(1994) 11 KL CK 0053

In the High Court Of Kerala

Case No : Original Petition No. 142 of 1993-S

Commissioner of Income Tax APPELLANT

Vs

Geetha Bhavan Trust RESPONDENT

Date of Decision : 04-11-1994

Acts Referred:
Income Tax Act, 1961 — Section 10(22), 256

Citation : (1995) 1 ILR (Ker) 558

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; V. Ramachandran, B.S. Krishnan, Senior Advocate and P.R. Raman, for the Respondent

Judgement

T. L. Viswanatha Iyer, J.—The assessee is a trust constituted by a deed dated September 1, 1977. The objects of the trust are to provide for :

" (a) Institutions for spreading faith in God, the consciousness of the basic identity of religions, the spirit of religious and universal brotherhood.

(b) Educational institutions of any kind either general, vocational, pedagogic or otherwise.

(c) Hostels, boarding houses and camps for students, teachers and others connected with the institutions and establishments mentioned by the trust.

(d) Libraries and reading rooms and other institutions for general or mass education.

(e) Hospitals, vaidyasalas, dispensaries, nursing homes, medical research centres, health centres, sanatorium and other institutions for" medical relief, etc. "

2. But the assessee had, for the time-being, engaged itself only in educational activities and was running a primary school at Angarnally and a high school at Alwaye. During the assessment year 1983-84, corresponding to the year ending

March 31, 1983, there was a surplus receipt of Rs. 3,78,620 by the assessee from the receipts in the schools which were ploughed back into the schools themselves for their educational and developmental activities. The assessee claimed exemption u/s 10(22) of the Income Tax Act, 1961, in respect of the income so received. The assessing authority, however, rejected the claim. The Commissioner (Appeals) took a different view and held that the entire income was exempt, inasmuch as the assessee was running only educational institutions and had no other source of income. The institutions were also not run for purposes of profit. The assessment was therefore set aside. The Tribunal affirmed this decision. Reference of the question whether income was exempt u/s 10(22) of the Act was sought, but declined by the Tribunal. This application u/s 256(2) was, therefore, filed to compel reference of the aforesaid question of law.

3. Having heard both sides we do not find any reason to direct reference of any questions of law as arising out of the order of the Tribunal.

4. Counsel for the Revenue contends that while it is true that the income sought to be assessed was derived from the educational institutions during the year in question, the objects of the trust were wide and, therefore, it could not be said that the trust as such existed only for educational purposes. It was also contended that since a surplus had been generated from the running of the schools, the institution must be treated as one run for profit. We find it difficult to agree with either of these submissions.

5. It is true that the objects of the trust comprehend various items. But admittedly the trust is running only the two educational institutions referred to earlier. The objects clause has no doubt delineated in great amplitude the objects for which the institution in question was constituted. In reality, however, it only empowers the institution to embark upon the various activities permitted by it. It does not necessarily imply that the institution should embark on them, or has embarked on them.

6. What Section 10(22) speaks of is income of a university or other educational institution existing only for educational purposes, and not for purposes of profit. Here is a trust running two educational institutions, The income which is sought to be subjected to assessment is that derived from these educational institutions. It is an admitted fact that the surplus was used only for the purposes of the educational institutions. The profits of the trust are not distributed. It is not a profit-making organisation arid the surplus earned from the schools is ploughed back into the schools themselves for their educational and developmental purposes. What is relevant u/s 10(22) is the source of the income, whether it has been derived from an educational institution existing solely for educational purposes. The schools in question are not used for any other purposes. They, therefore, exist solely for educational purposes. Even the trust, for that matter, existed solely for that purpose during the relevant years despite the permissive amplitude of its objects clause, since it had not embarked upon any other activity.

7. "Exist" means "to be in present force, activity or effect at a given time". If during the relevant year, the trust in question existed solely for educational purposes, we should think that Section 10(22) is attracted to the facts of this case, when the income derived is solely from the educational institutions run by it, and the activities of the trust are not for profit.

8. We do not find anything in the decisions in The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, , Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, or Municipal Corporation of Delhi Vs. Children Book Trust, , which militates against the view we have taken. All those cases dealt with the scope and effect of the term "charitable purpose" and as to what exactly was charity. They have no application to this case where the claim is u/s 10(22).

9. We do not find any error in the order of the Tribunal and no referable question of law arises out of it. We dismiss the petition.