

(1976) 09 MAD CK 0010

In the Madras High Court

Case No : Tax Case No. 423 of 1971 (Reference No. 138 of 1971)

Commissioner of Income Tax

APPELLANT

Vs

S. Ramaswamy Iyer

RESPONDENT

Date of Decision : 21-09-1976

Acts Referred:

Income Tax Act, 1961 — Section 11(1)

Citation : (1977) 110 ITR 364

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : A.N. Rangaswamy and Nalini Chidambaram, for the Appellant; K. Srinivasan and K.C. Rajappa, for the Respondent

Judgement

Ismail, J.—The Income Tax Appellate Tribunal, Madras Bench, u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as the Act,

has referred the following question of law for the opinion of this court:

Whether, on the facts and in the circumstances of the case, and on a true construction of the deed as subsequently modified, the entire income

from trust property is exempt from tax for the assessment years 1962-63 , and 1963-64 u/s 11 of the Income Tax Act, 1961 ?

2. The assessee is the sole trustee of a trust known as "" Gnani S. Ramaswamy Iyer Charitable Trust"" of which he was also the founder. The trust

was created by him with the avowed intention of perpetuating the memory of his deceased father, by a charitable endowment for the benefit of

poor students belonging to the Saurashtra Brahmin community. The document was dated 6th January, 1947, and that document read as follows :

With a view to perpetuate the name and memory of my father, Gnani S. Ramaswamy Iyer, and to provide for the support and benefit of male and

female students of Saurashtra community, i have this day founded a charitable trust in the name of my father. For the said purpose, i have constituted a fund of Rs. 50,000 in cash and dedicated the said fund as fixed and permanent asset to the said Trust. I have further made out deeds and documents in respect of the said trust describing the same therein as "Gnani S. Ramaswamy Iyer Charitable Foundation". I have also arranged for the maintenance of accounts in the name of the said Trust in which the amount has been credited in favour of the said trust as its fixed asset and permanent fund. I shall be the first trustee of the said Trust for the duration of my life and after me, my male heirs and after their lifetime, their respective male heirs and so on from generation to generation, shall be trustees. The trustee or trustees for the time being shall deposit the amount with a reputed bank or banks or with sound business men for interest for fixed terms. The interest shall be realised once in six months or a year by the said trustee as they deem fit and utilised as per directions specified here-under for the benefit of the poor students, male and female, of the Saurashtra community.

3. With the said permanent fund of the charitable trust, houses or house sites yielding good return, or Nanja or Punja lands fetching good income may be purchased in the name of the trust and those properties shall be appropriated to the trust and administered as properties belonging to the trust. The said properties shall be leased and from out of the income, municipal taxes, land taxes, expenses of repairs, etc., shall be paid. Monies left over after defraying the said expenses and liabilities shall be utilised for the objects of the trust detailed below :

4. The following objects of the trust shall be carried out every year without fail beginning with the reopening of the schools after the summer recess in 1947.

5. Detailed accounts shall be kept for the receipts and expenses. The balance shall be struck after meeting all the liabilities and expenses for each year. The fund shall be improved and developed by lending out the monies left over for interest and appropriating the proceeds of such investment to the fund.

6. The endowed fund and the immovable properties acquired out of the fund are exclusively the properties of the trust and the trustees are only

entitled to be in control and management of them to develop and improve them using the rents and profits of the properties every year for the purposes of the trust mentioned below.

7. They have no right to alienate them or to change them over to any other trust or to use the income for any other purposes. They shall not act

against my wishes. Neither I nor my heirs are entitled to ask for the release of the properties from the said endowment or revoke the said trust or

alter the terms for any reason whatsoever. This trust deed is executed by me of my free will and volition with the desire that the under-mentioned

objects of trust should be fulfilled every year without fail perpetually and eternally.

8. Details of objects of the trust to be performed by the said trustees :

1. Granting of scholarship in full or part to the poor Saurashtra Brahmin students, male and female.

2. "Providing free midday meals to poor Saurashtra Brahmin male and female students.

3. Donating free-clothing to poor boys and girls on the occasion of Deepavali.

4. Providing free text books, etc., to the male and female students of our community on the reopening of schools after summer holidays.

After my demise, should any of my male adult heirs living at the time wish to perform any other charities in any year or years, they may spend half

of the income for that charity in accordance with the decision of the majority of my heirs at a meeting convened for the purpose, for those years

while the other half shall be spent on the above-said four, objects every year as stated above from out of the income of each year.

9. On 29th March, 1961, the founder-trustee executed another instrument which, according to him, was intended to amend by way of clarification

the terms of the original deed. That document read as follows:

I executed a charitable trust deed on January 6, 1947. This was registered with the Madurai Registrar as document number 6 of 1947, in Volume

79 in pages 260 to 263 in Book 4. As per the terms and conditions stipulated in the above charitable trust settlement deed, I have created " Saint

(Gnani) S. Ramaswamy Iyer Charitable Trust". In the above trust deed, it has been stated that trust properties and deposit amounts (fund-

amounts) should not be transferred or alienated to other institutions and that

trust income should not be spent for purposes other than those specified in the above deed.

But considering the trend noticed in practical experience with regard to the above private charitable trust and in order to remove and modify the terms in clause 5 of the trust deed dated January 6, 1947, with reference to the carrying out of the charities and with a view to amend and modify

the conditions and terms of the trust as detailed below, i am executing this supplemental trust deed. Charities are being done as per the terms and

conditions stipulated in the deed dated January 6, 1947, relating to " Saint S. Ramaswamy Iyer " Trust.

I, during my lifetime, and trustees, after my lifetime, have power to spend the incomes from the trust properties for the charities subject to the terms

and conditions laid down below. Charities referred to in items 1 to 4 of the trust deed are to be done to the extent of 50% of the annual income.

Out of the balance of 50%, 20% is to be applied for charity relating to providing poor people and children with food, clothes and medical aid.

The trustees using their discretionary powers can either spend or gift away in lieu of expenditure any amounts up to 30% of the annual income to

poor relations for their welfare.

The amount of the original deed relating to this supplement deed is Rs. 50,000.

10. For the assessment year 1961-62, the trustee filed a return showing "" no income "" as taxable and indicating in section D of the return that the

trust, had a net income of Rs. 3,050. The trustee claimed exemption from assessment u/s 4(3)(i) of the Indian Income Tax Act, 1922. We are not

referring to this assessment any further for the reason that we are concerned in this reference only with the assessments for the assessment years

1962-63 and 1963-64. However; we may point out one thing. Since the Income Tax Officer, for the purpose of completing the assessment for the

assessment year 1962-63, had relied upon his order in relation to the assessment year 1961-62, it was only proper that the Tribunal should have

annexed a copy of the assessment order for the year 1961-62 as an annexure to the statement of the case, which has not been done.

11. For the assessment year 1962-63, the assessee returned an income of Rs. 3,449 and showed it in section F of the return form. The said sum

of Rs. 3,449 was arrived at after deducting a sum of Rs. 1,642 from the gross

income of Rs. 5,092. The Income Tax Officer, by his order dated 25th November, 1966, took the view that out of the expenses of Rs. 1,642, a sum of Rs. 1,394.65 had been spent for the benefit of the grandchildren of Shri P. Nagendran and that, therefore, that could not be allowed as a deduction. Therefore, deducting only the balance of Rs. 203 from Rs. 5,092 he assessed the income of Rs. 4,089 to tax.

12. Similarly, for the assessment year 1963-64, the assessee claimed an expenditure of Rs. 2,147 out of the gross income of Rs. 7,174 of the trust. The Income Tax Officer held that apart from Rs. 114 out of Rs. 2,147, the balance had been spent for the benefit of the grandchildren of Shri Nagendran, who is the author of the trust, and that, therefore, the same could not be claimed as a deduction. Therefore, deducting Rs. 114 from Rs. 7,174 he assessed the income of Rs. 7,060 to tax.

13. The orders of assessment for all the three years, namely, 1961-62, 1962-63 and 1963-64, were taken up in appeal and the Appellate

Assistant Commissioner of Madurai Range by his order dated 28th February, 1969, allowed the appeals and held that the entire gross income was

exempt from tax. His reasoning was that the original trust deed endowed the properties wholly for charitable purposes, that the subsequent deed

executed on 29th March, 1961, was not valid, because the founder of the trust did not reserve a power to vary the application of the income and

that the only power which was reserved was under clause 5 of the original trust deed, which could be exercised by the trustees after the death of

the founder and that too for the purpose of varying the charitable objects originally, mentioned in the trust deed to the extent of 50% of the income.

Consequently, according to the Appellate Assistant Commissioner, the supplemental deed dated 29th March, 1961, constituted breach of trust on

the part of the founder of the trust and with reference to such a breach of trust, the revenue had no reply and, therefore, since the trust was created

wholly for charitable purposes, the entire income should be exempt. When the department preferred appeals to the Income Tax Appellate

Tribunal, Madras Bench, that Bench also affirmed the order of the Appellate Assistant Commissioner. It is the correctness of this action of the

Tribunal affirming the order of the Appellate Assistant Commissioner that is challenged in the form of the question referred to this court, as

extracted already.

14. Before we indicate our answer to the question, we shall refer to certain features, one arising out of the trust deed and the other arising out of

the statutory provisions. As far as the trust deed is concerned, it is clear that the four objects mentioned in the original trust deed are really

charitable objects and there is no dispute with reference to the same. If the original trust deed stood without being interfered with by the

supplemental deed dated 29th March, 1961, there can be doubt whatsoever that the property: would be property held under trust wholly for

charitable purposes. The question for consideration is, what exactly is the impact of the supplemental deed dated 29th March, 1961. The

supplemental deed actually provided that 30% of the income could be spent by way of expenditure or gift in favour of poor relations of the

founder. The expenditure for the benefit of the poor relations of the founder, who will necessarily be ascertained individuals, cannot be said to be

one for a charitable purpose, as contained in the Act. As we have pointed out already, the Tribunal and the Appellate Assistant Commissioner

proceeded on the basis that the founder of the trust had no right to execute the supplemental deed dated 29th March, 1961. We are of the view

that the Tribunal was right in this behalf. Once we hold that the original trust was for a charitable purpose in the nature of benefit to the public, the

trustee cannot alter that purpose without a power being reserved therefore in himself, in that trust deed. As we have pointed out already, except to

the extent of 50% of the income from the trust property being diverted for other charitable purposes after the death of the founder, at the instance

of the trustees then functioning, under the original trust deed, there is no other provision therein reserving a power with the founder to alter the

charitable character and the object of the trust and to provide for application of any part of the income from the trust properties for the benefit of

the poor relations. The result of this will be that the original trust deed stood in law without being in any way influenced or affected by the

subsequent supplemental deed dated 29th March, 1961.

15. Let us now refer to Section 11 of the Act. It is sufficient to refer to the provisions of Section 11(1)(a) and (b) for the purpose of this case and

they are as follows :

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income--

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India ; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of twenty-five per cent of the income from the property, or rupees ten thousand, whichever is higher;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from the property held under trust in part.

16. Thus, it will be clear that as far as Section 11(1)(a) is concerned, there are two consequences ""that will follow. One is that out of the income derived from the property held under trust wholly for charitable or religious purposes, only that amount which had been applied to such purposes in India will not be included in the total income of the person receiving the income. The second is, if the income is not actually applied for such purposes and is accumulated, for application to such purposes, even then it will not be liable to be included in the total income, so long as the said amount so accumulated is not in excess of twenty-five per cent of the income from the property or Rs. 10,000, whichever is higher. Just as Section 11(1)(a) deals with a case where the property is held under trust wholly for charitable or religious purposes, Section 11(1)(b) deals with a case where the property is held under trust in part only for such purposes, namely, for charitable or religious purposes. Even in such a case, the provision is that that part of the income which had been applied to wholly charitable or religious purposes in India will be exempt and that if it is not so applied, but accumulated, that also will not be liable to be included in the total income to the extent to which such income so set apart is not in excess of twenty-five per cent of the income from the property held under trust

in part. In view of our finding that the original trust deed stood unaffected by the subsequent supplemental deed dated 29th March, 1961, it must follow that the property was held in trust wholly for charitable purposes and that consequently it is Section 11(1)(a) of the Act that applied to the case and not Section 11(1)(b) of the Act. In that event, as we have pointed out already, the income actually applied to such purposes or the income accumulated for such purposes, within the limits provided for in the second limb of Section 11(1)(a) of the Act, will not be liable to be included in the total income of the, person receiving the same. If any part of the income has actually been spent in terms of the subsequent supplemental deed dated 29th March, 1961, that will only mean that that part of the income had not been applied for charitable purposes for which the trust was created. Therefore, the authorities below should have approached this question from the above point of view and found out on the basis of their conclusion that the supplemental deed dated 29th March, 1961, was not a valid one, as to what part of the income of the trust property was actually applied for "the original charitable purposes of the trust or what part of the income of the trust property was accumulated for such purposes, and on the basis of a finding in this behalf they should have applied the provisions of Section 11(1)(a) of the Act. If any portion of the income of the trust property had been spent for the benefit of the poor relations of the founder, as would appear to have been done from the orders of the Income Tax Officer for the relevant years, that part of the income would not qualify for the benefit of Section 11(1)(a) of the Act, since such application of the income would not have been for the charitable purposes for which the property is held under trust. In the light of the provisions contained in Section 11 of the Act, we cannot share the view of the Appellate Assistant Commissioner of Income Tax confirmed by the Tribunal that "the tax laws do not provide a remedy to safeguard revenue, in a case where there is a breach of trust". Since the statute exempts only that part of the income which is applied to the charitable purposes, any part of the income applied to any other purposes, which application would constitute a breach of trust, will not enjoy the benefit of exemption and will be liable to be included in the total income and this is the remedy which the statute has reserved to the revenue. The authorities below, without bearing

this distinction in mind, have proceeded on the basis that the entire income will be exempt u/s 11 of the Act. On the face of it, and for the reasons indicated by us, such a conclusion is erroneous.

17. Therefore, while answering the question referred to this court in the negative and in favour of the department, we direct the Tribunal to dispose

of the appeals for the two years in question, namely, 1962-63 and 1963-64, afresh on the basis that the supplemental deed dated 29th March,

1961, was not valid and the only trust deed in operation was the original deed of the year 1947 and to consider in the light of that trust deed,

whether the income from the trust property was applied to or accumulated for application to the charitable purposes mentioned therein, as

contemplated by Section 11(1)(a) of the Act and with what consequence. There will be no order as to costs.