act, 1956 — Section 617
Finance Act, 1972 — Section 7
Income Tax Act, 1961 — Section 11, 11(1), 11(5), 12, 12A
Wealth Tax Act, 1957 — Section 25, 5(1)

Citation : (2002) 175 CTR 19 : (2002) 257 ITR 275 : (2002) 123 TAXMAN 494

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Nem, for the Appellant; R.C. Pandey, R.D. Jolly and Premlata Bansal, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—All these writ petitions involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. However, the fact of the matter is being noticed from CW 129 of 1982.

3. The petitioner is a public Charitable Trust constituted and founded in terms of Indenture dated 8th April 1971 made by Shri Dharam Chand Anand. The founder constituted an HUF under and name and style of "Dharam Chand Anand & Sons" wherein his wife Smt. Chandan Kanta Anand and his sons - S/Shri Deep Chand Anand, Jagdish Chand Anand, Kuldeep Chand Anand and Shri Satish Chand Anand were members. They held 4,500 shares in Gabriel India Limited. A smaller HUF Constituting of himself and his wife Smt. Chandan Kanta had also been created and the said smaller HUF owned 2000 shares in Asia Automotive Pvt. Ltd. The said HUF donated to the petitioner 1000 shares value of Rs. 100/- each of

Gabriel India Limited on 4th February 1972 and 500 equity shares of face value of Rs. 100/- each of Asia Automotive Pvt. Ltd. on 10th April 1975.

4. This Trust is registered u/s 12-A(a) of Income Tax Act. Its objects are charitable in nature within the meaning of Section 2(15) thereof. The donation accepted by it are also entitled to exemption from Income Tax in terms of Section 80G of the Income Tax Act. In its Wealth Tax Return, the petitioner claimed exemption u/s 5(1)(i) of the Wealth Tax Act for the year 1976-77. However, the said claim was not entertained. An appeal preferred there against was dismissed. The matter, however, was not carried to the Income Tax Appellate Tribunal. However, in some other matter, a Full Bench of Income Tax Appellate Tribunal, Bombay granted the relief as prayed for by the petitioner whereafter, a Revision Application was filed before the Commissioner. The Commissioner of Wealth Tax, by the impugned order dated 31st May 1981 passed u/s 25 of the Wealth Tax Act held:

"4. Shri P.J. Francis, Senior Advocate, appearing before me on behalf of the petitioner Trust, contested the order of the W.T.O. as well as that of the AAC. Placing reliance on the order of the ITAT, Bombay Bench "B" in the case of Sabrina Charitable Trust & Others, he contended that the provisions of Section 5(1)(i) of the Wealth-tax Act, 1957, are applicable in the present case. A related issue was raised by for decision in the case of petitioner Trust in its revision petitions u/s 264 of the I.T. Act, 1961, in regard to its Income Tax assessments for the Income Tax assessment years 1976-77 and 1977-78 (revision petition No. CIT/D- VI-RP (21-22/79-79), viz., I have held in my orders of even date that the petitioner trust is not eligible for exemption u/s 11 of the I.T. Act, 1961. Following that I uphold the order of the authorities below that the petitioner Trust is not entitled for exemption u/s 5(1)(i) of the W.T. Act, 1957, and, Therefore, see no reason for interference."

5. The question which arises for consideration in these writ petitions is as to whether, having regard to the facts and circumstances of this case, the impugned order can be said to be valid in law.

6. Section 11(1) of the Income Tax Act excludes "income" specified therein from the "total income of the previous year specified therein.

7. Section 13(1)(c) & (d), 13(2)(h) and 13(3) of the Act, however, read as under:

"13. Section 11 not to apply in certain cases

(1) Nothing contained in Section 11 or Section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-

(a) ...

(b) ...

(bb) ...

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in Sub-section (3);

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of Sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in Sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provision of Sub-clause (ii) shall not apply to any use or application, whether directly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in Sub-section (3), in so far as such use or application relates to any period before the 1st day of June, 1970;

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year-

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983, otherwise than in any one or more of the forms or modes specified in Sub-section (5) of Section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983, otherwise than in any one or more of the forms or modes specified in Sub-section (5) of Section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company (not being a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act) are held by the trust or institution after the 30th day of November, 1983:

Provided that nothing in this clause shall apply in relation to-

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973,

(ia) any accretion to the shares, forming part of the corpus mentioned in Clause

- (i), by way of bonus shares allotted to the trust or institution;
- (ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March 1983;
- (ia) any asset, not being an investment or deposit in any of the forms of modes specified in Sub-section (5) of Section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in Sub-section (5) of Section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;
- (iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984, or any subsequent assessment year:

Explanation. -Where the trust or institution has any other income in addition to profits and gains of business, the provisions of Clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of accounts in respect of such business.

Explanation. -For the purposes of Sub-clause (ii) of Clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in Sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by Section 7 other than Sub-clause (ii) of Clause (a) thereof of the Finance Act, 1972.

"13.(2) Without prejudice to the generality of the provisions of Clause (c) and Clause (d) of Sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in Sub-section (3),-

(h) if any funds of the trust of institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971) in any concern in which any person referred to in Sub-section (3) has a substantial interest."

(3) The persons referred to in Clause (c) of Sub-section (1) and Sub-section (2) are the following, namely:-

- (a) the author of the trust or the founder of the institution;
- (b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;
- (c) where such author, founder or any person is a Hindu undivided family, a

member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest."

8. Thus, even if in a case where the assessed has substantial interest in the company by reason of the afore-mentioned provision, the income of the property of the trust shall be deemed or applied for the benefit of a person referred to in Sub-section (3). The persons referred to in Clause (c) and Sub-section (1) and (2) as contained in Sub-section (3) includes the author of the trust or the founder of the institution or the person who has made substantial contribution to the trust or the institution, i.e. whose total contribution up to the end of the relevant years exceeds Rs. 50,000/-.

9. It is trite that if an exemption can be granted in terms of provisions of the Income Tax Act, such exemption has to be granted in terms of the provisions of the Wealth Tax Act also.

10. In Commissioner of Income Tax Vs. Sir Shri Ram Foundation, , a Division bench of this court made a distinction between the expressions "funds" and "invest" and held that Clause (h) of Sub-section (2) of Section 13 of the Income Tax Act covers investment of the Trust funds in any concern in which any of the persons specified in Sub-section (3) as substantial interest and if such investment of the trust funds is made after 31st December 1970, it would result in forfeiture of exemption from tax. But, however, if the trust funds have already been invested before 1st January 1971, the exemption would be forfeited if the funds continue to be so invested even after 31st December 1970. It was observed:

"...In order to attract the provisions of Section 13(2)(h), what is essential is that the funds of the trust are invested in a concern covered by Section 13(2)(c) and if such investment is made prior to January 1, 1971, funds are continued to be not invested after December 31, 1970. It is only if the funds of the trust itself are u/s 11, the funds have to be such as are capable of investment. Therefore, in order to attract Section 13(2)(h), it has to be established that the funds of the trust which are capable of being invested have been utilized for making investment as provided therein. When the funds of the trust are so invested and such investment is continued after December 31, 1970, the trust whose funds are so invested will not be entitled to claim exemption u/s 11. The above position has been elaborately dealt with by the Gujarat High Court in Commissioner of Income Tax Vs. Insaniyat Trust (Now merged with Sarabhai Foundation), .

The word "investment" means to lay out money in business with a view to obtain

income or profit. In order to constitute an investment the amount laid down should be capable of resulting in an income or return or profit to the investor and in every case of investment, the intention and positive act on the part of the investor should be to earn such income, return or profit to the investor. In order to constitute an investment, the money shall be laid out in such manner, as to acquire some species of property which brings in an income to the investor. An investment popularly means every application of money which is intended to fetch return by way of interest income or profit. Thus only money employed as capital in a business is money invested in business. (Vide *Edwards J., in Tax Commissioner v. Australian Mutual Provident Fund Society* [1902] 22 NZLR 445) . In *Arnaild v. Grinstead* (21 WR Eng 155) , it was observed that in its most comprehensive sense it is generally understood to signify the laying out of money in such a manner that it produces a revenue. An illuminating observation was made in *IRC v. Desoutter Bros. Ltd.* [1946] 1 All ER 58 (CA) about what "investment" means. It was observed that the word "investment" is not a word of art, but has to be interpreted in a popular sense. It is not capable of legal definition, but a word of current vernacular. The word "invest" and "investment" are to be taken in the business sense of laying out of money for interest or profit.

A plea similar to the one taken by learned counsel for the Revenue was raised before the Kerala High Court in *Commissioner of Income Tax Vs. Chandrika Educational Trust*, . There also it was pleaded that the expression "continued to remain" qualifies the expression "in any concern" whether it was an investment or not. The plea was rejected by the Kerala High Court. It was observed that it would be doing violence to the plain language of the provision. Section 13(2)(h) requires that the funds of the trust are, or continue to remain invested in any concern of the nature mentioned therein.

11. The same Bench in CW 45/82 in view of the afore-mentioned decision answered a question sought to be referred in Wealth Tax Act in favor of the assessee and against the Revenue.

12. From the discussions made hereinbefore, there is no manner of doubt that the petitioner would be entitled to exemption as prayed for by him.

13. For the reasons afore-mentioned, these petitions are allowed and the impugned order is set aside without any orders as to costs.