(1992) 12 RAJ CK 0037

In the Rajasthan High Court

Case No : Income Tax Reference No. 48 of 1982

Commissioner of Income Tax APPELLANT

Vs

Paramhans Ashram Trust RESPONDENT

Date of Decision : 08-12-1992

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

Citation : (1993) 113 CTR 433 : (1993) 203 ITR 711

Hon'ble Judges : K.C. Agrawal, C.J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal, Jaipur Bench, has referred the following question of law arising out of its order dated September 25, 1980, in respect of the assessment years 1970-71, 1971-72, 1976-77 and 1977-78 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the decision of the Appellate Assistant Commissioner that the assessee is a public charitable and religious trust and its income is entitled to exemption u/s 11 of the Income Tax Act, 1961 ?"

2. The brief facts of the case are that the assessee has claimed expenses for repairs and maintenance of temple and dharamshala besides expenses over charity. The Income Tax Officer came to the conclusion that this is a case of a private trust and as per clause 3 of the trust deed, no deduction in respect of the repair charges shall be permissible.

3. Against the assessment orders, appeals were preferred to the Appellate Assistant Commissioner of Income Tax, A-Range, Jaipur, wherein it was submitted that the income earned from the property held under trust is wholly for charitable and religious purposes and, in accordance with the provisions of Section 11 of the Income Tax Act, 1961, the assessee is exempted. Alternatively, it was submitted that non-allowance of proper deduction is contrary to law. It

was further submitted that for the assessment year 1972-73, the assessee was held to be a public charitable trust and that the application of the assessee u/s 12A of the Income Tax Act is pending before the Commissioner of Income Tax, Jaipur. The learned Appellate Assistant Commissioner came to the conclusion that no reasons have been given by the Income Tax Officer and, in view of the aims and objects of the trust, the assessee is a public religious and charitable trust. The objects which have been reproduced from the deed are: (1) maintenance of the existing dharamshalas, help of Agarwals and other widows and children, (2) feeding of mendicants, and (3) construction of new dharamshalas and schools, help of destitutes. It was also noted that the activities carried on by the assessee-trust are in consonance with the aims and objects of the trust and the trust is registered with the Charity Commissioner, Rajasthan. With regard to the claim of adjustment of various expenses, the matter was sent back to the Income Tax Officer to examine the claim for allowance of various expenses by treating the assessee''s income to be exempt u/s 11 of the Income Tax Act, 1961.

4. Against this order, the Revenue had gone in appeal before the Income Tax Appellate Tribunal where it was contended that the son of the author of the trust has stated on October 9, 1967, that the trust is a private trust. The Tribunal came to the conclusion that the trust was created in 1928 and the copy of the original trust deed was also submitted and if the son of the author of the trust wrongly mentioned somewhere that it was a private trust, the said statement is not legally correct. The Tribunal came to the conclusion that the finding given by the Appellate Assistant Commissioner is supported by material on record and that no positive material was brought on record to show that the assessee is not a religious and charitable trust. The appeal was dismissed. In order to appreciate the arguments of learned counsel for the Revenue, it has to be seen as to whether the trust is a private trust or a public charitable trust. Normally, in a private trust, the beneficial interest is vested in one or more individuals whereas a public or charitable trust, on the other hand, has objects by which the public at large is benefited. The beneficiaries are capable of being ascertained in the private trust while the charitable purpose has been defined to include relief of the poor, education, medical relief and advancement of any other object of general public utility not involving the carrying on of any activity for profit. According to the main objects, the maintenance of the existing dharmashalas, help of Agarwals and other widows and children, feeding of mendicants and construction of new dharamshalas and schools, and help of the destitutes cannot be said to be restricted in respect of a particular individual or groups of them. The use of the word "object of general public utility" can be interpreted to cover such trust where the intention is to give the benefit to sizable numbers of the public in contrast to an individual or group of individuals. The expenses in constructing new dharamshalas were considered as advancement of the charitable object of the trust which was held entitled to exemption u/s 11 of the said Act in the case of Satya Vijay Patel Hindu Dharamshala Trust Vs. Commissioner of Income Tax, Gujarat I, and this court in Ragunath Das Parihar Dharmshala Vs. Commissioner

of Income Tax, has held that the sole purpose of the trust was to run a dharamshala which is an object of general public utility and so when this was the sole object, the income derived therefrom in the shape of the rent from the dharamshala is exempt u/s 11 read with Section 2(15) of the Act. Similarly, the other objects of help of Agarwals, widows and children, feeding of mendicants and help of destitutes are of general public utility and the Tribunal has rightly come to the conclusion that the assessee is a public charitable and religious trust and its income is entitled to exemption u/s 11 of the Income Tax Act, 1961.

5. Accordingly, the question is answered in favour of the assessee and against the Revenue. No order as to costs.