
(1996) 07 KL CK 0007

In the High Court Of Kerala

Case No : Income Tax R. No's. 78 and 79 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Muthoottu Charitable Trust

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 11, 13(1), 13(3)

Citation : (1997) 227 ITR 203

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair, M.A. Firoz and Dale P. Kurien, for the Respondent

Judgement

V.V. Kamat, J.—The assessee in these two references, relating to the assessment years 1980-81 and 1981-82 is a trust created under an indenture executed on August 16, 1976. Three brothers, Mr. M. George, M. Mathew and Mathew M. Thomas of Muthootu House, Kozhencherry, are the authors of this trust. These three brothers also along with their children and close relatives carry on the business of the firm in the name and style of Muthoottu Mini Chitty Fund. The business is of conducting chitty and money-lending on a large scale. There are different partnership firms also other than the above chitty fund. The present assessee-trust though came up under the indenture in 1976, became active after the formation of the chitty fund in June, 1977.

2. The nature of the business activity so far as is relevant to the present references postulates a spread over of the activities of the fund carried out by the above firm. The firm had several series of chitty funds on the basis of agreements entered into between the fund, on the one hand, and the subscribers who are participants in the series of chitty funds on the other.

3. We had an occasion to consider the format of agreements, in order to ascertain the connection of the trust in regard thereto, in matters relating to taxation of the firm in question in the reference proceedings -- I. T. R. Nos. 75

and 76 of 1989 Commissioner of Income Tax Vs. Muthootu Mini Chitty Fund, , decided by us by our judgment dated June 25, 1996. Reading the agreement, especially Clause 6 thereof, we have Ruled that from the amount forgone by the successful bidder in a series in question, 5 per cent, will be set apart to meet the chitty expenses and from the balance amount 25 per cent, was to be given to the trust. On the basis of the terms and conditions of the agreement, with regard to this amount known as 25 per cent, we have held that the said percentage could not be understood to be the income of the above firm but can only be understood to be the income of the trust-the present assessee. In the process of reasoning in the said references, the decision of the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., , direct on the point was relied upon. We held that the agreements are more than specific emphasising in the first instance, that the full amount would be the property of the firm, the assessee-firm. We also found that 25 per cent, in regard thereto would be the property of the trust as and by way of income.

4. In these references we have to consider the following two questions :

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that it could not be said that the investment had been made by the assessee-trust in a firm, Muthootu Mini Chitty Fund, or continued to remain invested there, as understood in the business parlance with a view to obtaining any profit ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that application of Section 13(1)(c) read with Section 13(2) (h) was Ruled out ?"

5. The undisputed facts are that the present assessee-trust was deriving its entire income from the chitty fund. At the time of the original assessment, the Income Tax authorities treated the entire income of the trust as exempt u/s 11 of the Income Tax Act, 1961. This was found to be irregular when it was discovered that the entire funds were really in the hands of a chitty fund--a firm--and came to be transferred to the trust only much thereafter on April 25, 1984.

6. Therefore, u/s 265 of the Income Tax Act, 1961, the Commissioner of Income Tax, Trivandrum, initiated action with regard to the two assessment years in question.

7. For the assessment year 1980-81, the assessment was completed on December 2, 1982, and for the next assessment year 1981-82 it was completed on March 30, 1983. Action u/s 263 was initiated on the basis of a notice dated November 5, 1984, posting the matter to November 19, 1984. By two separate orders dated November 19, 1984, and March 11, 1985, it was held that the accounts of the assessee-trust showed an amount of Rs. 1,10,187 for the assessment year 1980-81 and Rs. 19,510 for the assessment year 1981-82 remained with the firm of the chitty fund itself. There is no dispute that as for the chitty fund floated by the firm in question its moneys have no concern with the

religious or charitable purposes in any way whatsoever. The Commissioner found that these amounts for these assessment years continued to remain with the firm "without adequate compensation being charged from them". Consequently, it was held that the completion of the assessment granting protection of Section 11 of the Income Tax Act, 1961, was an error and prejudicial to the interest of the Revenue. The Commissioner also observed that provisions of Sections 13(1)(c), 13(2)(a), 13(2)(b) and 13(3)(b) of the Act also do not save the situation.

8. The controversy centres around the two assessment years in regard to which amounts of Rs. 1,10,187 and Rs. 19,510, having been shown by the assessee-trust as the income, crediting them shown as amounts due to the trust from the chitty business. In addition thereto, the undisputed position also floats on the surface of the record, to the effect that these amounts were actually given to the trust on April 25, 1984. In regard to these amounts for these assessment years what is to be seen is as to whether the trust would be liable to be taxed or whether the trust will get the benefit of Section 11 of the Act and in regard thereto whether there would be any difficulty on the basis of the provisions of Section 13 of the Act in the matter of availability of the benefit u/s 11.

9. The proceedings before the Income Tax Appellate Tribunal reveal that the Tribunal acted on the above undisputed factual matrix. The Tribunal addressed itself with regard to the situation of the continuance of these amounts with the firm understanding the same as an investment with the firm. In the process, the Tribunal observed that since the amounts have not been received by the assessee in the relevant accounting years it also cannot be said that the amounts came to be invested by the assessee-trust with the chitty fund either initially or continuously thereafter, with a view to earn any profit in regard thereto. In the process of reasoning, the Tribunal Ruled out the application of the provisions of Section 13(1)(c) read with Section 13(2)(h) of the Act. The Tribunal also Ruled out the application of Section 13(2)(a) of the Act speaking of the income or the property which is lent or continued to be lent. The Tribunal further emphasised that the amount must exhibit the character of a loan connected with some positive act of money-lending which is not possible when admittedly the amounts are received by the trust only on April 25, 1984. In the process of reasoning, finding that the situation would not be governed by the provisions of Section 13 of the Act, the Tribunal reached the conclusion that the Commissioner of Income Tax was not justified in setting aside the completed assessment orders. In fact on the basis of undisputed factual matrix we are required to consider the character of the two amounts. We have examined the agreements in question with regard to the series of chitty funds and on the basis thereof we have already decided that this 25 per cent, out of the amount forgone by the successful bidder would be the property of the trust in the nature of this amount. These amounts are the income of the trust with reference to the assessment years in question. The books of account of the trust bear a clear testimony in regard thereto as an undisputed position. It is also further crystal clear that these amounts continued to be with the chitty fund firm, not only during both the assessment years in

question but also thereafter till April 25, 1984. To be precise with regard to the first assessment year 1980-81 the amount was with the chitty fund firm for a period of 49 months and for the next assessment year 1981-82 it was with the chitty fund firm for a period of 37 months. These are the amounts which were with the chitty fund firm.

10. It must be made clear that the consideration as to whether the amounts would carry interest or the amount would have some connection with the profit of the chitty fund firm would take us clearly into the realm of irrelevance, with regard to the basic question of taxability of the two amounts. The factual matrix makes it clear that these amounts are nothing other than the income of the trust. This income of the trust was with the chitty fund firm during the period of the assessment years. The question is whether these two amounts would have to be understood in such a manner as by virtue of the provisions of Sections 11 and 13 of the Income Tax Act, these amounts would have to be understood as non-taxable in any sense of the situation.

\\ 11. In our judgment, these two amounts would be the income of the trust with reference to the assessment years in question. If the amounts are the income of the trust, remaining with the chitty fund firm wholly during the assessment years in question could never be brought about in regard to the benefits of Section 11 of the Income Tax Act, 1961. The provisions of Section 13(1)(c)(ii) make it abundantly clear that if such income is not used for the benefit or applied in regard thereto, it would not be possible even to contemplate coverage of the provisions of Section 11 in regard thereto. On the contrary, the facts are crystal clear that the benefit with regard to the amounts in question is literally and wholly for the benefit of the chitty fund firm which has no connection whatsoever with the concept of charity or religion. Added to it the factual matrix it is further clear that the three persons who are the founders of the trust are brothers inter se who through the activities of the chitty fund firm along with their children and close relatives are engaged in the business of conducting chitty and money-lending on a large scale not only in the name of the chitty fund firm in question but in the names of different partnership firms. The concerned amounts would have no connection whatsoever with regard to the use or application for religious or charitable purposes. Section 13(3) of the Act makes this position clear as specifying persons for whose benefit, directly an income is sought to be used by the trust in question. Clauses (a) and (b) of the above statutory provision would carve out and make it clear that the considerations of Section 11 could not be available with regard to the two amounts in question in any manner. In view of the above position it will have to be said that the two authorities looked at the question as discussed above from aspects which were not really necessary when the factual situation is clear and piercing to know that the amounts are the income of the trust and the trust would not get any benefit of Section 11 of the Act in view of the situation that it was the chitty fund firm who had the amounts till April 25, 1984. The amounts were available to the chitty fund firm for use. It was available for use for the three brothers who had

founded the trust in a situation which is further abundantly clear that even though the trust was founded in 1976 nothing happened till the formation of the chitty fund firm in June, 1977.

12. For the above reasons, we pass the following order. Question No. 1 is not necessary and we decline to answer the same. Question No. 2 is answered in the negative to the extent that the provisions of Section 13(1)(c) (Section 15(1)(c) (ii) read with Section 13(2)(a) and (b) of the Income Tax Act, 1961), in favour of the Revenue and against the assessee. With regard to Section 13(2)(h) it is unnecessary and we decline to answer the same.

13. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench, for passing consequential orders.