
(2002) 09 KL CK 0022
In the High Court Of Kerala
Case No : T.R.C. No. 199 of 2000

M.P. Santhivarma Jain

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 16(1), 16(11), 4, 4(1), 4(3)
Kerala Agricultural Income Tax Act, 1991 — Section 16

Citation : (2004) 187 CTR 79 : (2004) 265 ITR 385

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

Bench : Division Bench

Advocate : P.V. Jyothi Prasad, for the Appellant; Georgekutty Mathew, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—The matter arises under the Kerala Agricultural Income Tax Act, 1991 (hereinafter referred to as "the Act"). The petitioner is the president of a trust by name "M. S. P. Family Jain Trust". The trust owned agricultural properties in the State from which agricultural income was derived. In order to claim the benefit of exemption from payment of agricultural Income Tax u/s 16 of the Act as per Section 16(13) it must be registered as provided u/s 16(10) of the Act. The petitioner had applied for and obtained registration u/s 16(11) of the Act evidenced by order dated March 13, 1997 (item 2 of the paper book). The petitioner is presently concerned with an order dated January 14, 1999, passed by the Deputy Commissioner/Commercial Taxes, Waynad, cancelling registration of the said trust granted by the Deputy Commissioner, Kozhikode, by order dated March 13, 1997, and confirmed in revision by the Commissioner of Agricultural Income Tax, Board of Revenue, Thiruvananthapuram.

2. On the basis of the trust deed (item 6--translation copy in English, item 7 of the paper book), the petitioner was claiming exemption from payment of agricultural Income Tax right from the beginning. In fact for the assessment year

1974-75 (accounting year 1973-74), the petitioner claimed exemption from payment of agricultural Income Tax u/s 4(1) of the Agricultural Income Tax Act, 1950. The assessing authority and the Tribunal, after considering the various clauses in the trust deed, found that for all intents and purposes the object of the trust was to propagate a particular religion and to render service to the followers of that religion, particularly with reference to the families who created the trust. In view of the said finding, the authorities held that the agricultural income of the assessee cannot be excluded by virtue of Section 4(3)(a) of the Agricultural Income Tax Act, 1950. However, in revision filed by the petitioner this court in *M.P. Shanthivarma Jain, President, M.S.P. Family Jain Trust Vs. State of Kerala*, , held that the trust was a public trust and, therefore, it is entitled to exemption from payment of agricultural Income Tax in respect of the agricultural income used for the said purpose in the *M.P. Shanthivarma Jain, President, M.S.P. Family Jain Trust Vs. State of Kerala*, , was taken in appeal before the Supreme Court and the Supreme Court reversed the judgment of this court. In *State of Kerala Vs. M.P. Shanti Verma Jain*, , the Supreme Court has specifically noted that the Tribunal has found that the trust was a private family trust, that finding was not the subject-matter of reference before the High Court and that therefore, the High Court was not justified in going into the question and in holding that the trust was a public trust. The Supreme Court, in fact, had gone into the various clauses of the trust deed produced before the court by the parties and observed as follows (page 792) :

"We have also examined the trust deed which was produced at the time of arguments. The deed of trust and the rules run into more than thirty pages out of which six pages of the trust deed narrate the philosophy of the Jain dharma. The objects of the trust clearly show that the trust is meant for propagation of the Jain religion and rendering help to the followers of the Jain religion. Even the medical aid and similar facilities are to be rendered to persons devoted to the Jain religion and to non-Jains if suffering from ailments but the medical aid could be giving to them only if any member of the families managing the trust, shows sympathy and is interested in their treatment. The Tribunal, in our opinion, was right in its conclusion that the dominant purpose of the trust in the present case was propagation of the Jain religion and to serve its followers and any part of agricultural income of the trust spent in the State of Kerala also could not be treated as an allowable item of expense."

3. This decision was rendered by the Supreme Court on May 8, 1998. The Kerala Agricultural Income Tax Act, 1950, was repealed and the Kerala Agricultural Income Tax Act, 1991, was enacted. It must be noted that there was no provision in the Agricultural Income Tax Act, 1950, for registration of a charitable/religious institution. The relevant portion of Section 4 of the Agricultural Income Tax Act, 1950, reads as follows :

"4. Total agricultural income.--(1) Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural

income derived from land situated within the State and received by him within or without the State, but does not include-- . . .

(b) any agricultural 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 the State ;

(c) any agricultural income derived from property held under trust in part only for such purposes, to the extent to which such income is applied to such purposes in the State . . .

(3) Nothing contained in Clause (b) or Clause (c) of Sub-section (1) shall operate so as to exclude from the total agricultural income of the previous year of the person in receipt thereof,--

(a) any part of the agricultural income from the property held under trust for private religious purposes which does not enure for the benefit of the public ;

(b) in the case of a trust for charitable purposes or a charitable institution, any agricultural income thereof, if the trust or institution is created or established for the benefit of any particular religious community or caste ; . . ."

4. After the new Act, charitable and religious institutions are covered by the provisions of Section 16 of the said Act The said section also contains provisions similar to the provisions of Section 4 of the 1950 Act already extracted above. The relevant part of Section 16 of the new Act reads as follows :

"16. Charitable trusts and institutions. --(1) Subject to the provisions of this Act the total agricultural income of any charitable trust does not include, --

(a) any agricultural 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 the State ; and, where any such income is accumulated or set apart for application to such purposes in the State, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent. of the agricultural income from such property ;

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

Explanation.--for the purposes of Clauses (a) and (b), if in the previous year, the agricultural income applied to charitable or religious purposes in the State falls short of seventy-five per cent. of the agricultural income derived during that year from property held under trust, or, as the case may be, held under trust in part by any amount-- . . .

(6) Nothing contained in Clause (a) or Clause (b) of Sub-section (1) shall operate so as to exclude from the total agricultural income of the previous year of the person in receipt thereof,--

(a) any part of the agricultural income from the property held under trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution, any agricultural income thereof, if the trust or institution is created or established for the benefit of any particular religious community or caste ;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution any agricultural income thereof, --

(i) if under the terms of the trust or the rules governing the institution any part of such income enures ; or

(ii) if any part of such income or any property of the trust or institution is during the previous year, used or applied, directly or indirectly for the benefit of any person referred to in Sub-section (8)."

5. Sub-sections (10) and (11) of Section 16 of the Act of 1991 provide for registration of trusts or institutions created for charitable or religious purposes and Sub-section (12) provides for cancellation of the registration. The consequence of non-registration of the trust is also provided in Sub-section (13). Sub-sections (10) to (13) read as follows :

"(10) Any trust or institution created for charitable or religious purposes may make an application in the prescribed form and in the prescribed manner to the Deputy Commissioner of Agricultural Income Tax within six months from the date of commencement of this Act or from the date of creation of the trust or institution, whichever is later, along with a copy of the instrument creating the trust or the bye-law of the institution, as the case may be, for registration :

Provided that the Deputy Commissioner may admit an application for registration presented after the above date if he is satisfied that there was sufficient reason for not presenting an application in time.

(11) The Deputy Commissioner may, on receipt of the application if he is satisfied that the trust or the institution is created for religious or charitable purposes and not for avoiding or reducing the tax payable under this Act, may grant registration to such trust or institution :

Provided that before passing an order rejecting an application for registration the applicant shall be given an opportunity of being heard.

(12) If the Deputy Commissioner is satisfied that any trust or institution registered under this section, is not utilising the agricultural income in accordance with the provisions in the instrument or deed creating the trust or institution or otherwise tries to avoid or reduce the tax payable under this Act he

may cancel the registration after giving the trust or institution a reasonable opportunity of being heard.

(13) A trust or institution which is not registered in the manner provided in Sub-section (10) above or the registration of which has been cancelled under this section shall be liable to tax on the total agricultural income and the provisions of this Chapter shall not apply to such trust or institution."

6. It is also relevant to note that Section 13(7) of the Act of 1991 provides for compounding in the case of charitable and religious trust, which reads as follows :

"(7) Any trust or institution created for charitable or religious purposes and registered as such in the manner provided in Section 16 may opt to pay tax in accordance with the provisions of this section, irrespective of the extent of holdings and for the extent above twenty hectares the rate shown in column 5 of the table shall apply." The other relevant provisions are contained in rules 17 to 20 of the Kerala Agricultural Income Tax Rules, 1991, which read as follows ;

"17. Charitable trusts and institutions. -- Any trust or institution created for charitable or religious purposes may file an application under Sub-section (10) of Section 16 to the Deputy Commissioner having jurisdiction over the area in which any of its properties are situated, within six months from the date of commencement of the Act or from the date of creation of the trust or institution whichever is later.

18. The application shall be in Form No. 11 and shall be accompanied with a copy of the instrument creating the trust or the bye law of the institution. The Deputy Commissioner on receipt of the application may conduct such enquiry as he deems fit and if the particulars furnished in the application are correct and complete and the trust or institution is eligible for registration in accordance with the provisions of the Act and not one created to evade or reduce the tax payable under the Act, grant registration to the trust or institution.

19. If the application is found to be incomplete or incorrect or if the trust or institution is created for evading or reducing the tax liability or otherwise not in conformity with the provisions of the Act, he may after affording a reasonable opportunity of being heard, reject the application for registration.

20. The orders registering or rejecting the application for registration shall be communicated to the applicant, to the Commissioner and to the Agricultural Income Tax Officer concerned."

7. The contention of learned counsel appearing for the petitioner is that the Deputy Commissioner has no jurisdiction u/s 16(12) of the 1991 Act to cancel a registration already granted for reasons other than what is stated in the said section. He also submits that the petitioner-trust is a religious trust of a public nature which is evident from Clauses 14(b), 17, 19 and 20 of the trust deed, which is produced as item No. 6 in the paper book.

8. The learned Government pleader, appearing for the respondent, submits that the Supreme Court, after considering the very same trust deed had clearly held that the petitioner's trust is only a private family trust which is not entitled to exemption from payment of agricultural Income Tax under the provisions of Section 4 of the Agricultural Income Tax Act, 1950. He further submits that in a case where registration has been erroneously granted, the authority who had granted the said registration has got power to cancel the same if it is found that the same was done either erroneously or under a mistake. He also pointed out that there is provision--Section 42 of the Act, 1991 --for rectification of such mistakes. The Government pleader also relied on the decision of this court in CAIT v. Dharmapalan (M. P.), Dharmapal Jain Trust [1999] 7 ITR 165 and Dharmapal Jain Trust v. State of Kerala [2002] 10 KTR 484 in support of his contentions.

9. We have already extracted the relevant provisions of the Agricultural Income Tax Act, 1950, and the Kerala Agricultural Income Tax Act, 1991, in regard to the grant of exemption. There is no difference in the wording of Section 4 of the old Act and Section 16 of the new Act in so far as a claim for exemption is concerned. We have also noted that the Supreme Court had considered the question regarding the nature of the trust and had held that the trust is a private trust which is not entitled to exemption in view of the prohibition contained in Section 4(3)(b) of the Agricultural Income Tax Act, 1950. The provisions of Section 16(1)(a) and (b) and Section 16(6) are similar to Section 4(1)(b) and (c) and Section 4(3) and hence the decision rendered by the Supreme Court squarely applies and it has to be held that the petitioner-trust is not entitled to the benefit of exemption from payment of agricultural Income Tax in view of the specific provision contained in Section 16(6)(b) of the 1991 Act. Though learned counsel appearing for the petitioner sought to canvass the said decision by relying on the various clauses in the trust deed particularly clauses mentioned by counsel and noted above, in view of the categorical finding by the Supreme Court after referring to the entire clauses in the trust deed that it is a private family trust, it will not be open to this court to consider the claim independently and to arrive at a finding to the contrary. Hence, we hold that the petitioner-trust is a private religious trust disentitled to the benefit of exemption u/s 16(1)(a) and (b) in view of the specific provision contained in Section 16(6)(b) of the Act.

10. The further question that arises for consideration in this case is as to whether the Deputy Commissioner was justified in cancelling the registration on the ground that the trust is a private religious trust not entitled to exemption under the Act. We have already extracted the provisions regarding the registration of a charitable/religious institution contained in Section 16(10) to (13) of the Act. As per Section 16(10) of Act, any trust or institution created for charitable or religious purposes may make an application in the prescribed form and in the prescribed manner to the Deputy Commissioner of Agricultural Income Tax within six months from the date of commencement of this Act or from the date of creation of the trust or institution, whichever is later, along with a copy of the

instrument creating the trust or the bye-law of the institution, as the case may be, for registration. Under Sub-section (11) of Section 16, the Deputy Commissioner may, on receipt of the application if he is satisfied that the trust or the institution is created for religious or charitable purposes and not for avoiding or reducing the tax payable under this Act, grant registration to such trust or institution. In the instant case, as already noted, there was no provision for registration of a charitable institution in the Agricultural Income Tax Act, 1950. Though the trust was created as early as in 1963, there was no occasion for the trust to apply for registration till April 1, 1991, i.e., the date of commencement of the Act. It is seen from the order granting registration, produced as item No. 3 in the paper book, that the petitioner has made an application on June 28, 1991, i.e., within the time provided for in Section 16(10) of the Act of 1991. The order states that the enquiries conducted would reveal that the above trust is created for charitable purposes and, therefore, eligible for registration. Registration u/s 16(11) was accordingly granted on March 13, 1997. Here it must be noted that as per the decision of this court in *Shanti Verma Jain v. State of Kerala* [1986] KLT 786 (decided on February 6, 1986), the petitioner-trust was found to be a public trust which position remained till the Supreme Court has reversed the said judgment on May 8, 1998. It is, in the above circumstances, the Deputy Commissioner happened to hold that the petitioner-trust is created for charitable purposes in his order dated March 13, 1997, long prior to the decision of the Supreme Court. Construing the trust deed the Supreme Court observed that the objects of the trust clearly show that the trust is meant for propagation of the Jain religion and rendering help to the followers of the Jain religion and held that the Tribunal was right in disallowing the claim for exemption.

11. Sub-section (10) of Section 16 starts with the expression "any trust or institution created for charitable or religious purposes" and Section 16(9)(a), for the purpose of this section, defines a "trust" to mean a trust created for charitable purposes. Thus, in order to apply for registration, even a religious trust must be one created for charitable purposes. The Supreme Court has already held that the purpose of this trust is not charitable. Further, this court had occasion to consider the provisions regarding the grant of registration in *Thyaka Trust Vs. State of Kerala and Another*, where one of us (Sivarajan J.), after considering the provisions of Section 16 in its entirety, observed thus (page 199) :

"It would appear from Sub-section (13) of Section 16 that the registration u/s 16(10) is contemplated only for availing of the benefit of Chapter IV. It would also appear from a reading of Section 16 that the registration as contemplated u/s 16(10) is required only for assessee to agricultural Income Tax claiming exemption from payment of tax in respect of the agricultural income derived by them in the previous year and that it will not apply to a charitable institution which is not an assessee under the Act." It was further observed in paragraph 12 that (page 199) :

"A fair reading of Section 16 particularly Sub-sections (1), (2), (12) and (13) would establish beyond any doubt that the said section has application only to a charitable trust which is an assessee to agricultural Income Tax and not to any other trusts."

12. Looked at from many angle, we are of the view that the petitioner-trust is not a charitable one and, therefore, it is not entitled to apply for registration under the Act. As already noted, the Deputy Commissioner happened to grant the registration at a time when the Division Bench decision to the effect that the petitioner is a public trust but when the Supreme Court held that it is a private trust, this position, so far as the petitioner is concerned, is that it has always been a private trust. The registration was granted erroneously and by mistake.

13. This court had occasion to consider the question as to whether a registration erroneously granted u/s 16(11) can be cancelled by resort to the provisions of Section 16(12) of the Act in *Dharmapal Jain Trust v. State of Kerala* [2002] 10 KTR 484. It must be noted that this is in respect of a sister concern of the petitioner having a trust deed with similar provisions. The Division Bench held that the authority granting registration to a charitable institution under Sub-section (11) of Section 16 has got the inherent jurisdiction to cancel or to withdraw the registration wrongly granted when such illegality comes to his notice and that Section 42 of the Act can also be sought in aid for rectification of such mistakes.

14. In view of this legal position, the second contention of the petitioner that the Deputy Commissioner cannot cancel the registration erroneously granted other than for the reasons stated in Sub-section (12) of Section 16 is also unsustainable. In the above circumstances, we do not find any merit in this tax revision case. It is accordingly dismissed.