(1997) 02 KL CK 0038

In the High Court Of Kerala

Case No : Income-tax Reference No. 22 of 1995

Commissioner of Income Tax APPELLANT

Vs

Dharmodayam Co. RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:
Income Tax Act, 1961 — Section 11(1), 11(4A), 2(15)

Citation : (1997) 141 CTR 524 : (1998) 233 ITR 250

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; Party in person, for the Respondent

Judgement

Mrs. K.K. Usha, J.—A reference is at the instance of the Revenue from the order of the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No. 264/Coch. of 1989. Relevant assessment year is 1985-86. Following are the questions raised for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case and also on an interpretation of Section 11(4A) of the Income Tax Act, 1961, the assessee is entitled to exemption u/s 11(1) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that ''the business is carried on for carrying out the primary objects of the trust and it will not be hit by the provisions of Section 11(4A) of the Income Tax Act'' and is not the above finding wrong, unreasonable and unwarranted considering the scope and object of Section 11(4A) of the Income Tax Act, 1961 ?"

2. This court had occasion to consider the issue raised in question No. 1 in I. T. R. No. 42 of 1994 in Commissioner of Income Tax Vs. Dharmodayam Co., in the assessee''s case itself. It was held that the assessee is entitled to claim exemption u/s 11(1) of the Income Tax Act, 1961, in respect of its income from

the kuri business, in spite of the provisions contained under Sub-section (4A). In the light of the above, question No. 1 is answered in the affirmative, in favour of the assessee and against the Revenue.

3. Question No. 2 is really another facet of question No. 1. In view of the our answering question No. 1 as above, we decline to answer question No. 2.

4. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

