
(2005) 02 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No. 148 of 1998

Commissioner of Income Tax	Vs	APPELLANT
Duttom Enterprises		RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 80G

Citation : (2005) 197 CTR 606

Hon'ble Judges : Viney Mittal, J; G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant; None, for the Respondent

Judgement

G.S. Singhvi, J.—In terms of the directions given by the Supreme Court vide order dt. 13th Feb., 1996, in Civil Appeal no. 120.6 of 1979, the Income Tax Appellate Tribunal (Chandigarh Bench) (for short, "the Tribunal") has referred the following question of law for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. 33,948 collected by the assessee on account of charity did not constitute the assessee's income ?"

2. The assessee is a registered firm. It is engaged in wholesale business of wine. For the asst. yr. 1973-74, the assessee filed return declaring an income of Rs. 1,36,820. It claimed deductions of Rs. 33,948 on account of charity. The AO completed assessment u/s 143(3) of the IT Act, 1961 (for short, "the Act"), at an income of Rs. 1,76,080. While doing so, the AO treated the entire amount on account of charity as revenue receipt and added the same to the total income of the assessee. He, however, allowed deductions u/s 80G of the Act. The AAC, Rohtak Range, Rohtak, confirmed the order of the AO but in the further appeal, the Tribunal granted relief to the assessee by making the following observations :

"We have carefully considered the rival contentions. We do not dispute that in the aforesaid four invoices, certain money on account of Dharmada has been

collected by the concerned dealer. But all the same, we cannot accept the existence of a custom. If there was any such custom in the trade, the assessee would have fallen in line with such custom right in the asst. yr. 1968-69 when the business was started. The assessee would not have been unaware of the custom, if any, during the five years of its business prior to the present assessment. We would, however, accept the assessee's contention that the money collected on account of Dharmada did not come into the hands of the assessee as income. The assessee specifically collected the money for purposes of charity and also disbursed the said amount for purposes of charity. The assessee's case is covered by the Supreme Court judgments in the cases of (i) The Commissioner of Income Tax, Bombay City II Vs. Shri Sitaldas Tirathdas, and (ii) Commissioner of Income Tax, West Bengal Vs. Tollygunge Club Ltd., . Though the amount collected on account of Dharmada was included in the bills, we are unable to accept the Revenue's contention that the said amount formed a part of sale proceeds and therefore, be treated as the assessee's income. In the case of Chowringhee Sales Bureau (P) Ltd. (supra), the amount collected with the sale proceeds was on account of sales-tax but in the case of the assessee, the amount collected with the sale proceeds was specifically and exclusively meant for charity. In respect of the aid sum collected by the assessee by way of charity, the assessee was only a trustee and this would be apparent from the fact that a sum of Rs. 22,956 was disbursed to different parties in this year, and the balance of Rs. 10,990 was carried over for similar disbursements in the subsequent years. The Revenue has not made any submission that the amount collected for charity was not disbursed for purposes of charity. We would thus hold that the sum of Rs. 33,948 did not constitute the assessee's income. The addition of Rs. 33,948 is thus deleted. Since we have deleted the entire addition of Rs. 33,948, the deduction of Rs. 10,248 allowed u/s 80G is withdrawn."

(Emphasis, italicised in print, added)

3. We have heard Shri Rajesh Bindal, learned counsel for the Revenue, and perused the record.

4. In Commissioner of Income Tax, West Bengal Vs. Tollygunge Club Ltd., , the Supreme Court considered the question substantially similar to the one referred by the Tribunal in this case and answered the same in favour of the assessee. The facts of that case were that by a resolution passed at a general body meeting of the respondent, which was a social and sports club, it was decided to levy a surcharge of eight annas over and above the admission fee. The proceeds of the surcharge were to go to the Red Cross Fund. On 30th Jan., 1950, the earlier resolution was modified and it was decided that the surcharge should be earmarked for local charities and not solely for the Indian Red Cross. The Tribunal and the High Court held that the respondent's receipt from the surcharge levied on admission tickets for purposes of charity could not be included in its taxable income. While affirming the judgment of the High Court, their Lordships of the Supreme Court held :

"Since a resolution was passed at the general meeting for levying the surcharge for local charities and pursuant to this resolution the surcharge was paid by the race-goers and received by the respondent for the specific purpose of being applied to local charities, the surcharge, when paid, was clearly impressed with an obligation in the nature of trust for being applied for the benefit of local charities, and was by that obligation diverted before it reached the hands of the respondent and at no stage became part of the income of the respondent.

It is settled law that a trust may be created by any language sufficient to show the intention and no technical words are necessary and it may even be created by the use of words which are primarily words of condition. The only requisites which must be satisfied are that there should be "purposes independent of the donee to which the subject-matter of the gift is required to be applied and an obligation on the donee to satisfy those purposes."

5. Similar view was expressed by the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., in respect of Dharmada realised by the respondent. The propositions laid down in that case read as under :

"(i) that when the customers or brokers paid the amounts to the respondent earmarking them for "Dharmada", those payments were validly earmarked for charity, in other words, right from the inception those amounts were received and held by the respondent under an obligation to spend them for charitable purposes only, with the result that those amounts were not its trading receipts:

(ii) that the "Dharmada" amounts could not be regarded as part of the price or a surcharge on the price of goods purchased by the customers: the amount of "Dharmada" was undoubtedly a payment which a customer was required to pay in addition to the price of the goods which he purchased from the respondent, but the purchase of the goods by the customer would be an occasion and not the consideration for the "Dharmada" amount taken from the customer. It was true that without payment of the "Dharmada" amount, the customer might not be able to purchase the goods from the respondent but that did not make the payment of "Dharmada" involuntary inasmuch as it was out of his own volition that he purchased yarn or cotton from the respondent. The "Dharmada" amount was, therefore, not a part of the price, but a payment for the specific purpose of being spent on charitable purposes."

6. In Commissioner of Income Tax Vs. Modipon Ltd. (No. 1), , a Division Bench of the Delhi High Court approved the view taken by the Tribunal that the receipt on account of charity collected did not constitute business income of the assessee.

7. Following the law laid down in the aforementioned judgments, we answer the question referred by the Tribunal in the affirmative, i.e., in favour of the assessee and against the Revenue.

8. The reference is disposed of in the manner indicated above.