(2006) 07 GUJ CK 0096

In the Gujarat High Court

Case No : Income Tax Reference No. 234 of 1995

Commissioner of Income Tax APPELLANT

Vs

Chandra Charitable Trust RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:
Income Tax Act, 1961 — Section 11, 12, 13(1), 263

Citation : (2007) 294 ITR 86

Hon'ble Judges : R.S. Garg, J;M.R. Shah, J

Bench : Division Bench

Advocate : Mona M. Bhatt, for the Appellant; R.K. Patel, for the Respondent

Judgement

R.S. Garg, J.—Mrs. Mona Bhatt, learned Counsel for the Revenue and Mr. R.K. Patel, learned Counsel for the assessee.

At the instance of the Revenue, the Tribunal has referred the following questions for our opinion:

(1) Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee-trust is a religious trust entitled to the benefit of Section 11?

(2) Whether the Tribunal is right in law and on facts in holding that Jainism is not a religion, and if Jainism is not a religion, the bar contained u/s 13(1)(b) would not apply in the present case?

(3) Whether the Appellate Tribunal is right in law and on facts of the case in holding that the fresh assessment made by the Income Tax Officer pursuant to the order u/s 263 made by the Commissioner of Income Tax is redundant?

2. Learned Counsel for the Revenue submits that Section 11 and Section 12 of the Income Tax Act while providing certain exemption to charitable religious trusts, Section 13(1)(b), contraindication to Sections 11 and 12, denies exemption in particular situations. She submits that, according to Section 13(1)(b), exemption would not be available in the case of a trust for charitable

purposes or a charitable institution created or established after the commencement of the Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste. Referring to a Division Bench judgment of this Court in the matter of Shantagauri Ramniklal Trust and Others Vs. Commissioner of Income Tax and Another, , it is submitted that what are the requirements to be taken note of while deciding the question whether the trust is a religious charitable trust or not. Reliance is also placed on a judgment of the apex court in the matter of Bal Patil and Another Vs. Union of India (UOI) and Others, , to contend that Jainism is not a simple philosophy or a life-style but in fact it is a religion itself. Referring to certain covenants of the trust deed, it was submitted that as the basic purpose of creation of the trust was to promote Jainism which is a religion or to help the caste/community which follows Jainism, and, if that be so, exemption would not be available, but the case of the respondent-trust would be counted out of the exemption Clause and would be included in exceptions.

3. Shri Patel, learned Counsel for the respondent-assessee, on the other hand, placed reliance upon yet another judgment of this Court in the matter of Commissioner of Income Tax Vs. Barkate Saifiyah Society, and submitted that exclusion from exemption u/s 13(1)(b) applies only to charitable trusts and charitable institutions and if the trust is charitable as well as religious in nature, the assessee would be entitled to exemption u/s 11 of the Act.

4. A The question, that what should be the principle adopted and whether Jainism is a life-style or a religion, would lose much of its importance in view of the judgment of this Court in the matter of Commissioner of Income Tax Vs. Barkate Saifiyah Society, . If Jainism is accepted to be a religion and from the covenants of the trust-deed it can be spelt out that not only to propagate Jainism or help and assist maintenance of the temple, sadhus, sadhvis, shraviks and shravaks, yet other goals are set in the trust deed, then the trust would become a charitable trust, so also a religious trust or it can be addressed as a charitable religious trust, and, if that be so, Section 13(1)(b) would not be applicable. Once the basic question is answered against the interests of the Revenue, then the other questions can conveniently be decided against the interests of the Revenue. The reference stands disposed of accordingly. No costs.

