

(2003) 09 KL CK 0020

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15583 of 2003

Medical Trust Hospital

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Kerala Building Tax Act, 1975 — Section 3(1)

Citation : (2004) 2 ILR (Ker) 408 : (2004) 2 ILR (Ker) 232 : (2004) 2 KLT 139

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : M.P. Abraham, for the Appellant; Sojan James, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is a limited company running a hospital by name, Medical Trust Hospital, at Ernakulam. The Tahsildar issued notice to the petitioner proposing building tax assessment on the hospital building vide notice Ext. P1 dated 16.4.1999. The petitioner filed a detailed reply claiming exemption from building tax in respect of the hospital-building on the ground that the building is principally used for charitable purposes and hence exempt from building tax u/s 3(1)(b) of the Kerala Building Tax Act, 1975, hereinafter called the "Act". Since the question of exemption was raised by the petitioner, the Tahsildar referred the matter to the Government for decision u/s 3(2) of the Act. The Government after hearing the petitioner's objections issued Ext. P4 order whereunder building tax exemption claimed by the petitioner in respect of the hospital building was rejected for the reason that the petitioner was not rendering "free medical relief but was charging fees and remuneration for treatment and services rendered in the hospital. Pursuant to Ext. P4 order of the Government, the Tahsildar issued, building tax assessment and demand notice in Form Nos. V and VI of the Building Tax Rules respectively, produced in the WP as Exts.P5 and P6 respectively. The petitioner is challenging Ext.P4 order of the Government denying building tax exemption for the hospital building and the consequent orders of assessment and demand of building tax by the Tahsildar.

2. I heard Shri M.P. Abraham, counsel appearing for the petitioner and Shri Sojan James, Government Pleader appearing for the respondents.

3. The main argument of the petitioner is that the petitioner is a charitable institution entitled to exemption in respect of the hospital building u/s 3(1)(b) of the Act and the Government order declining exemption is illegal and arbitrary. In support of the petitioner's claim for exemption, the petitioner has produced a Division Bench judgment of this Court in ITR 6 and 7 of 1992 confirmed by Ext.P7 order of the Supreme Court dismissing of SLPs filed against the said judgment whereunder the Income Tax exemption claimed by the petitioner-company for the assessment years 1981-82 and 1982-83 stands allowed. Government Pleader Shri Sojan James, submitted that the decision referred to by the petitioner under the Income Tax Act has no relevance and according to him the exemption from building tax is available u/s 3(1)(b) of the Act only if the building is "principally used for charitable purposes". According to him, the Explanation to the Section makes it clear that so far as charity in the form of medical relief is concerned, in order to qualify for exemption, "medical relief should be rendered "free" of cost and not on chargeable basis. In support of his contention, the Government Pleader has referred to the decision of the Supreme Court in Municipal Corporation of Delhi Vs. Children Book Trust, , whereunder the Supreme Court has held that charitable purpose for the purpose of Income Tax Act is different from charitable purpose as understood under the Municipal laws. It was held by the Supreme Court in paragraphs 75 and 76 at page 1471 as follows:

"75. We have already seen that merely because education is imparted in the school, that by itself, cannot be regarded as a charitable object. Today, education has acquired a wider meaning. If education is imparted with a profit motive, to hold, in such a case, as charitable purpose, will not be correct. We are inclined to agree with Mr. B. Sen, learned counsel for the Delhi Municipal Corporation in this regard. Therefore, it would necessarily involve public benefit.

76. The rulings arising out of Income Tax Act may not be of great help in the Income Tax Act. "Charitable purpose" includes the relief of the poor, education, medical relief and the advancement of any other object of general public utility. The advancement of any other object of general public utility is not found under the Delhi Municipal Corporation Act. In other words, the definition is narrower in scope."

4. In order to appreciate the contentions raised, the section under which the petitioner claims exemption under the Act has to be referred to which is as follows:

Section 3. Exemptions: (1) Nothing in this Act shall apply to:

(a) buildings owned by the Government of Kerala or the Government of India or any local authority, and

(b) building used principally for religious, charitable or educational purposes or as factories or workshops.

Explanation:- For the purpose of this sub-section, "charitable purpose" includes relief of the poor and free medical relief.

It is obvious from the above provisions that the exemption is not for a person or for an assessee, but for a building as such and exemption is directly geared to the use of the building. If the building is "principally used" for religious, charitable or educational purposes, or as factories or workshops, it is entitled to building tax exemption, whatever be the objects of the institution owning it. In other words, even if the building is not owned by charitable institution building tax exemption will still be available for a building if the building is principally used for purposes referred to in Section 3(1)(b) which entitle it to exemption u/s 3(1) of the Act. Similarly every building owned by charitable and religious organizations is not granted blanket exemption from building tax under the Act. Even if building is owned by charitable organization, exemption from building tax- will be available only if the building is principally used for charitable purposes. Ownership-based building tax exemption provided u/s 3(1)(a) of the Act is limited to buildings owned by State, Central-Govt. and local authorities. Medical relief is certainly a charitable activity, but Explanation to Section 3(1)(b) qualifies the kind of medical relief contemplated as charity for the purposes of the Act which is "free medical relief. Free Medical Relief does not admit of medical relief on chargeable basis. In this case, though the petitioner has a case that it is a charitable institution rendering medical services, it is conceded that charges are generally levied on commercial lines. However, counsel for the petitioner contended that the petitioner is also rendering some free medical service. Since rendering of free medical service was not a matter seriously pressed by the petitioner at the time of hearing before the Government, the petitioner has produced some proof to substantiate it by producing balance sheet and accounts. The petitioner has produced Audited Income and Expenditure statement of the hospital for the year ending on 31.3.2002 which shows gross collection of around Rs. 19.9 crores which is in the form of charges for medical treatment under various heads. The Expenditure shown under free medical treatment is only Rs. 57,87,002 which according to counsel represents value of medicines and other items supplied free of cost. From the figures furnished in the audited accounts produced by the petitioner, it is clear that the petitioner is rendering medical services on chargeable basis and it is obvious from the amount received that the charges are on commercial line. In fact even after all the Expenditure, there is a profit of above Rs. 1.2 crores. It is also to be noted that even in the Income Tax case relied on by the petitioner, the High Court has given a finding that the petitioner is charging for medical services on commercial lines. Therefore, I do not find anything wrong in the conclusion arrived at by the Government that the services rendered by the petitioner are for remuneration and so much so the petitioner's hospital building is not entitled to exemption, as it is available only to a building where free medical relief is rendered. The

wording of the section is clear and admits of no doubt and petitioner cannot be granted exemption in violation of the exemption provisions merely because the petitioner is not paying Income Tax. It is pertinent to note that the Supreme Court in Delhi Municipal Corpn. cases referred to above held that definitions from one statute should not be adopted for the purposes of another statute and no violence should be done to the specific meaning assigned to the definition clause in the statute under consideration. Even assuming that the petitioner is entitled to continued income -tax exemption, the same does not apply to the Building Tax Act as such because the Building Tax Act has not adopted the definition of charity from the Income Tax Act. The decision of this Court relied on by the petitioner is based on the decision of the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , which is a decision rendered with reference to the definition of charitable purpose contained in the Income Tax Act, which includes the "advancement of object of general public utility". This limb of the definition clause in the Income Tax Act is absent in the Building Tax Act. It is very strange that even after claiming to be a charitable institution, the petitioner has not claimed Income Tax exemption u/s 11 of the Income Tax Act but has claimed exemption u/s 10(22A) of the Act. Probably the petitioner does not want the Income Tax Department to monitor the income applied for charitable purposes for the relevant year or to observe the restrictions in regard to carry-forward the surplus for application for charitable purposes in subsequent years, which is the scheme contemplated u/s 11 of the Income Tax Act. It is seen from Ext. P7 order of the Supreme Court that the Delhi Municipal Corporation's case explaining the concept of "philanthropy" was not brought to the notice of the Hon'ble Supreme Court. In any case since the Supreme Court has held in Aditanar Educational Institution Vs. Additional Commissioner of Income Tax, , that Income Tax exemption has to be claimed and granted each year depending on the facts of each year's case, the Same cannot as such be applied to the scheme of the buildings tax exemption under the Act. Therefore, the decision under the Income Tax Act relied on by the petitioner has no application here, and following the direct decisions of the Supreme Court Delhi Municipal Corporation's case referred above it has to be held that so long as the building is not "principally used for rendering free medical service", it is not entitled to exemption. Even if the income derived from medical treatment is used for charitable purposes, still the exemption for building tax is not available to the hospital building unless medical relief is generally granted free of cost in such building.

5. The next question is whether the free medical services stated to be rendered by the petitioner will entitle the petitioner for building tax exemption for the building. Here again the provision in the Act is very clear that in order to qualify for exemption the principal use of the building should be for rendering free medical services and probably the incidental recovery of some charges from patients who can afford to pay may not disentitle the building for exemption. In this context, the other decision of this Court relied on by the petitioner in State

of Kerala v. St. Gregarious Medical Mission 1992 (1) KLT 230, is relevant wherein this Court has held that collection of some amount from patients who can afford to pay does not disentitle a hospital building from building tax exemption. In this case, the petitioner is rendering medical services on commercial lines and the free medical services rendered is totally insignificant which is evident from the figures furnished by the petitioner in the audited accounts. Out of the total collection of Rs. 19.9 crores for the year ending on 31.3.2002, the petitioner has spent only around Rs. 57 lakhs towards charity. In other words, charity is only 3% of the receipts. Therefore, going by the facts admitted in the audited Income and Expenditure Statement furnished, the Government's order is beyond challenge and the petitioner is rightly declined exemption. Therefore, the challenge against Ext. P4 is only to be rejected and I do so.

6. The petitioner has challenged Exts.P5 and P6 assessment and demand notice issued by the Tahsildar for the reason that the assessment is completed without proper opportunity. I find some substance in the contention of the petitioner because the only issue concluded by the Government order namely Ext.P4 is on petitioner's claim of exemption. Even after disallowance of claim of exemption, there is scope for enquiry with regard to plinth area of the building, date of completion of construction of the building and the rate of tax to be applied, etc. The assessment in the prescribed form could be issued only when facts are not in dispute. The Tahsildar has assessed the building tax for the building on the square area of 14368.80 sq.metre. It is not known whether the figure is taken from the petitioner's own return or from the approved plans or Tahsildar has conducted inspection and collected data. The petitioner has raised a further question that part of the building was completed years back and assessment cannot be made in respect of the building completed earlier. The Act specifically provides for exemption in Section 5(4) to exclude such portion of the building, construction of which was completed earlier, and assessed earlier. The charging section provides for assessment of building only on completion of the building. Therefore, even when the construction of the building as planned was not completed, but occupied by the party after part completion to carry on business, it can be assessed for the constructed area and as and when full construction is over assessment will have to be made for the whole construction but demand of tax should be after excluding the tax already paid in terms of Section 5(4). Therefore, if the petitioner has been assessed for any portion earlier, then petitioner is entitled to exemption u/s 5(4) of Act. On the other hand, if assessment was proposed only after completion of the full construction of the hospital complex, then the entire building is liable to be assessed. The Tahsildar is therefore directed to inspect the building and determine the plinth area of the building based on plans approved and found on physical inspection. The petitioner will be free to produce details of any portion of the building if assessed earlier and tax paid and the Tahsildar will naturally give credit for the tax so paid and will demand the balance building tax for the building u/s 5(4) of the Act. So far as the claim of limitation against assessment is concerned I do not propose to

go into it because the issue is not seen raised or decided by any authority. If notice was issued within time after completion of complete construction of the petitioner's hospital building and the petitioner's claim for exemption was referred to the Government for decision then the Tahsildar rightly waited for Government's order to complete assessment. Anyhow it is open to the petitioner to raise this issue and the Tahsildar will consider it.

W.P.C. is therefore disposed of with direction to the Tahsildar to collect information as stated above after inspection, issue notice proposing plinth area to be assessed and the rate of tax to be applied, etc., and call for written objections and the petitioner will file detailed reply. The petitioner will be heard before final orders are issued by the Tahsildar. I make it clear that the Tahsildar should issue a detailed order supported by reasons on all issues raised by the petitioner instead of issuing assessment order and demand notice in the form prescribed under the Rules. The Tahsildar will complete the assessment within two months from the date of production of a copy of this judgment by the petitioner. Exts. P5 and P6 are vacated to enable the Tahsildar to issue fresh orders in the place of those orders.