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(1996) 09 PAT CK 0038

In the Patna High Court

Case No : Taxation Case Nos. 115 and 116 of 1984

Bihar State Forest Development Corporation — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Citation : (1996) 09 PAT CK 0038

Judgement

D.P. Wadhwa, C.J.—At the instance of the assessee, the Income- tax Appellate Tribunal, Patna Bench, u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), has referred to this court the following questions said to be questions of law and arising out of a composite order of the Appellate Tribunal for the assessment years 1977-78 and 1978-79 :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not a charitable trust the income of which was exempt from tax u/s 11 of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sale proceeds of clear felled trees did not constitute capital receipts in the hands of the assessee ?

3. Whether, on the facts in the circumstances of the case and on a correct interpretation of the relevant agreement of sale, the Tribunal was correct in law in holding that the sale of standing trees had been completed during the previous year relevant to the assessment year 1978-79 ?

4. Whether the Tribunal was justified in holding that the sales of Rs. 51,27,500 was rightly included in the total income of the corporation for the assessment year 1978-79 vis-a-vis the method of accounting followed by the assessee in this regard to show the sales as and when items were lifted on payment of instalments ?"

2. At the outset Mr. Rastogi, learned counsel for the assessee stated that questions Nos. 3 and 4 aforesaid were covered by two decisions of the Supreme

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Court in Morvi Industries Ltd. Vs. Commissioner of Income Tax (Central) Calcutta, and in State Bank of Travancore Vs. Commissioner of Income Tax, Kerala, against the assessee. Accordingly, both questions Nos. 3 and 4 are answered in the affirmative in favour of the Revenue and against the assessee.

3. On question No. 2, Mr. Rastogi brought to our notice the decisions of this court in Taxation Cases Nos. 117 and 118 of 1984 in the case of Commissioner of Income Tax Vs. Bihar State Forest Development Corporation Ltd., filed by the Revenue for the same assessment years. This decision is dated June 25, 1996, and has been rendered on a reference made by the Revenue u/s 256(1) of the Act. The questions which the Revenue got referred to this court were as under (at page 767) :

"(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in coming to the conclusion that the expenses incurred on forestry regeneration by the corporation are not capital in nature and they are revenue expenses ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in confirming the order of the Commissioner of Income Tax (Appeals) who had deleted the addition of Rs. 89,06,981 and Rs. 58,124, respectively, for the assessment years 1977-78 and 1978-79 as a revenue expenditure ?"

4. After recording the submissions of the parties, the Bench observed that the first question, in view of the subsequent events, had become merely of academic importance as the disputes between the parties had been resolved by them under certain agreement dated January 29, 1993. As regards the second question, the Bench observed that it had not been disputed by the Revenue that the same was covered by the decision of the Supreme Court in favour of the assessee and against the Department. The Bench accordingly declined to answer the question on the merits and returned the same giving liberty to make fresh assessments for these two assessment years and disposed of the reference. Mr. Rastogi, therefore, said that the second question did not need to be answered inasmuch as the assessments for the two years in question had been set aside by the Bench on reference made by the Revenue, and in that view of the matter the assessing authority was to consider the matter afresh. Mr. Sharan, learned counsel for the Revenue, however, submitted that answer to this question did not admit of any ambiguity and that it had to be answered in favour of the Revenue and against the assessee and in support of his contention he referred to a decision of the Supreme Court in V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala, . Since the reference in the present case had arisen on an application filed by the assessee and the assessee does not want that this Bench should give any answer to the question, we could have returned question No. 2 unanswered. But then it is a question of law which is covered by a decision of the Supreme Court in V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala, . In that case the Supreme Court has asked for a supplementary

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reference from the Appellate Tribunal about the import of the expression "clear felling". In the supplementary statement the Appellate Tribunal observed that the import of the expression "clear felling" is that : "all trees except casuarina are to be felled at a height not exceeding six inches from the ground, the barks being left intact on the stump and adhering to it all round the, stump without being torn off or otherwise changed." Before the Supreme Court, the question was if the High Court was correct in holding that the income derived from clear felling of trees was subject to Income Tax. The Supreme Court held as under (at page 466) :

" On the finding in the present case it is clear that the trees were not removed with roots. The stumps of the trees were allowed to remain in the land so that the trees may regenerate. If a person sells merely leaves or fruit of the trees or even branches of the trees it would be difficult (subject to the special exemption u/s 4(3)(viii) of the Indian Income Tax Act, 1922) to hold that the realisation is not of the nature of income. Where the trunks are cut so that the stumps remain intact and capable of regeneration, receipts from sale of the trunks would be in the nature of income. It is true, that the tree is a part of the land. But by selling a part of the trunk, the assessee does not necessarily realise a part of his capital. "

5. Accordingly, I answer question No. 2 in the affirmative in favour of the Revenue and against the assessee.

6. Mr. Rastogi was at pains that the first question had to be decided in favour of the assessee. In fact, this was the only question which was pressed before us by him. To understand the argument advanced in the case, it is necessary to refer to the facts of the case in brief.

7. The assessee is a Government company within the meaning of Section 617 of the Companies Act, 1956. The objects for which the said company was incorporated have been set out in the order of the Appellate Tribunal in appeal before it are as under :

" The memorandum of association of the corporation also enumerated the objects for which the company was established. The objects of the corporation as per the memorandum of association, inter alia, are as under :

A. To promote , develop, establish, execute, operate and otherwise carry on projects, schemes, industries, business and activities which in the opinion of the company are likely to -

(i) accelerate and increase forest production and productivity.

(ii) contribute to better utilisation of forestry products including timber, fuelwood, pulpwood, climbers, herbs, fruits and seeds ; leaves and any product of the forest.

(iii) contribute to the development of industries based on forest products ; and

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(iv) increase the availability of supplies of forest products whether major or minor in the State of Bihar.

For the purposes aforesaid, the Corporation could engage itself in the following activities amongst others -

(i) To promote, establish, execute and operate projects and schemes relating to exploitation of forests and conversion of natural forest areas into artificial plantations of valuable species and to manage forest plantations.

(ii) To own, establish, purchase, take over, run, manage, finance, superintend or control such industries, enterprise and business incidental to or for the purpose of development of the forest resources in the State.

(iii) To plant, replant and afforest in general forest lands, waste lands or other lands under the company or lands not belonging to the company on such terms and conditions which the company may decide. "

8. It was the contention of the assessee that the assessee was not liable to tax as, according to the assessee, it was not carrying any commercial activity and that it was a charitable organisation and thus exempt u/s 11 of the Act. It appears that no such contention was raised before the Inspecting Assistant Commissioner of Income Tax. It was for the first time, this contention was raised before the Commissioner of Income Tax (Appeals) who negatived the same. The Commissioner of Income Tax (Appeals) also observed that the assessee itself had filed voluntary returns showing taxable income. The Commissioner of Income Tax (Appeals) was of the view that the total effect of reading the memorandum of association showed that the assessee carried on business activities which were incidental to the carrying out of the objectives of the assessee-company.

9. On appeal by the assessee, the Appellate Tribunal held as under :

" Yet another contention raised on behalf of the assessee is that the Corporation is a charitable trust and hence its income was exempted from payment of Income Tax u/s 11 of the Income Tax Act. In support of this contention, it was further submitted that the Corporation derived income from the property held under trust wholly for charitable purpose. The expression ''charitable purpose'' has been defined u/s 2(15) of the Income Tax Act. It includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. It was submitted on behalf of the assessee that its case was covered by the latter part of the definition of the expression ''charitable purpose'', as the object of the trust was of general public utility, viz., developing forest wealth of the State. The definition of this expression, however, further lays down that if any object of general public utility involves carrying on of any activity for profit, such an object would be excluded from ''charitable purpose''. In the instant case, the Corporation has to achieve the object of development of forest wealth but this object clearly involves carrying on of activities for earning profit, viz., selling

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forest products including timber trees. In our opinion, therefore, the object of development of forest wealth which involves carrying on of business activity for earning profit cannot bring the case of the Corporation within the purview of Section 11. So the contention in this regard put forth on behalf of the assessee has to be repelled."

10. Mr. Rastogi, however, submitted that in view of the decisions of the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, and in Commissioner of Income Tax, A.P. Vs. Andhra Pradesh State Road Transport Corporation, , question No. 1 had to be answered in favour of the assessee and it had to be held that the assessee-company was a charitable organisation and its income thus exempt from payment of Income Tax.

11. Before we consider these judgments, we may refer to the definition of "charitable purpose" as appearing in Clause (15) of Section 2 of the Act and Sections 11 12, 12A and 13 in the relevant part dealing with income from the property held under trust for "charitable purpose" ;

" 2. In this Act, unless the context otherwise requires,--. . .

(15) ''charitable purpose'' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.

11. (1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income -

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India ; . . . .

(4) For the purposes of this section ''property held under trust'' includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income Tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment ; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

12A. The provisions of Section 11 and Section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely :--

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment

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of the institution, whichever is later :

Provided that the Commissioner may, in his discretion, admit an application for the registration of any trust or institution after the expiry of the period aforesaid ;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of Section 11 and Section 12 exceeds twenty-five thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below Sub-section (2) of Section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

13. (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--. . .

Explanation 1. For the purposes of Sections 11, 12, 12A and this section, ''trust'' includes any other legal obligation ..."

12. In Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , it has been held (headnote) :

" The income and property of the assessee were liable to be applied solely and exclusively for the promotion of the objects set out in the memorandum and no part of such income or property could be distributed amongst the members in any form or utilised for their benefit either during its operational existence or on its winding up or dissolution. The assessee''s income was derived primarily from two sources : (i) an annual subscription collected from its members at the rate of Rs. 3 per powerloom, in regard to which it was conceded by the Department that it was exempt from tax ; and (ii) commission of a certain percentage of the value of licences for import of foreign yarn and quotas for purchase of indigenous yarn obtained by the assessee for its members. This commission was credited separately in a building account and out of this amount the assessee constructed a building. The Tribunal held that the primary purpose for which the assessee was established was to promote commerce and trade in art silk, silk yarn and cloth as set out in Clause (a) and the other objects in Clauses (b) to (e) were merely subsidiary objects ; that the primary purpose was plainly advancement of an object of general public utility and did not involve the carrying on of any activity for profit within the meaning of Section 2(15) of the Income Tax Act, 1961, because whatever activity was carried on by the assessee in fulfilment of the primary purpose was for advancement of an object of general public utility and not for profit ; and that, therefore, the assessee''s income was exempt from tax u/s 11(1)."

13. That is not the position in the present case before us.

In the Commissioner of Income Tax, A.P. Vs. Andhra Pradesh State Road

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Transport Corporation, , the court has held that (headnote) :

"... the activity of the assessee was not carried on with the object of making profit . . . and that the amount left over after utilisation for the purpose set out in Section 30 of the Road Transport Corporation Act as amended was to be made over to the State Government for the purpose of road development and that the amount so handed over to the State Government did not become part of the general revenue of the State but was impressed with an obligation that it should be utilised only for the purpose for which it was entrusted, viz., road development, which was an object of general public utility."

14. Again that is not the case before us. Thus, the aforesaid two decisions are clearly distinguishable and do not apply to the facts of the present case. The objects with which the assessee was incorporated as a company may appear to be of general public utility for development of forestry, but then there were other objects as well which make the assessee a commercial organisation with no restriction as to how its income would be utilised. Thus, considering the principles set out in the aforesaid decision of the Supreme Court we find no difficulty in answering the first question in the affirmative, in favour of the Revenue and against the assessee.

15. The reference is answered accordingly. There will be no order as to costs.

S.J. Mukhopadhaya, J.

16. I agree.

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