(1988) 02 PAT CK 0007

In the Patna High Court

Case No : C.W.J.C. No. 1173 of 1983

Bihar State Board of Digambar Jain Religious Trusts APPELLANT

Vs

District Judge and Another RESPONDENT

Date of Decision : 11-02-1988

Acts Referred:
Bihar Hindu Religious Trusts Act, 1950 — Section 2, 69, 70
Income Tax Act, 1961 — Section 12, 2(24)

Citation : (1991) 187 ITR 295

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Debi Prasad, for the Appellant; Jaya Roy, for the Respondent

Judgement

S.B. Sinha, J.—In this writ petition, the petitioner has prayed for the quashing of a judgment dated December 17, 1982, as contained in Annexure 2 to the writ petition, passed by Shri Bhuvneshwar Prasad, District Judge, Singhbhum in Miscellaneous Appeal No. 6 of 1980, whereby and where-under he allowed the appeal preferred by Shri Digambar Jain Trust, Chaibassa (respondent 2 hereof) which arose out of an order of assessment dated September 17, 1979, made u/s 70(1) of the Bihar Hindu Religious Trusts Act, 1950 (hereinafter referred to as "the said Act") and the rules framed thereunder.

2. The facts of the case lie in a very narrow compass.

3. Respondent No. 2 is a trust within the meaning of the provision in the said Act and the Rules framed thereunder. It is admitted that one Shri Mishrilal Jain donated a sum of Rs. 2,50,000 to the appellant-trust. According to respondent No. 2, the said amount was donated with a specific direction that the said sum would form part of the corpus of the trust .-

By reason of an order dated September 17, 1979, the appellant-Board held that the aforementioned amount of Rs. 2,50,000 being income of the trust, has also to be taken into consideration for the purpose of assessment of respondent No. 2-

trust for the accounting year 1979-80 in terms of Section 70(1) of the said Act. The aforementioned order is contained in annexure 1 to the writ petition.

4. Respondent 2 being aggrieved by and dissatisfied with the said order, preferred an appeal before the District Judge, Singhbhum at Chaibassa who, by the impugned judgment dated December 17, 1982, held that the aforementioned amount does not come within the purview of ''income'' of the trust in question and as such no fee is leviable in relation thereto.

5. Mr. Debi Prasad, learned counsel appearing for the petitioner, submitted that the word "income" is of wide amplitude and in that view of the matter, there is no reason as to why a donation given by any person to the trust would not be subjected to assessment.

6. For the purpose of appreciating the point involved in this writ petition, the following provisions of the said Act may be taken into consideration :--

"Section 2(o). ''Trust Fund'' means the Bihar State Board of Religious Trust Fund, the Bihar State Board of Swetambar Jain Religious Trust Fund or the Bihar State Board of Digambar Jain Religious Trust Fund, as the case may be, formed u/s 69.

Section 2(p). "Trust property" means the property appertaining to a religious trust.

"Section 69. Creation of Trust Funds. --(1) There shall be formed a separate Trust Fund for each of the Bihar State Board of Religious Trust, the Bihar State Board of Swetambar Jain Religious Trust to be respectively known as the Bihar State Board of Religious Trust Fund, the Bihar State Board of Swetambar Jain Religious Trust, Fund and the Bihar State Board of Digambar Jain Religious Trust Fund, and there shall be placed to the credit of-- ...

69(iii) The Bihar State Board of Digambar Jain Religious Trust Fund --

(a) all sums received by the Bihar State Board of Digambar Jain Religious Trusts as donations and grants ;

(b) all sums received from trustees of Digambar Jain Religious Trusts as fines u/s 67 ;

(c) all sums received from trustees of Digambar Jain Religious Trusts as fees u/s 70 ;

(d) all receipts by the Bihar State Board of Digambar Jain Religious Trusts in respect of fees for inspection and supplying copies of any documents ;

(e) all sums received or recovered by the Bihar State Board of Digambar Jain Religious Trusts as costs awarded to it in any suit or proceeding ; and

(f) all sums received or recovered by the Bihar State Board of Digambar Jain Religious Trusts on any other account except certified sums received or recovered by it u/s 64.

Section 70(1). Fee payable by religious trusts to Board.--For the purpose of defraying the expenses incurred or to be incurred in the administration of this Act, the trustee of every religious trust shall, in each financial year, pay to the Board such fee, not exceeding five per cent. of its net income in the last preceding financial year, as the Board may, from time to time, with the previous sanction of the State Government, determine."

7. There cannot be any doubt that any sum received by the Board shall form part of the trust fund, but Section 70 of the Act being a charging provision, the fee at the prescribed rate only is payable by the trustees of every religious trust not exceeding 5 per cent. of its net income in the last preceding financial year.

8. From a plain reading of Section 70(1) aforementioned, it is evident that the fee is not leviable on the trust fund but is leviable on the net income.

9. It has not been denied that the aforementioned sum of Rs. 2,50,000 was donated by Shri Mishrilal Jain with a clear direction that the same would form part of the corpus of the trust. Reference in this connection may be made to Barclays Bank Ltd. v. Quistclose Investments Ltd. [1970] AC 567 : [1968] 3 All ER 651 (HL), wherein it has been held that, in respect of a ''trust'', if a particular sum is to be utilised for a particular purpose, the sum cannot be utilised for any other purpose whatsoever. Evidently, therefore, the trustees were not empowered to treat the said sum in any manner other than for the purpose of corpus of the trust. The word "income" has been defined in Section 2(24) of the Income Tax Act which reads as follows :

"2(24). ''income'' includes --

(i) profits and gains ;

(ii) dividend ;

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes, not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution

Clause (iia) in the aforementioned definition was inserted by the Finance Act, 1972, with effect from April 1, 1973. The very fact that, even under the Income Tax Act, a contribution with a specific direction that it shall form part of the corpus of the trust does not come within the purview of the definition of income is clearly demonstrative of the fact that such donation cannot come within the purview of the definition of income even for the purpose of the said Act. In this connection, reference may also be made to Section 12 of the Income Tax Act, 1961, which reads as follows :

"12. Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution'') shall, for the purposes of Section 11, be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and Section 13 shall apply accordingly."

10. From the aforementioned provision, it is absolutely clear that the sum in question cannot be treated as income of a trust.

11. u/s 70 of the said Act, the fee is leviable upon the net income of the trust.

12. Evidently, therefore, Section 70 of the Act imposes a fiscal liability upon the trust. It is now a well-settled canon of interpretation of statutes that, in case of any doubt, a fiscal statute should be construed in favour of the assessee. Reference in this connection may be made to [1985] PLJR 1923.

13. In this view of the matter, I do not find any merit in this writ petition which is, accordingly, dismissed with costs.