
(1998) 02 KL CK 0020

In the High Court Of Kerala

Case No : Income-tax Reference No"s. 119 to 121 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Dharmadeepti

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(1), 13(1), 2(15)

Citation : (1999) 236 ITR 397

Hon'ble Judges : Om Prakash, C.J.;J.B. Koshy, J

Bench : Division Bench

Advocate : N.R.K. Nair, for the Appellant; V.M. Kurian, A.V. Thomas, E.K. Dilraj and Mathew B. Kurian, for the Respondent

Judgement

Om Prakash, C.J.—Heard counsel for the appellant.

2. The Income Tax Appellate Tribunal, Cochin Bench, referred the following questions relating to consecutive assessment years 1982-83 to 1984-85 for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case and in view of Section 13(1)(bb) of the Income Tax Act, the assessee is entitled to exemption under the Income Tax Act ?

2. Whether the provisions of Section 13(1)(bb) are inapplicable in respect of business which itself is the property held under trust ?

3. Whether, on the facts and in the circumstances of the case, the interest on investment of surplus fund could be assessed under the head "Business" ?

4. Whether, on the facts and in the circumstances of the case, when the assessee"s counsel gave up ground No. 2 the Tribunal is justified in considering the ground on merits on the basis that "there is no estoppel against law" and is not the above consideration based on the principle of estoppel wrong since the principle is available only to the parties to the dispute ?"

3. We take up questions Nos. 1 and 2 first for consideration.

4. The assessee a public limited company is engaged in the business of running kuries. The contention of the assessee is that the income from the kuri business held under trust was applied for charitable purposes and therefore, it is entitled to exemption u/s 11 on the basis of the Supreme Court decision in Dharmadeepti, Alwaye, Kerala Vs. Commissioner of Income Tax, Kerala, rendered in the case of the assessee itself, wherein the Supreme Court held that running of kuri business is exempted u/s 11 for the assessment year 1969-70.

5. The Assessing Officer rejected the contention of the assessee in the following words :

"This decision was valid until 1976-77, but in view of the amendment to the Income Tax Act introduced in Section 13(1)(bb), any income of a charitable institution from business or profession is not entitled to exemption u/s 11 unless the business itself is carried on in the course of the actual carrying out of the primary object of the institution. The assessee-company is only appropriating the income from business and using it for charitable purposes and not earning the income during the course of carrying out the primary objects of the company. The decision of the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , also discounts the contention of the assessee that it is earning its income during the course of the actual carrying out of the primary objects. In the circumstances, the assessee's case is covered by Section 13(1)(bb) and, therefore, no exemption can be granted u/s 11."

6. The assessee then carried the dispute in appeal to the Commissioner of Income Tax (Appeals), who held that after the insertion of Section 13(1)(bb) in the Income Tax Act, with effect from April 1, 1977, the decision of the Supreme Court in Dharmadeepti, Alwaye, Kerala Vs. Commissioner of Income Tax, Kerala, , in the case of the assessee itself would not be applicable and exemption u/s 11 could not be claimed on the strength of that decision by the assessee.

7. Thereupon, the assessee went up in appeal to the Income Tax Appellate Tribunal which disposed of the appeal relating to the consecutive assessment years 1982-83 to 1984-85 by a common order dated December 2, 1995. The Appellate Tribunal, notwithstanding the amendment in the Act inserting Section 13(1)(bb), relied on the Supreme Court decision in Dharmadeepti, Alwaye, Kerala Vs. Commissioner of Income Tax, Kerala, , in the case of the assessee itself for the assessment year 1969-70 and held as under :

"In the case of the assessee, the apex court has held in clear terms that the income of the appellant from the kuri business was the income derived from the property "held under trust", for charitable purposes of the appellant and as such was entitled to exemption in relation thereto u/s 11(1)(a) of the Income Tax Act. The insertion of Section 13(1)(bb) in our opinion will not in any way oust the right of the assessee to exemption."

8. The only question for consideration is as to whether the assessee will become disentitled to the exemption u/s 11 after the insertion of Section 13(1)(bb) in the Act.

9. Exactly the same controversy arose in *Thanthi Trust Vs. Assistant Commissioner of Income Tax*, before the Madras High Court. In that case the petitioner-trust was created for the purpose of establishing a Tamil daily (Daily Thanthi) by the founder of the said newspaper who was carrying on the business of printing and publishing of the said newspaper as a sole proprietor since 1942. By another supplementary deed, the founder directed that the surplus income of the said trust should be devoted by the trustees for the charitable purposes, namely, running educational institutions for teaching journalism, arts and science, setting up scholarships, hostels and other educational purposes. In the course of assessment for the years 1979-80 to 1983-84, the respondent raised the objection regarding the claim of exemption u/s 11 of the Act on the ground that by virtue of Section 13(1)(bb) of the Act the trust is not entitled to claim exemption. The Madras High Court held that the founder of the trust has clearly evinced an intention to create a public charitable trust as seen from the preamble and clause of the original trust deed and the charitable objects referred to in the supplementary deed have to be fulfilled from and out of the income from the business which is directed to be held under trust. It was held that it is to carry out and fulfil those objects, the business is being carried on and thus the primary purpose is to carry out the charitable objects and the business is carried on as a means in the course of the actual carrying out of that primary purpose and not as an end in itself. The court continued to observe that while the predominant object of the trust is the carrying out of the charitable objects referred to in two of the three categories of charitable purposes referred to in Section 2(15), the carrying on of the business which is actually the property held under trust or other legal obligation is incidental and the profit resulting from the business can be taken to be a by-product. This is how the Madras High Court held that the respondent was not right in denying the exemption to the petitioner-trust u/s 11 of the Act for the assessment years 1979-80 to 1983-84 simply on account of Section 13(1)(bb) being inserted in the Act. We quite agree with the view taken by the Madras High Court in *Thanthi Trust Vs. Assistant Commissioner of Income Tax*, and following the same we answer question No. 1 in favour of the assessee and against the Revenue. So far as question No. 2 is concerned, we are of the view that the provisions of Section 13(1)(bb) are applicable to the facts of this case and yet the assessee is entitled to exemption u/s 11 of the Act for all these years in question.

10. Coming to question No. 3, the contention of the assessee before the Assessing Officer was that the interest received on the deposits should be assessed under the head "Other sources". The Assessing Officer rejected that contention and brought to tax interest income under the head "Business income". The standing counsel made a feeble attempt before us to canvass the view taken by the Assessing Officer in this behalf. The Appellate Tribunal held as

under :

"We have also gone through the list of fixed deposits made under surplus funds since 1972. Barring income from those deposits which are invested as deposit u/s 15 of the Chitties Act, the income from other deposits cannot be considered as income from business as such deposits have come into the surplus funds of the trust by means of accumulation over the years. Hence, the interest income from non-business deposits can be taxed under other sources and cannot be considered as income from business of running kuries."

11. We fully agree with the reasoning given by the Appellate Tribunal in this behalf. Interest on the investment of the funds accumulated all the years cannot be said to be business income and that can be brought to tax only under the head "Other sources". So far as the last question is concerned, it is worth pointing out that the Appellate Tribunal formulated ground Nos. 2, 3 and 4 in the beginning of its order. According to the Tribunal, "they were common grounds raised in these appeals". In paragraph 3, the Tribunal observed as under :

"Shri V.M. Kurian, learned advocate for the assessee, confined himself only to ground Nos. 3 and 4 stating that he would give up ground No. 2. In our considered opinion, there is no estoppel against law and counsel for the assessee is not permitted to withdraw ground No. 2, the adjudication of which is rather very material and relevant for deciding the issue before us."

12. It is in this backdrop, learned standing counsel urged before us that when ground No. 2 was explicitly given up by counsel for the assessee, the Tribunal was not right in deciding the said ground holding that there was no estoppel against law. It is not pointed out from the records that the assessee ever gave up the claim for exemption u/s 11(1). The assessee consistently claimed exemption u/s 11, notwithstanding Section 13(1)(bb) having been inserted in the Act by amendment. The matter viewed in this light, the statement made by counsel for the assessee is of no significance. We, therefore, answer all the questions against the Revenue and in favour of the assessee.

13. The references are, accordingly, disposed of.