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In the High Court Of Kerala

Case No : Income-tax Reference No''s. 64 and 65 of 1966

Commissioner of Income Tax APPELLANT

Vs

P. Krishna Warrier RESPONDENT

Date of Decision : 17-11-1970

Acts Referred:
Income Tax Act, 1961 — Section 2(15)

Citation : (1972) 84 ITR 119

Hon'ble Judges : P. Govindan Nair, J;M.U. Isaac, J

Bench : Division Bench

Advocate : P.K. Krishnan Kutty Menon, for the Appellant; D.A. Krishna Varrier and K. Ram Kumar, for the Respondent

Judgement

Govindan Nair, J.—On the application of the Commissioner of Income Tax, the Income Tax Appellate Tribunal, Madras Bench " B ", drew up a statement of the case and have referred the following questions for our decision.

" 1. Whether, on the facts and in the circumstances of the case, the objects of the Arya Vaidya Sala constitute a charitable purpose within the meaning of Section 2(15) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the assessee is entitled to exemption on the 25% of the profits devoted to the development of Arya Vaidya Sala ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in deleting the additions of the sums of Rs. 8,331 and Rs. 27,506 made in the assessment year 1962-63 and Rs. 7,678 and Rs. 36,224 made in the assessment year 1963-64? "

2. This reference is a composite one and relates to Income Tax of the income of an institution known as the Arya Vaidya Sala for the two assessment years 1962-63 and 1963-64. To understand the contentions urged on behalf of the revenue at whose instance this reference has been made and those of counsel

for the assessee, it is necessary to refer to a few facts.

3. Institutions known as the Arya Vaidya Sala, Arya Vaidya Hospital and Arya Vaidya Pata Sala existed for nearly 70 years. These were founded by a very well-known physician, Shri. P. S. Warrier, who died on the 30th January, 1944. Before his death, he executed a will on November, 3, 1939, and that will is annexure " A " to the statement of the case. Paragraph 9 of that will contains provisions which have to be adverted to in answering the questions referred to us. Paragraph 9 contains many sub-paragraphs. It is unnecessary to refer to all the sub-paragraphs, but we must read sub-paragraphs G, J, K, L and M :

" G. The primary and chief objects of the trust are to carry on for ever the two institutions, viz., the Arya Vaidya Sala and the Arya Vaidya Hospital on the lines followed now and with the object of enlarging and increasing their scope and utility. The work of Arya Vaidya Sala now consists of-

1. Preparation of ayurvedic medicines.

2. Sale of the same.

3. Treatment of patients, receiving from them compensation according to their capacity and means.

4. To conduct research into aryavaidyam with a view to make it more and more useful to the public.

J. The trustees are to run the above institutions according to the intentions expressed above with such modifications as the circumstances may warrant.

K. In the Aryavaidya Pata Sala run under the auspices of the Arya-vaidyasamajam, Aryavaidyam is taught in accordance with the service of Ayurveda. I have been meeting the expenses of the said institutions, not covered by its income, from out of the profits of Arya Vaidya Sala.

L. Out of the net profits of the Arya Vaidya Sala 25% to be devoted to the development of the Arya Vaidya Sala, 25% for meeting the expenses of the Arya Vaidya Hospital and 25% for division equally between the two Tavazhis (this only for 20 years), out of the remaining 25% a sum not exceeding 10% may be, according to requirements, utilised for the purposes of the Arya Vaidya Pata Sala. The balance, if any, that may remain out of the 10% after disbursement to the Aryavaidya Pata Sala may be used for the Aryavaidya Sala itself. The balance 15% are to be deposited by the trustees each year in approved banks as reserve fund for the two Tavazhis for a period of 20 years and the fund thus accumulated inclusive of interest is to be divided equally among the two Tavazhis equally, i.e., in moiety, and it will be the duty of the trustees to invest the same on the authority of immovable properties.

M. The trustees are not bound to pay any amount to the said two Tavazhis after the expiry of the 20 years. The 40% of the profit so marked for 20 years and so released after the expiry of 20 years are, therefore, to be utilised for the

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development of the Aryavaidya Sala and Aryavaidya Hospital according to the discretion of the trustees."

4. We are concerned in this case about the 25% of the net profit of the Arya Vaidya Sala which has been earmarked for the development of the Arya Vaidya Sala as also the excess of the 10% not utilised for the purpose of Arya Vaidya Pata Sala which is to be used by the Arya Vaidya Sala itself. These latter amounts are specifically covered by question No. 3 referred to us.

5. The liability to Income Tax of the 60% of the profit of Arya Vaidya Sala made up of the 25% set apart for the Arya Vaidya Sala itself, 25% for the Arya Vaidya Hospital and 10% for Arya Vaidya Pata Sala arose in relation to the assessment years 1952-53, 1953-54, 1954-55, 1955-56 and 1956-57. This court held that the above 60% is not liable to be taxed and this view has been affirmed by the Supreme Court in the decision in Commissioner of Income Tax Kerala and Coimbatore Vs. Krishna Warriar, . This decision was rendered under the Indian Income Tax Act, 1922. The definition of " charitable purpose " has been altered by the Income Tax Act, 1961, and the present definition is contained in Section 2(15) of that Act reading as follows:

"2. (15) '' Charitable purpose '' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

6. It will be seen from the definition that if any other object of general public utility involves the carrying on of an activityfor profit, that object of general public utility will cease to be a charitable purpose as defined in that section. A fortiori the income derived from such activity will be taxable under the Act. This proposition as such is not challenged before us. What is urged by the assessee is that the activity of the Arya Vaidya Sala is not an activity that will fall under the 4th category mentioned in the definition just read, namely, an object of general public utility. It is urged that the object, if gleaned from all the circumstances, the intention of the testator and from the practice that was obtaining in the working of the institution during his lifetime, is affording medical relief. This is the view that has been taken by the Tribunal. We shall extract the relevant part of the order of the Tribunal which is in paragraph 9 :

" As stated earlier, the work of Arya Vaidya Sala consists of preparation and sale of Ayurvedic medicines, treatment of patients and conducting research in Arya Vaidyarn. The objects are inter-connected and have to be viewed as a composite scheme. They are not independent and disassociated with each other. A reading of the will clearly indicates that late Shri Warrier, the testator, being an eminent Ayurvedic physician himself was devoted to the cause of Ayurveda, that he was interested in extending the benefits of the system of Arya Vaidyam to the general public and that he was desirous of making that system more popular. Treatment of patients on receiving compensation from them according to their ability to pay which is one of the avowed objects of the Arya Vaidya Sala, clearly indicates that

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Shri Warrier was desirous of putting this system of medical treatment within the grasp of even the poorest among the people. His intention was evidently to afford a system of cheap and wholesome medicinal preparations to be made available to the public. The preparation of Ayurvedic medicines is only incidental to the treatment of patients and the carrying on of research into Arya Vaidyam. Preparation and sale of Ayurvedic medicines cannot be disassociated from the other objects and treated as a separate object by itself. Taken as a whole, the object was clearly medical relief coming within Section 2(15) of the Income Tax Act, 1961."

7. The words in the definition " not involving an activity for profit" qualify only the general public utility mentioned as the fourth category in the definition and not medical relief to the poor or education enumerated earlier in the definition. If it, therefore, can be fairly stated that the object of the Arya Vaidya Sala is medical relief even if its activity involves making of profit, the Arya Vaidya Sala will not be outside the definition. The question then is what is the nature of the activity carried on by the Arya Vaidya Sala. We have read the will which enumerates the various purposes for which the Arya Vaidya Sala was founded and continued to exist. The first two items pertain to the preparation and sale of Ayurvedic medicines. The next two relate to the treatment of patients and research in Arya Vaidyam. To what extent research has been conducted there is no material to determine and that activity has not been relied on by the Tribunal in deciding the appeal before it. It did however refer to treatment of patients evidently referring to item 3 enumerated in the will and found it possible to state that the preparation and sale of Ayurvedic medicines is only incidental to the treatment of patients and the carrying on of research in Arya Vaidyam. From the facts established and proved in the case, it is impossible to come to such a conclusion. The gross turnover in relation to the sale of Ayurvedic medicines is in the region of lakhs of rupees: Rs. 11,33,669.10 for the year 1962-63 and Rs. 12,52,050.94 for the year 1963-64. During these years the amounts received by special treatment are respectively only Rs. 25,138 and Rs. 17,872. If these figures are any reflection of the extent of the respective activities--and we think they are--they clearly show that the treatment of patients referred to in item 3 is only a negligible activity. This can form only a very incidental object of the Arya Vaidya Sala, the predominant and the substantial object being the preparation and sale of Ayurvedic medicines. We must in this connection remember that the funds for the activities of the hospital and the carrying on of the Aryavaidya Pata Sala have to be supplied by the Arya Vaidya Sala not to mention the 25% and the 15% set apart for the two Tavazhis for whose benefit 40% of the income of the Arya Vaidya Sala had been diverted. A reading of the will indicates that the finances for all the objects of the trust are to stem or to flow from the Arya Vaidya Sala. Profits can normally accrue only from a business activity or a trading activity or a commercial activity. The intention of the testator has to be gleaned not only from his desire that the Arya. Vaidya Sala and the Arya Vaidya Hospital must exist for ever and must continue to serve the needs of the public

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but also that the Arya Vaidya Sala by its working must supply the financial resources essential for the existence of all the three institutions, Arya Vaidya Sala, Arya Vaidya Hospital and Arya Vaidya Pata Sala. It has also to pay for 20 years substantial amounts to the two Tava2his of the testator. It is, therefore, clear that it is a trust which has mixed objects of a charitable purpose and non-charitable purposes. Before the amendment introduced by Section 2(15) of the Income Tax Act, 1961, 60% of its income was taken as earmarked for charitable purposes. The question whether this particular charitable purpose of running the Arya Vaidya Sala was or was not an object of general public utility was not considered, in fact did not arise for consideration, in the earlier decision. It cannot, therefore, be said that this is a matter covered by the Supreme Court decision to attract the principle of res judicata. We have to answer that question and we have come to the conclusion from the discussion above that the object of the Arya Vaidya Sala is not medical relief or education or relief of the poor and can fall, if at all, only under the 4th category, and intrinsically mixed up with an activity for profit. It thus falls outside the ambit of the definition in Section 2(15) of the Income Tax Act, 961. The answer to questions Nos. 1 and 2 must therefore be in the negative, that is, in favour of the department and against the assessee. We answer them accordingly.

8. It is admitted that the answer to the third question must depend upon the answers on the first two questions as the amounts mentioned in that question, are the amounts coming out of the 10 per cent. earmarked for the Arya Vaidya Pata Sala which were not utilised for the Arya Vaidya Pata Sala but utilised for Arya Vaidya Sala. We, therefore, answer question No. 3 also in the negative, that is, in favour of the department and against the assessec. We make no order as costs in these cases.

9. A copy of this judgment under the seal of the High Court and the signature of the Registrar will he sent to the Appellate Tribunal as required by Sub-section (1) of Section 260 of the Income Tax Act, 1961.

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