
(1986) 02 KL CK 0007
In the High Court Of Kerala
Case No : A. L. T. R. No. 337 of 1982

M.P. Shantivarma Jain

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 4(1)(b), 4(3)(a)

Citation : (1986) 23 KLJ 397

Hon'ble Judges : P.C. Balakrishna Menon, J; M. Fathima Beevi, J

Bench : Division Bench

Advocate : T.R. Govinda Warriar, for the Appellant;

Judgement

Balakrishna Menon, J.—The Agricultural income tax and Sales Tax Appellate Tribunal, Kozhikode has referred the following questions for decision of this Court under Sec. 60(1) of the Agricultural income tax Act, 1950 (hereinafter referred to as "the Act") at the instance of the assessee: 1. Whether on the facts and in the circumstances of the case, this Tribunal is right in holding that section 4 of Act 22 of 1950 as amended by Act 9/74 is applicable for the assessment of the tax for the accounting year 1973-74?

2. Whether on the facts and in the circumstances of the case, this Tribunal is right in holding that since the object of the Trust being propagation of Jain Religion and the service of its followers, the trust is not entitled for the claim of exemption from tax u/s 4 as it stands after the amendment of the Act by Act 9/74.

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that even the amount spent in this State in furtherance of the objects of the Trust cannot be treated as allowable items of expenses and

4. Whether on the facts and in the circumstances of the case, this Tribunal has any material in inferring and is it justified in entering into a finding that the object of the trust is only to spend money for the propagation of a particular type of

religion and for the services of its followers.

The assessee is the President of the "M. S. P. Family Jain Trust" (hereinafter referred to as "the Trust") in Kalpetta North and the income assessed is the agricultural income from the properties of the Trust. The assessment relates to the year 1974-75. The Agricultural Income Tax Officer brought the income of the Trust to tax overruling the contention of the assessee that the Trust is entitled to exemption under Sec. 4 of the Act. His alternative contention that the income of the Trust spent within the State is not taxable was also not accepted. The assessment order was confirmed in appeal by the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Kozhikode. In further appeal at the instance of the assessee the Tribunal confirmed the assessment subject to certain directions in regard to the claim for expenses and depreciation. 2. The answer to the questions of law referred to this Court depends on the interpretation of the relevant provisions of the Agricultural Income Tax Act, 1950 as amended by Kerala Act 9/1974. Even though the applicability of the amendment Act to the present case is questioned and is directly covered by question No. 1 referred to this Court, counsel for the assessee concedes that the Act as amended in 1974 is applicable to the assessment proceedings in the present case and question No. 1 should be answered in favour of the Department in the light of the decision of the Supreme Court reported in Karimtharuvi Tea Estate Ltd. Vs. State of Kerala, .

3. The relevant provisions of sec. 4 of the Act are extracted below:-

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 --

(a) ...

(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.

(2)....

(3) Nothing contained in clause (b) or clause (c) of subsection (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;

Thus a private religious Trust with no benefit to the public, or a charitable Trust established for the benefit of any particular religious community or caste is not entitled to the benefit of exemption under the aforesaid provisions of the Act. It would follow that if there is benefit to the public, a private religious Trust is also entitled to the benefit of exemption. So also a charitable Trust, the benefit of which is not confined to a particular religious community or caste, is entitled to the exemption. The Tribunal declined relief to the assessee on the basis of its finding recorded at, page 21 of the paper book produced in this case. The finding is extracted below:-

As this trust is a private family trust, the exemption provided for u/s 4(1) (b) and (c) is not applicable to the trust. The reasons for writing the trust has been elaborately dealt with in rule 2 of the M. S. P. Family Trust Rules. The definition clause also reveals that this is only a private trust. No doubt in rule 16, 17, 18 and 19 there are certain exceptions. According to these rules, the trust is permitted to utilise the fund for charitable purposes which enures for the benefit of the public As the dominant object of the Trust is to propagate a particular religion of M.S.P. Family and service to the followers of that religion with specific reference to M. S. P. Families it cannot be treated as a public trust.

4. The Trust is created as per a registered document executed by one M.S. Pathumiah Gounder on 1-1-1963. A copy of the document is produced along with the statement of the case submitted by the Tribunal as Annexure 4. It is necessary to advert to the provisions of the document to consider whether the Trust is entitled to exemption under sec. 4(1) of the Act. Clause (1), of the document mentions the name of the Trust as "M. S. P Family Jain Trust". Clause 2 elaborates the reasons for creating the Trust by dedicating the properties mentioned in the document. The clause refers to Jineswara not as an individual, but a state of consciousness that an individual can aspire for and attain to. There is reference to certain principles in life, following which it is possible to attain this higher state of consciousness. Sub-clause [c] of clause 2 directs that With a view to ensure proper administration of the Trust, the management should be by the members of the settler's family. The Trust is to be administered and managed for the benefit of mankind. The objects of the Trust and how the income from trust properties is to be used are elaborately dealt with in the various sub-clauses of clause 3. That includes provisions for the expenses of education of Jain students and students interested in Jainism, to help establish educational institution wherein the laudable principles of Jainism will be taught, to provide for the translation and publication of books and periodicals to propagate the principles of Jainism, to establish libraries and donate books, to appoint pandits and learned men to initiate devotees into Dharma and help those who come to worship at the temple to be established by the Trust, to provide funds for renovation of Jain temples and for poojas and abhishekas therein, to provide for

daily poojas and other expenses of the temple to be established by the Trust, to render monetary help to indigent Jains for expenses of marriage, upanayanam and maintenance, to provide for food and necessities of Jain Sanyasins and to help propagate Dharma among the people to lead a better life. There are also other items of charities not confined to people of Jain religion. There are provisions to provide for the establishment of a hospital with maternity ward for treatment of indigent persons. There are also provisions for medical aid to ailing persons. The Trust is enjoined to strive for propagation of Ahimsa and to do everything to defend the freedom of India. There are provisions to help students of other religions and to defray their expenses of education; but in the matter of selection of such students it is necessary to see that they are of good character and have qualities like Ahimsa and kindness to all forms of life. The Trust is enjoined to help poor agriculturists at times of natural calamities. There is also a provision to encourage vegetarian food habits among people with a view to foster kindness to all forms of life.

5. B.K. Mukherjea in his Tagore Law Lectures on Hindu Law of Religious and Charitable Trusts, Fifth Edition States at page 493:-

The distinction between a private and a public trust is that whereas in the former the beneficiaries are specified individuals, in the latter they are the general public or a class thereof. A religious endowment must, therefore, be held to be private or public according as the beneficiaries "thereunder are specific person or the general public or sections thereof.

In the Law of Hindu Religious and Charitable Endowments by V.K. Varadachari, Third Edn. it is stated at page 235 under the heading "Charitable Trust in India":-

Charitable trusts are only public. In England a religious-trust being a form of charitable trust is also public, but in India, according to Hindu Law, religious trust may be public or private, Ram Saroop v. S.P. Sahi, 1959 SC 961

It is further stated at page 236:-

This distinction between a Charitable and a religious endowment lies in this: the former is the outcome of benevolence, the latter is that of piety; though in some endowments both piety and benevolence may coexist. While a religious endowment is one for an object or purpose which is essentially spiritual, the object of a charitable endowment is to benefit our fellow-beings or even animals.

In Deoki Nandan Vs. Murlidhar, it is stated at page 136:-

(5) It will be convenient first to consider the principles of law applicable to a determination of the question whether an endowment is public or private, and then to examine, in the light of those principles, the facts found or established. The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are general public or a class thereof While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the latter they constitute a body

which is incapable of ascertainment. The position is thus stated in Lewin on Trusts, Fifteenth Edition, PP.1516:

By public must be understood such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trust for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained.....

Vide also the observations of Mitter J. in Haji Mahammad Nabi Shirazi and Others Vs. Province of Bengal and Others, . Applying this principle, a religious endowment must be held to be private or public, according as the beneficiaries thereunder are specific persons or the general public or sections thereof.

This decision was followed in The State of Bihar and Others Vs. Charusila Dasi, and in Radhakanta Deb v. Commissioner, (1981) 2 SCR 826 . In Charusila Dasi's case, on a construction of the deed of Trust, the Supreme Court observed at page 1008;

"We must construe the need of trust with reference to all its clauses and so construed, we have no doubt that the trusts imposed constitute a public endowment. There is one other point to be noticed in this connection. The deed of trust in the present case is in the English form and the settlor has transferred the properties to trustees who are to hold them for certain specific purposes of religion and charity; that in our opinion is not decisive but is nevertheless a significant departure from the mode a private religious endowment is commonly made.

In the deed of Trust construed by the Supreme Court in the The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay, one of the objects of the Trust was to provide "relief and benefit of the poor and indigent members of Jewish or any other community of Bombay or other parts of India or of the world either by making payments to them in cash or providing him with food and clothes and/or lodging or residential quarters or in giving education including scholarships to or setting them up in life or in such other manner as to the said Trustees may seem proper". The settler was a Jew, Sir Sassoon David, Baronet. Construing the document as creating a public charitable trust the Supreme Court observed at page 1064:-

We are not unmindful of the fact that it is open to the trustees to spend the net income entirely for the purpose referred to in sub-cl (a) to the exclusion of the other clauses. But the very fact that the relations or members of the family do not come in directly under any of those latter sub-clauses cannot be ignored, for they certainly have some bearing on the question as to who or what were the primary objects of the trust as a whole. In the next place, the purpose of sub-cl. (a) is the "relief and benefit of the poor and indigent members of Jewish or any

other community of Bombay or other parts of India or of the world". It is conceded by learned counsel that this sub-clause clearly expresses a general charitable intention involving an element of public utility. It follows, therefore, that sub-cl. (a) constitutes a valid public charitable trust having as its beneficiaries the several classes of persons referred to therein.

In Radhakanta Deb's case the Supreme Court stated at page 800:-

The essential distinction between a private and a public endowment is that whereas in the former the beneficiaries are specified individuals, in the latter they are the general public or class of unascertained people. This doctrine is well-known and has been accepted by the Privy Council and also by this Court in a large catena of authorities.

6. Applying these tests we have no doubt that the document annexure 4 creates a public religious and charitable trust and the trust is entitled to the benefit of exemption under clause (b) of sec. 4(1) of the Act.

7. Counsel for the Revenue has strongly urged that the questions referred for decision do not contain a challenge against the finding of the Tribunal that the trust in question is a private family trust and hence it is not open to this Court to consider whether the assessee trust is a public trust or a private trust. We do not agree. The questions referred involve a challenge against the finding of the Tribunal and the answer to the questions necessarily involves consideration as to whether the assessee trust is a public trust or a private trust. That apart, the exclusion of exemptions under clauses (b) or (c) of sub-section (1) as per clause (a) and (b) of sub-section (3) of sec 4 is only with respect to private religious trust with no benefit to the public, or to charitable trusts for the benefit of any particular religious community or caste. The Trust in the present case is both religious and charitable, and even if construed as a private religious trust, the benefit to the public provided for in the deed of Trust takes it out of the exclusion in clause (a) of sub-sec. (3) of sec. 4 of the Act. Taken as a charitable trust, the benefits of the Trust are not confined to any particular religious community or caste and for that reason it does not fall under the exclusion in clause (b) of sub-sec. (3) of sec. 4. Hence even if the Trust is considered as of a private religious character, since it provides for benefits to the public, it is entitled to the exemption under sec. 4 [1] [b] of the Act, as per which agricultural income to the extent to which it is applied for charitable or religious purposes within the State is to be excluded in computing the total income chargeable to tax under the Act. For the aforesaid reasons we answer question No. 1 in favour of the Revenue and against the assessee and questions 2, 3 and 4 in favour of the assessee and against the Revenue.

A copy of this judgment under the seal of the Court and the signature of the Registrar will be forwarded to the Agricultural Income Tax and Sales Tax Appellate Tribunal, Kozhikode.