
(1974) 06 KL CK 0010

In the High Court Of Kerala

Case No : Income-tax Referred Case No. 77 of 1972

Commissioner of Income Tax

APPELLANT

Vs

Dharmadeepti

RESPONDENT

Date of Decision : 12-06-1974

Acts Referred:

Income Tax Act, 1961 — Section 11

Citation : (1975) 100 ITR 375

Hon'ble Judges : P. Govindan Nair, C.J;M.U. Isaac, J;George Vadakkal, J

Bench : Full Bench

Advocate : P.A. Francis and P.K. Ravindranatha Menon, for the Appellant; C.T. Peter, T.C. Karunakaran, V.M. Kurian, A.I. Mohammad Basheer and E.M. Shahul Hameed, for the Respondent

Judgement

Govindan Nair, C.J.—This reference is at the instance of the department and the question referred to us for the year 1969-70 by the Income Tax Appellate Tribunal, Cochin Bench, reads as follows :

" Whether, on the facts and in the circumstances of the case, the assessee is entitled to exemption u/s 11 of the Income Tax Act, 1961, for the assessment year 1969-70 ? "

2. The relevant objects of the company are detailed in Clauses 3(a), 3(b)(iv), 3(c), 4(iii) and 4(iv) and they read as follows :

" 3. (a) The main objects to be pursued by the company on its incorporation are :

(i) to give charity.

(ii) to promote education.

(iii) to establish or aid in the establishment of associations, institutions, funds, trusts with the object of promoting charity and/or education provided that the company shall not support with its funds or endeavour to impose on, or procure to be observed by, its members or others any regulation or restriction which, if

an object of the company, would make it a trade union.

(b) The, objects incidental or ancillary to the attainment of the above main objects are :.....

(iv) to run chitties (kuries).....

(c) The other objects for which the company is established are :

(i) to establish, promote and carry on any other business which may seem to the company profitable or advantageous and to establish offices and other places of business in this State or anywhere in India, as the directors deem necessary.

4. The objects of the company extend to all the States and Union Territories of the Indian Union :.....

(iii) the income and property of the company whensoever derived shall be applied solely for the promotion of its objects as set forth in this memorandum.

(iv) no portion of the income or. property aforesaid shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise by way of profit to persons who at any time are or have been members of the company or to any person claiming through any one or more of them."

3. The assessee contended that no business activities as envisaged by Clause 3(c) describing "other objects" in the memorandum as required by Section 13 of the Companies Act, 1956, had been actually carried on by the assessee and no income whatever had been derived from any such business and the business of conducting the chitties has been described in the memorandum only as "incidental objects" and, as it is evident from the memorandum that the main objects of the company are those described in Clause 3(a), the income from the conduct of business of chitties, which is the property held under trust, is property held under trust for a charitable purpose and must, therefore, be exempt from tax u/s 11 of the Income Tax Act, 1961, for short, "the Act". This is the very same question that we dealt with in a batch of cases, Income Tax Referred Cases Nos. 51 to 56 and 79 of 1972, Dharmaposhana Company Vs. Commissioner of Income Tax, wherein the facts were practically the same and in which we pronounced judgment just now. We would, however, like to add a word more in this case in addition to what we said in our judgment in those cases. In view of the altered definition of the term "charitable purpose", the question whether an object of a company is a main object or is only an incidental object loses much of its significance. We say so because we conceive that even in cases where a business is conducted not in carrying out the objects of the company but only in aid of achieving the objects of the company if that business is so linked or connected with the objects of the company and, if the objects are such that it will fall only under "objects of general public utility", the charitable purpose will cease to be a charitable purpose as denned in the Act. And if the incidental object or even the purpose of the company is business, as conducting kuries is, the income or at least a specified part of it must be exclusively applicable to

charitable purposes in order that income or the specified part thereof could be exempted from tax. A complete discretion in the directors to apply the funds to charitable and non-charitable purpose (which in this case would include business) would make the trust a non-charitable trust. So in *Oxford Group v. Inland Revenue Commissioners*, [1949] 31 TC 221 it was observed that although a religious body might, without losing its religious character, engage in a number of subsidiary activities which were not purely religious, a trust which was so worded as to permit the expenditure of income by such a body in such subsidiary activities was not a good charitable trust. It was further held that the objects set forth in Clause 3(c), paragraphs (9) and (10), of the memorandum of association were not merely ancillary to the main objects expressed in Sub-clauses (A) and (B), but themselves conferred powers on the company which were so wide that they could not be regarded as charitable. The principle has been clearly expressed if we may say so with respect by Lawrence L.J. in *Keren Kayemeth Le Jisroel Ltd. v. Inland Revenue Commissioners*, [1932] 17 TC 27 as follows :

" The instrument with which this case is concerned consists of the memorandum of association of the company and it is essential to bear in mind that in order to obtain exemption from Income Tax under the section it is not enough that "the purposes described in the memorandum should include charitable purposes the memorandum must be confined to those purposes so that any application by the company of its funds to non-charitable purposes would be ultra vires.....

The extensive powers conferred on the company by Sub-clauses (2) to (22) (to some of which I have referred in order to indicate their character) although purporting to be secondary to the object mentioned in Sub-clause (1), are nevertheless objects for which the company is established.

The company can exercise any or all of these powers whenever in its opinion such an exercise would be conducive to the attainment of the so-called primary object which, from a practical point of view, means that it can exercise them whenever it is minded to do so, and whether such exercise is in fact conducive to the attainment of that object or not, as neither the court nor any one else can control the company's opinion, or otherwise interfere with the manner in which it chooses to carry out its objects.

It would be difficult in any case to determine whether any particular enterprise undertaken by the company under its wide powers was or was not in fact conducive to the attainment of the primary object, but when the question of whether it is or is not so conducive is left to the decision of the company itself, I cannot avoid the conclusion that the objects mentioned in Sub-clauses (2) to (22) can be carried out by the company just as freely as the object mentioned in Sub-clause (1) and that there is no substantial difference in degree between them."

4. These decisions were referred to with approval by the Supreme Court in *East India Industries (Madras) Private Limited Vs. Commissioner of Income Tax*,

Madras, . Here the property that was contended to be held under trust was the business of the kuri and the income therefrom was to be applied for the objects of the company which are stated in Clause 3(a). The business of conducting the kuries is itself mentioned as an incidental object of the company in Clause 3(b). Under Clause 3(a) the charitable purposes are mentioned as " to give charity, to promote education and to establish or aid in the establishment of associations, institutions, funds, trust with the object of promoting charity and/or education.... " We have no doubt whatever that these charitable purposes include and comprehend advancement of objects of general public utility and particularly the carrying on of business. And since there is no restriction that any part of the income from the business must be applied to charitable purposes alone and there is an implied discretion in the directors to apply the income or property of the company to all or any of the purposes which will include business, the principle stated above and which we enunciated in our judgment that we just now pronounced in Income Tax Referred Cases Nos. 51 to 56 and 79 of 1972 Dharmaposhana Company Vs. Commissioner of Income Tax, must apply.

5. Mr. C. T. Peter, counsel for the assessee, invited our attention to the decision of the Supreme Court in Oriental Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay, , wherein it was held that " the mere fact that a company has within its objects the dealing in investment in shares, does not give to the company the characteristics of a dealer in shares ". This decision only considered the question when a company can be said to be a dealer. The mere power to deal in shares does not mean that the company was actually dealing in shares and was a dealer in shares. So the assessee is well founded in his contention that by the mere power taken under other objects to carry on business will not be sufficient to say that the company was carrying on business. But it is admitted that the company was carrying on kuries and it is not contended that conducting kuries is not. business. The decision in Oriental Investment Co. Ltd. v. Commissioner of Income Tax can, therefore, have no application. It is the principle of that decision that is laid down in Wilson Box (Foreign Rights) Ltd. (in liquidation) v. Brice (H. M. Inspector of Taxes), [1936] 20 TC 736, another case relied on by counsel for the assessee, and that decision too is not helpful.

6. We, therefore, answer the question referred to us in the negative, that is, in favour of the department and against the assessee. We direct the parties to bear their respective costs.

7. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.