

(2004) 09 AHC CK 0008

In the Allahabad High Court

Case No : W.T. Reference No. 81 of 1985 30 September 2004

CWT

APPELLANT

Vs

Ma Shree Kishoriji Bishwa Hitakari Trust

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Citation : (2005) 142 TAXMAN 668

Hon'ble Judges : R.K. Agrawal, J;P. Krishna, J

Bench : Full Bench

Advocate : Shambhu Chopra, for the Revenue, for the Appellant;

Judgement

1. The Income Tax Appellate Tribunal Allahabad has referred the following two questions of law u/s 27(1) of the Wealth Tax Act (hereinafter referred to as the Act) for opinion to this court:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the property under the Trust deed dated 18-8-1961 was held by the assessee trust for a public purpose of a charitable or religious nature within the meaning of section 5(1)(i) of the Wealth Tax Act, 1957 ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the wealth-tax authorities were not justified in not granting exemption to the assessee trust u/s 5(1)(i) of the Wealth Tax Act, 1957 on the strength of proviso to section 21A of the said Act for the assessment year under consideration i.e. assessment year 1968-69 when in fact section 21A was applicable for assessment year 1973-74 onwards ?".

2. Briefly stating the facts giving rise to the present reference are as follows:

The respondent assessee is a trust. It was constituted under a deed dated 18-8-1996. The assessment year in question is 1968-69 for which the relevant valuation date is 30th of June. The wealth of trust consists of immovable property and movable property in the form of shares, post office saving bank

account and cash in hand. The respondent disputed its liability to wealth tax on the ground that the properties being trust properties were exempted u/s 5(1)(i) of the Act. The Wealth-tax Officer did not accept the claim of exemption put forward by the respondent. Deriving strength from the assessment made under the Income Tax Act regarding the income of trust he completed the wealth tax assessment for the assessment year in question on the net wealth of Rs. 3,56,135.25. The appeal preferred by the respondent before the Appellate Assistant Commissioner did not meet with any success. Feeling aggrieved the respondent preferred appeal before the Tribunal. The Tribunal had allowed the appeal by holding that a trust for the benefit of public with the direction that preference should be given to the members of the settler's family in the selection of beneficiaries is nonetheless a valid charity if the trust was created before 1-4-1962 and it could not be said that in the trust deed the benefit to the community was remote or that the paramount and dominant object was the relief of settler's relatives. The Tribunal had held that the respondent is exempted u/s 5(1)(i) read with the proviso to section 21A of the Act.

3. We have heard Shri Shambhu Chopra, the learned standing counsel for the revenue. Nobody has appeared on behalf of the respondent. The learned standing counsel for the revenue submitted that from a reading of clauses 4 and 6 of the Trust deed referred to in the statement of case it will be seen that the dominant purpose of the Trust was for the benefit of the settler and his descendants and only a negligible percentage of the income was earmarked for the charitable purpose. He submitted that in this view of the matter the Trust was not exempt u/s 5(1)(i) of the Act. He relied upon a decision of Madras High Court in the case of Commissioner of Wealth-tax Vs. Gangabai Charities, and of the Apex Court in the case of Gangabai Charities Vs. Commissioner of Wealth Tax, .

4. Having heard the learned standing counsel for the revenue we find that the Trust in question has been created on 18-8-1961. Clause 4 of the Trust deed which provides for application of the income of the Trust reads as follows:-

"(4) One of the conditions of the Trust hereby declared is that the trustees have to prudently manage the Trust properties and after meeting the expenses of the Management and payment of the dues, legally payable have to utilize balance in the following proportion for objects noted against each:

(a) 15% to be expended to meet emergent expenses like damages caused by natural calamities, illness, relief of distress among the deserving, fire victims sufferers from earthquakes, flood devastation by enemy action and epidemics. If deserving persons are not available in any year the amount has to be saved to be expended in suitable occasions to given relief at later times.

(b) 20% to be reserved for the maintenance of the Executant for her life time and after her death unless the Executant nominates any beneficiary for Dharmic, Social or Charitable object the said percentage of the income shall be expended

in such manner as the Trustees deem expedient.

(c) 20% to be expended on the upbringing, education and maintenance of deserving descendants of the Executant and if God forbid no such descendants of the Executant exist the amount should be utilized for grant of marriage expenses and scholarship to deserving students who might be connected with the Executant, at the discretion of the Trustees.

(d) 10% to be expended on performance of religious duties, celebration of Dasehra, Pilgrimage, Yatra, Pooja, feeding of poor and similar Dharmic objects. Any savings in any one year to be carried over to the next year and expended at the discretion of the Trustees for similar objects whenever suitable occasions arise.

(e) 10% to be expended on the maintenance, improvement additions, accretions and alternations of the Trust property. If no occasion arises for such expenditure in any year the amount shall be saved to be utilized when suitable occasion arises.

(f) 15% to be expended on providing marriage, expenses to deserving female descendants of the Executant or other persons preferably of caste fellows. If no suitable persons are available in any year the money shall be saved for expenditure when a suitable occasion arises.

(g) 10% to be expended at the discretion of the Trustees for the maintenance and support of the deserving persons."

Clause 6 of the Trust deed reads as follows:

"Another condition of the Trust hereby declared is that the Trustees are not authorized to treat this Trust as a Public Trust or incur expenditure on strangers so long as the descendants or caste fellows of the Executant are available."

5. From a reading of the various sub-clauses of clauses 4 and 6 of the Trust deed we are of the considered opinion that the predominant object of the Trust was for applying income of the Trust to the Executant during her life time and after her death to the descendants. Moreover we found that about 55% of the income has to be spent on the Executant or her descendants. 10% of the income has to be spent for maintenance, improvement of the Trust properties and 10% has been left to be expended at the discretion of the trustees for the maintenance and support of the deserving persons. According to the clause 6 of the Trust deed the deserving persons would be available only after the descendants and caste fellows of the Executant are exhausted. Thus, by no stretch of imagination it can be said that the predominant object was for a charitable purpose. In case of Gangabai Charity (supra) the Madras High Court while considering the following clause of the Trust deed executed by Smt. Gangabais case (supra):

"That the Trust property, more particularly described in the Schedule below shall be used for religious, charitable, social, cultural and other allied purposes" has

held that the purposes for which the property can be put to use are not confined to the religious or charitable use nor it can be said that the predominant object for which the property will be used are religious and charitable, it can be used for social, cultural and other allied purposes at the sole discretion of the trustee and therefore, it was not for public purpose or of charitable or religious nature. The aforesaid decision has been affirmed by the Apex Court in the case of Gangabai Charity (supra).

6. Respectfully following the aforesaid decisions we are of the considered opinion that in the present case the predominant object of the Trust was not for public or charitable purpose and therefore it is not exempt u/s 5(1)(i) of the Act. In view of the above conclusion arrived at it is not necessary to go into the second question.

7. In view of the foregoing discussion we answer the first question of law in negative ie. in favour of the revenue and against the assessee. The question No. 2 is returned unanswered. However, there shall be no order as to costs.