

(1984) 03 RAJ CK 0023
In the Rajasthan High Court
Case No : Income Tax Reference No. 7 of 1973

Hari Industries

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1985) 153 ITR 656

Hon'ble Judges : S.N. Bhargava, J; S.C. Agrawal, J

Bench : Division Bench

Advocate : R.P. Goyal and V.K. Singhal, for the Appellant; R.N. Surolia, for the Respondent

Judgement

Bhargava, J.—The following questions have been referred to the High Court by the Income Tax Appellate Tribunal u/s 256(1) of the I.T. Act, 1961 (hereinafter to be referred to as "the Act").

"1. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that a sum of Rs. 7,984 collected by the applicant as charity collection on the bills constituted part of sale price and as such taxable income of the assesses ?

2. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding addition of Rs. 4,734 as taxable income of the appellant on the ground that no trust has been created ?"

2. M/s. Hari Industries (hereinafter referred to as "the assessee"), carries on the business of milling of sarson seeds(mustard), selling the oil and oil-cake. On each of the sales effected by it, it used to collect 6p. per Rs. 100 by way of charity. These recoveries towards charity are effected through the sale bills. During the assessment year 1966-67, the total amount of such collections came to Rs. 7,984. Out of this collection, the assessee paid a sum of Rs. 5,500 to a public charitable trust, namely, M/s. Hari Paropkari Trust. The balance of the

collections was applied towards payment to persons such as All-India Telegraph Union, the Forest Employees' Union, the Agarwal Sabha, the Telegraph Employees' Union, etc. The ITO allowed rebate to the assessee under s. 80G of the Act in respect of the amount of Rs. 5,500 paid to Hari Paropkari Trust. Such rebate worked out to Rs. 3,250 and after deducting this from the gross collections of Rs. 7,984, he treated the balance of Rs. 4,734 as part of the assessee's income from business. On appeal, the AAC held that the so-called charity collections formed part of the trading receipt of the assessee and since the ITO had granted the requisite relief under s. 80G with regard to the payment to a public charitable trust, no interference was called for and the appeal was dismissed. The assessee preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal also held that the alleged charity collections represented the collections effected by the assessee from its customers as these were not voluntary payments by the customers towards charity, but were recovered by the assessee through the sale bills and customers had no volition in the matter not to pay such amounts towards the alleged charity. It was further found that the assessee had not created any trust in respect of such recoveries. Therefore, it also confirmed the findings that these collections also formed part of sale proceeds. Since the ITO had allowed rebate under s. 80G of the Act, it also dismissed the appeal. The assessee filed an application u/s 256(1) of the Act for making a reference to the High Court and the Tribunal finding that there was divergence of opinion between the various High Courts on this point and since there was no pronouncement on this question by the High Court of Rajasthan, or by the Supreme Court, referred the two questions noted above for the opinion of this court. Notice was issued to the Department.

3. We have heard the learned counsel for the assessee as well as for the Revenue and have also perused the record of the case.

4. The learned counsel for the assessee has placed reliance on Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., which has settled the controversy. The Supreme Court in that case held that "dharmada" means anything given in charity for religious or charitable purposes. Among the trading and commercial community, payment for "dharmada" is regarded as a gift for charitable purposes. It was further held that when the customers or brokers paid the amounts to the respondent earmarking them for "dharmada", those payments were validly earmarked for charity. The assessee was under an obligation to spend them only for charitable purposes. Therefore, the amounts received as "dharmada" were not its trading receipts. It has been further held that the "dharmada" amount could not be regarded as a part of price or surcharge on the price of goods purchased by the customers. Even though the "dharmada" was collected through the sale bills and every purchaser had to pay "dharmada" if he had to purchase goods from the assessee, still it did not make the payment of "dharmada" involuntary inasmuch as it was out of his own volition that the purchaser purchased the goods from the assessee. Therefore, the amount of "dharmada" should not be held to be part of price, but a payment

for specific purpose for being spent on charitable purpose. The Supreme Court went further to hold that even though the "dharmada" amount was of a compulsory nature and the assessee had discretion as regards the manner in which and the time when it should spend for charitable purposes, or even if the assessee did not keep the amounts in a separate bank account, the "dharmada" amount could not be held to be part of price. The assessee holds the amount in trust. The Supreme Court approved the cases of the Allahabad High Court in *Thakur Das Shyam Sunder Vs. Additional Commissioner of Income Tax and Another*, and of the Punjab High Court in *CIT v. Gheru Lal Bal Chand* [1978] 111 ITR 134 and followed its earlier authority in *Commissioner of Income Tax, West Bengal Vs. Tollygunge Club Ltd.*, and confirmed the decision of the Allahabad High Court in *Bijli Cotton Mills Ltd. Vs. Commissioner of Income Tax*, . The Punjab and Haryana High Court in *Nathu Ram Shiv Narain Vs. Commissioner of Income Tax*, has held that the definition of charitable purpose in Section 2(15) of the Act was of a very wide amplitude. The donations made by the assessee did not involve any process or carrying on of any activity for profit. Therefore, the payments made to the Bank Employees' Union and backward classes were held to be for charitable purposes.

5. In this view of the matter, we hold that the amount of. Rs. 7,984 collected by the assessee as "dharmada" through its sale bills did not constitute part of sale price and, as such, it is not taxable income of the assessee. Therefore, the first question is answered in the negative. In view of our answer to the first question, no necessity arises for answering question No. 2.