

(1998) 08 MAD CK 0093

In the Madras High Court

Case No : Tax Case No. 854 of 1985 (Reference No. 435 of 1985)

Assembly Rooms

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-08-1998

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(1), 2(15)
Trusts Act, 1882 — Section 20

Citation : (2000) 241 ITR 76

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha babu, J.—The reference is at the instance of the assessee. The assessment year is 1979-80. The question referred to us is, as to whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee-trust was not entitled to exemption u/s 11 of the Income Tax Act, 1961.

2. The assessee, known as Assembly Rooms, is a trust which was created in the year 1923. It was created by Lord Willingdon. The trust deed has not been produced before us. The assessee relied upon the clauses in the trust deed extracted in the order of the Appellate Assistant Commissioner for the years 1977-78, copy of which was placed before us. The Revenue does not dispute the correctness of its contents. That order merely sets out certain clauses in the trust deed. In the absence of the trust deed, we can only refer to the clauses so extracted and decide the assessee's claim with reference to those clauses, as the assessee relies solely on those clauses to support its claim for exemption of its income u/s 11 of the Act.

3. Counsel for the assessee pleaded helplessness in the matter of production of the original trust deed, as his client had failed to respond to his repeated letters.

We are not in the least comfortable with the idea of having to decide the assessee's status in the absence of the document. However, having regard to the fact that the case before the Tribunal was argued on the basis of the clauses which are extracted in the order of the Appellate Assistant Commissioner, we shall refer to those clauses, and then decide as to whether those clauses by themselves enable the assessee to claim exemption for its income u/s 11 of the Act. Clause 4 of the trust deed reads as under :

"The trustees shall hold the Assembly Rooms in trust for the purposes hereinafter set out. They are empowered at their discretion to use or allow the use of the Assembly Rooms for the purpose of meetings, dramatic and other entertainments or other objects of a like nature in which the public may be interested, as also for private entertainments, theatrical and meetings, always provided that the room shall not be used at any time for political meetings. The trustees shall have the entire discretion to refuse the use of the Assembly Rooms if they have reasons to believe that they will be or are liable to be used for purposes which appear to them to be foreign to the objects of the trusts or otherwise undesirable or inexpedient. The trustees shall further have the right to charge a reasonable rent for the use of the Assembly Room such rent to be fixed at the discretion of the trustees in each case or classes of cases save in the contingencies hereafter referred to in paragraphs six and seven. The business of the trust may be transacted at meetings of the trustees or by circulation and in the former case the opinion of the majority of trustees present and voting shall prevail and have full force and effect. It shall be open to the trustees to delegate to the secretary or other person chosen from amongst themselves the performance of any routine business. It shall further be open to the trustees to frame from time to time bye-laws and rules for the more convenient transaction of business subject to the confirmation of His Excellency the Governor of Madras."

4. Clause 5 reads as under :

"The trustees shall maintain an account of the income and expenditure in regard to the Assembly Rooms and shall once a year publish a statement giving an abstract of the income and expenditure. The trustees shall each year submit the accounts to the audit of an auditor or firm of accountants to be approved by His Excellency the Governor.

Any surplus that may remain in the hands of the trustees shall be invested in securities authorised by Section 20 of the Indian Trusts Act II of 1882. The trustees shall, notwithstanding the above provisions be at liberty to open a current account in any reputable bank for amounts not exceeding rupees ten thousand and in addition to open a separate account to be called the depreciation reserve for meeting the expenses of periodical renewals as also to constitute a provident fund for the employees of the Assembly Rooms."

5. Counsel for the assessee contended that these clauses by themselves are sufficient to sustain the assessee's claim that it is a trust whose object is

charitable being objects of general public utility, and that the object of the trust does not include the making of profit. Counsel contended that the assessee should, therefore, be treated as a charitable trust u/s 2(15) of the Income Tax Act, as also for the purpose of Section 11(1)(a) of the Act.

6. Reliance was placed by learned counsel for the assessee on the decision of the Constitution Bench of the Supreme Court in the case of *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*, wherein, the court held that if the object of the trust is one which is capable of being regarded as an object of general public utility--the object therein being the promotion of trade and commerce in art silk--the fact that it makes profits incidentally would not by itself disentitle it from being treated as a charity. Counsel also referred to the decision of this court in the case of *Commissioner of Income Tax Vs. Shri Thyaga Brahma Gana Sabha (Regd)*, wherein the court held that the promotion of art and music is an object of general public utility, and a small profit made incidentally by letting out the property owned by the trust would not deprive the assessee therein of its status as a charitable trust. Counsel lastly referred us to the passages at paragraphs 544 to 546 in Halsbury's Laws of England, fourth edition, volume 5, which passage referred to recreational charities. It is stated therein that if the facilities for recreation or other leisure time occupation are provided in the interests of social welfare, that would amount to a recreational charity, subject to the limitation that the facilities are provided with the object of improving the conditions of life for the person for whom the facilities are primarily intended, and either those persons have need of such facilities or the facilities are to be made available to the members of the public at large.

7. Paragraph 544 also refers to the Recreational Charities Act, 1958, a U. K. statute, which does not have a parallel in India.

8. Counsel for the Revenue, on the other hand, relied upon the language of Section 11(1)(a) of the Act, as also the decision of the Supreme Court in the case of *Gangabai Charities Vs. Commissioner of Income Tax* and another, more particularly the passages at page 421. She also referred us to the decision of this court in the case of *South Indian Athletic Association Ltd. Vs. Commissioner of Income Tax*, wherein, it was held that mere entertainment cannot be regarded as an object of public utility and treated as a charity, and a trust, whose object is to provide entertainment cannot be regarded as a charity.

9. The test to be applied for determining the existence or otherwise of a charity, when the charity is claimed to be one falling under the category of a charity intended for subserving an object of general public utility not involving the carrying on an activity for a profit is now settled by the decision of the Constitution Bench in the case of *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*. In the light of the ratio of that decision, it is clear that if the object of a trust is merely to make available a property owned by it to the members of the public to hold meetings,

to stage dramatic or other entertainment for the benefit of the public, and that trust satisfies the other provisions of the Act, such a trust can be regarded as charitable so long as the profit-making, if any, is only incidental and minor.

10. A close scrutiny of the clauses of the trust deed relied upon by the assessee, however, shows that it fails to meet the tests required to be met before the status of a charitable institution, and the benefit of exemption for its income can be claimed with reference to the provisions of the Act. The trustees under Clause 4 of the trust deed are to hold the property described as Assembly Rooms for the purposes enumerated therein. Those purposes include meetings, dramatic or other entertainments or other objects of like nature, in which the public may be interested as also private entertainment and barring political meetings. The use of the rooms for such purpose is at the sole discretion of the trustees. They are not bound to charge a rent, but, if they choose to levy a charge it should be a reasonable rent. The discretion vested in them extends to the letting of the rooms for the purposes in which the public may not be interested, such as private entertainment. The trustees have discretion to charge a rent for the hiring of the building for private entertainment. They are not required to make the building available for meetings for theatrical events, in which the public may be interested for any specified number of days or for a specified part of the year. It is open to them hypothetically to use the building solely for private entertainment and to derive income from such activity by fixing the rental at such rate as they may choose to regard as reasonable. Moreover, the trustees have no obligation to apply the income derived from the letting to any specified charitable objects. They are free to utilise the monies subject only to their obligation to invest the surplus in the securities authorised by Section 20 of the Indian Trusts Act. It is no doubt open to them to utilise the income and also the excess amount, if any available with them for creating the depreciation reserve as also for meeting the expenses of periodical renewal. It is also open to them to utilise those monies to constitute a provident fund for the employees of the Assembly Rooms. Such permissible activity, however, does not imply a prohibition in respect of other possible activities. The obligation to invest monies in the trust and the securities authorised by the Trusts Act is only for the surplus that remains in the hands of the trustees. The income realised from the investment made in the securities is available for the use of the trustees, and the manner in which that money is to be utilised is not set out in the trust deed.

11. For the purposes of claiming the benefit of exemption from tax for the income of a charitable trust, the conditions laid down in Section 11(1)(a) of the Act must be met. That section as analysed by the Supreme Court in the case of *Gangabai Charities Vs. Commissioner of Income Tax* and another, has three fold requirements, viz., that the income is derived from property held under the trust, the trust is wholly for charitable or religious purposes ; and the exemption is permissible to the extent to which such income is applied to such purpose in India.

12. As observed by the Supreme Court in that case (page 421) : "the crux of the statutory exemption u/s 11(1)(a) of the Act is not the income earned from property held under the trust, but the actual application of the said income for religious and charitable purposes. It is, therefore, necessary to indicate in the trust deed the broad objectives for which the income derived from the property is to be utilised". In the case before the Supreme Court, as in the case before us, there was no mention in the trust deed as to how the income derived from the trust property was to be utilised and there was no mandate in the trust deed that the income derived from the trust property was to be spent on religious or charitable purposes.

13. The ratio of the decision of the apex court in the case of Gangabai Charities Vs. Commissioner of Income Tax and another, squarely applies to the facts of this case. The Tribunal, therefore, was right in holding that the assessee was not entitled to exemption of its income u/s 11 of the Act.

14. The question referred to us, is, therefore, answered in favour of the Revenue, and against the assessee. No costs.