(1982) 05 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 190 of 1979

Mahakoshal Shaheed Smarak Trust APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-05-1982

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

Citation : (1982) 30 CTR 139 : (1983) ILR (MP) 60 : (1983) 140 ITR 795 : (1982) 27 MPLJ 798 : (1983) 12 TAXMAN 173

Hon'ble Judges : G.P. Singh, C.J;Faizanuddin, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

G.P. Singh, C.J.

This is a reference made by the Income Tax Appellate Tribunal referring for our answer the following questions of law :

"(1) Whether, on the material on record and especially the deed of trust on being read as a whole together with the accounts of the trust, the legal inference drawn by the Tribunal, that the applicant was not entitled to exemption from tax u/s 11 of the Income Tax Act, 1961, was correct ?

(2) Whether, on the material on record, could it be legally inferred that mere letting out of house property involved the carrying on of any activity for profit ?"

The relevant assessment years are 1967-68 to 1971-72. The assessee is a trust. The assessee claims that it is a charitable trust entitled to exemption u/s 11 of the I.T. Act, 1961. This claim of the assessee has been negatived on the ground that the assessee is not a trust for a charitable purpose as defined in Section 2(15) of the Act.

The assessee trust was constituted by a trust deed dated 31st October, 1947. It appears from the preamble of the trust deed that the Mahakoshal Provincial

Congress Committee by resolution passed on 21st October, 1945, authorised the raising of funds by subscription for installing and establishing a Shaheed Smarak Bhavan. After sufficient funds were collected, Seth Govindas, who was then the President of the Congress Committee, was authorised to create a trust and make arrangements for the proper functioning of the trust and administration of its properties. It was in pursuance of this resolution that the trust deed was executed by Seth Govindas on behalf of the Congress Committee. The object of the trust is stated in Clause (1) of the trust deed, which reads as follows :

"That the object of the trust is to commemorate and perpetuate the sacred memory of the martyrs of Mahakoshal who lost their precious lives in the Congress movements for the attainment of India''s independence from 1920 to 1945 by constructing buildings and institutions of a permanent character on the land to be taken on lease from the Municipal Committee, Jubbulpore, such as a spacious hall, library, reading-room, museum, offices, guest-houses, shops, swimming pool, parks, playgrounds and such other constructions as may be necessary from time to time."

Powers of trustees are enumerated in Clause (3). The relevant clauses are 3(a), 3(d) and 3(g) which are as under :

"3(a). The trustees make a plan of the buildings to be constructed, parks, playgrounds, tennis courts, etc., to be laid, ''and all other constructions to be made and shall construct them under their supervision and control with the trust funds already raised from subscriptions and to be raised hereafter and from donations, additions, alterations, repairs, etc., shall be done by the trustees out of the income of the trust and such funds as come to their hands.

3(d) They shall see that sufficient income accrues to the trust by letting out its premises from rents and profits, fruits and flowers, swimming pool and literary and other publications and in any other manner they deem necessary.

3(g) The trustees shall do all acts which are reasonable and proper for the realization, protection, benefit of the trust property and for the welfare, enlightenment and benefit of the beneficiary public."

The findings reached by the ITO which were not disturbed in appeal go to show that land measuring 4,52,580 sq. ft. was leased out by the Municipal Committee to the trust for the purpose of construction of Shaheed Smarak Bhavan and for the purpose of making provision for garden, playgrounds, swimming pool and the like for the benefit and recreation of general public, vide lease deed dated 31st October, 1947. The building known as Shaheed Smarak Bhavan was constructed during the year 1949-50 at a cost of Rs. 9,23,348 with the help of grant received from the Government. The building consists of a spacious hall and a stage. The Bhavan is utilized for the purpose of dramas and functions and other''activities and some remuneration is charged from persons using the spacious hall. The expenditure is mainly on establishment charges such as salaries, travelling, taxes, stationery and printing and maintenance of garden, building and children''s park.

The Tribunal came to the conclusion that construction of a memorial like the Shaheed Smarak Bhavan in the memory of the martyrs is undoubtedly a noble, patriotic, laudable and even a sublime object, but charity cannot be extended to the departed souls or their pious memories and that the purpose of the trust did not fall within the definition of "charitable purpose" as contained in Section 2(15) of the Act and, therefore, the trust was not qualified for exemption u/s 11. It was also held that assuming that the object of the trust was covered by the words "the advancement of any other object of general public utility" as used in Section 2(15) yet the purpose of the trust could not be charitable as the trust was engaged in an activity of profit in that it was earning rental income from the buildings.

Section 11 of the Act exempts from tax income from property held under trust for charitable or religious purposes. "Charitable purpose" is defined in Section 2(15) to include "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". The learned counsel for the assessee did not urge that the object of the asses-see-trust is relief of the poor, education or medical relief. His argument is only that the object of the trust falls within the words "the advancement of any other object of general public utility" as they occur in Section 2(15). These words have their origin in the summary of Sir Samuel Romilly submitted by him in the course of arguments in Morice v. Bishop of Durham [1805] 10 Ves 522. Under English law, however, the purpose of the trust must also be within the spirit and intendment of the preamble to the Statute of Elizabeth if it is to be regarded as charitable. There is no such limitation so far as Indian law is concerned. Every object of general public utility would, therefore, be charitable under the Indian law. The English decisions are, however, referred to for help and guidance although they cannot be regarded as having any binding authority. With these general observations we have to approach the question whether the object of the trust is of general public utility, and so, charitable within Section 2(15). The object clause of the trust deed states that the object of the trust is to commemorate and perpetuate the sacred memory of the martyrs of Mahakoshal who lost their precious lives in the Congress movement for the attainment of India''s independence from 1920 to 1925. This object is to be attained by constructing buildings and establishing institutions of a permanent character, such as a spacious hall, library, reading-room, museum, offices, guest houses, shops, swimming pool, playgrounds, etc. Now it is true that the offices, guest houses and shops have not normally to be used by the public. These are, however, not the main buildings which are intended to be constructed in furtherance of the object of the trust. The primary items are construction of a spacious hall, and establishment of library, reading-room, museum, swimming pool, parks, playgrounds, etc., which are obviously of great pubilc benefit. Office building would be needed for housing the office of the trust, shops may be needed for letting them out to earn some income for expenses of the trust, guest houses may be needed for providing accommodation to those who visit Jabalpur for purposes of the trust. But these buildings are ancillary to the primary buildings and institutions of public benefit io be constructed and established in the furtherance of the object of the trust. In this connection it cannot also be lost sight of that the Municipal Committee, which leased out the land to the trust, did so specifically for the purpose of construction of a building known as ''Shaheed Smarak Bhavan and for the purpose of making provision for garden, playground, swimming pool and the like for the benefit and recreation of the general public. Clause 3(g) of the trust deed also shows that "welfare, enlightenment and benefit of the beneficiary public" are the primary purposes for which the trustees have to act. The spacious hall known as Shaheed Smarak Bhavan provides a venue for social and cultural gatherings and benefits the general public although some charge is levied for making the building available. The children''s park, the garden and the library are also for public benefit. The museum and swimming pool, if and when established, will be of the same nature. There is, therefore, no difficulty in holding that the dominant object of the trust was not merely to have a memorial for the martyrs but to have such a memorial which would benefit the general public. The object of the trust is thus of "general public utility" within Section 2(15) and the trust is a charitable trust. The Tribunal was wrong in holding that the object of commemorating and perpetuating the sacred memory of the .martyrs was noble, patriotic, laudable and even sublime but not charitable. It cannot be laid down as an inflexible rule of law that no memorial can be of general public utility. The whole thing depends upon the nature of the memorial. If a memorial, as here, is a spacious hall useful to the general public for social and cultural activities or a library, garden and children''s park for the benefit of the public, it is difficult to hold that the memorial is not of general public utility. In this connection we may refer to the case of Murray v. Thomas [1937] 4 All ER 545, where a war memorial in the shape of a village hall was held to be for a charitable purpose. The purpose in such cases is not merely to commemorate the dead but also to serve for the betterment of the living (see also Halsbury''s Laws of England, vol. 5, 4th Edn., p. 337). The general observations made by the Calcutta High Court in KEDIA JATIYA SAHAYAK SABHA AND FUND Vs. COMMISSIONER OF Income Tax., , cannot be construed to lay down that a memorial irrespective of its nature can never be held to be for a charitable purpose. We are clearly of the opinion that the object of the trust fails within the words "the advancement of any other object of general public utility" as they occur in Section 2(15).

Next comes the question whether the assessee-trust can be excluded from the definition of "charitable purpose" in Section 2(15) because of the fact that it is earning some income from its buildings by letting them out. The words "not involving the carrying on of any activity for profit" as used in Section 2(15) were recently construed by the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, . It was held in his case that to take a trust outside Section 2(15) the activity for profit must be intertwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose. Where the predominant object of the activity of the trust is the carrying out of the object of general public utility and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. In other words, if the profit feeds a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The trust deed has to be seen in the light of these observations. It is true that under Clause 3(d) a trustee has the power to see that sufficient income accrues to the trust from rents by letting out its premises and from fruits and flowers, swimming pool and literary and other publications, but it is clear from Clause 3(g) tr/at the trustees have to do all acts which are reasonable and proper for the realization, protection, benefit of the trust property and for the welfare, enlightenment and benefit of the beneficiary public. In other words, the income from the trust property is to be utilized for the benefit of the public. Thus, the income from trust property is to feed the object of public utility. The dominant object of the trust is, therefore, not to earn profit but to carry out the object of public utility and so the profits earned in the shape of rental from buildings, etc., cannot take the trust out from the definition in Section 2(15).

For the reasons given above, we answer the questions as follows :

(1) The Tribunal was not right in holding that the trust was not entitled to exemption u/s 11.

(2) Letting out of house property did not take out the trust from the definition of charitable purpose contained in Section 2(15).

The assessee will get its costs of this reference from the Department, Counsel''s fee Rs. 200, if certified.

