**(2006) 02 MAD CK 0226**

**In the Madras High Court**

**Case No :** Tax Case (Appeal) No. 1599 of 2005

Commissioner of Gift Tax - I — APPELLANT

Vs

Sakthi Charities — RESPONDENT

**Date of Decision :** 20-02-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 92
Gift Tax Act, 1958 — Section 24(2), 45
Income Tax Act, 1961 — Section 11, 12

**Citation :** (2006) 284 ITR 401

**Hon'ble Judges :** P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

**Bench :** Division Bench

**Advocate :** J. Naresh Kumar, for the Appellant;

**Final Decision :** Dismissed

## Judgement

P.D. Dinakaran, J.—This appeal is directed against the order of the Income Tax Appellate Tribunal dated 8.4.2005 made in I.T.A. No. 4/Mds/98 for the assessment year 1985-86 raising the following substantial question of law:

Whether on the facts and in the circumstancess of the case, the Income Tax Appellate Tribunal was right in law in holding that, the assessee trust was exempt under the provisions of Section 45(e) of the Gift-tax Act, even though the Civil Court has no power to make amendments or alter the objects of the Trust Deed u/s 92 of the Civil Procedure Code?

2.1. The brief facts of the case are as follows:

The original gift tax assessment made on the assessee for the assessment year 1985-86 exempting the gift of Rs. 89,615/- made by the assessee trust u/s 45(e) of the Gift Tax Act (hereinafter referred to as the Act) was set aside by the Commissioner of Gift Tax u/s 24(2) of the Act by an order dated 6.2.1992 with a direction to compute the taxable gift accordingly. The trust was denied exemption u/s 11 of the Income Tax Act for various years taking notice of certain offending clauses in the trust deed dated 25.6.1968, which necessitated the assessee trust to move the Civil Court u/s 92 of the CPC where the trust got a declaratory decree dated 29.4.1981, where under the said offending clauses were got deleted with effect from 25.6.1968. But still the Revenue did not grant exemption.

2.2. Concededly, when the matter came up for consideration before this Court for the assessment year 1976-77, this Court also denied exemption on the ground that the Civil Court could not make a deletion of the offending clauses of the gift deed dated 25.6.1968 with retrospective effect, as a result, the Assessing Officer did not allow exemption u/s 45(e) of the Act for the assessment year 1985-86 by his assessment order 28.2.1994.

2.3. Aggrieved by the said order of the Assessing Officer refusing to grant exemption u/s 45(e) of the Act for the assessment year 1985-86, the assessee preferred an appeal before the Commissioner of Gift Tax (Appeals) by relying on a decision in the case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, . But the Commissioner of Gift Tax (Appeals) dismissed the appeal holding that the amendment had only prospective effect and not retrospective effect. Hence, the assessee filed further appeal before the Income Tax Appellate Tribunal. Before the Tribunal also, the assessee referred the decision of the Apex Court in the case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, . The Tribunal, following its own order in ITA Nos. 3838 and 3839/Mds/89, in the assessee''s own case, allowed the appeal. Hence the present appeal by the Revenue.

3. In this regard, it is apt to refer the decision of the Apex Court in the case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, , where under the Apex Court has held that since the decree was passed by the Civil Court permitting rectification of the trust deed, the same would have only prospective operation and would not affect the assessment year in question of the charitable trust and the income of the trust was not entitled to exemption under Sections 11 and 12 of the Income Tax Act for the assessment years prior to the date of the decree.

4. In the instant case, the date of the decree is 29.4.1981. It is not in dispute that the Income Tax Appellate Tribunal, while passing order under the Income Tax Act with regard to the assessment years 1 982-83, 1983-84 and 1984-85, followed the ratio laid down by the Apex Court in the case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, and held that the assessee is entitled to claim exemption on the basis of the declaratory decree of the District Judge, Coimbatore from the date of the decree.

5. A reference was sought to be made to this Court, but the Tribunal refused to refer the matter and by an independent order dated Nil March 1999, concluded the issue holding that the assessee is entitled to the exemption u/s 11 of the Income Tax Act with effect from the date of the decree of the Civil Court as per

 

the ratio laid down by the Apex Court in the case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, , but not for the assessment years prior to the date of the Civil Court decree.

6. It is therefore clear that the assessment under the Income Tax Act for the assessment years 1982-83, 1983-84 and 1984-85 stands concluded, as referred to above, and hence the Tribunal is right in applying the ratio laid down in the case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, for the assessment under the Gift Tax Act for the assessment year 1985-86 in consequence of the assessment made under the Income Tax Act.

7. Hence, we have no reason to interfere with the order of the Tribunal and accordingly, the Appeal stands dismissed.

 