
(1986) 02 CAL CK 0036

In the Calcutta High Court

Case No : Income-tax Reference No. 763 of 1979

Mullick Somnath Charitable Trust

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-02-1986

Acts Referred:

Income Tax Act, 1961 — Section 11, 2

Citation : (1986) 52 CTR 308 : (1986) 160 ITR 3 : (1986) 26 TAXMAN 156

Hon'ble Judges : Dipak Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Judgement

Dipak Kumar Sen, J.—The facts found and/or admitted in this reference are, inter alia, that Mullick Somnath Charitable Trust, Calcutta, the assessee, is a trust created by a trust deed which was executed by the settlor on January 14, 1959. The relevant provisions of the deed are, inter alia, as follows :

"The trustees shall hold and stand possessed of the trust property up to the trust following :

(i) The trustees shall with the said sum of Rs. 50,000 or part thereof as may be required or thought fit construct a suitable building on the piece or parcel of land mentioned in Schedules "A" and "B".

(ii) The trustees shall after payment of all taxes, impositions, costs of repair, management of the trust property, etc., use half of its net income at their absolute discretion for the benefit of the public in the advancement of religion, knowledge, health, safety, relief of the poor or any other object beneficial to mankind or of general utility and for any one or more of the said objects and to such extent and in such manner as the trustees may in their absolute discretion deem proper AND in particular to spend such of the said sum as they might think fit every year on such humanitarian and educational institutions as Jadavpore T. B. Hospital, Arya Vidyamandir, Bhowanipore, Calcutta, Gurukul Kangri, Kankhal (Hardwar), Calcutta Blind School, Deaf and Dumb School, Calcutta, Baba Kali

Kamliwala Panchayat, Kshetra Rishikesh and for support and maintenance of the poor and indigent relations of the settlor.

(iii) The remaining half of the net income of the trust property shall be accumulated by the trustees for such period as they might think fit and after sufficient accumulation, the same should be invested in making additions, alterations, improvements and acquisitions and the whole of the net income should be applied by the trustees for the purpose mentioned in paragraph 3(ii) thereof. "

2. The assessee was assessed to Income Tax for the assessment years 1967-68 to 1971-72 and also 1973-74. It was contended before the Income Tax Officer on behalf of the assessee that 50% of the net income of the trust was exempt from Income Tax u/s 11 of the Income Tax Act, 1961, as the assessee was a public charitable trust and its objects were charitable. The Income Tax Officer did not accept the contention of the assessee and following the decision of the Appellate Assistant Commissioner in the case of the assessee for the assessment year 1972-73 and also the order of the Commissioner of Income Tax passed in the said assessment year 1972-73, u/s 264, held that the assessee was not entitled to claim exemption u/s 11 of the Income Tax Act.

3. Being aggrieved, the assessee preferred appeals before the Appellate Assistant Commissioner against the assessments. The Appellate Assistant Commissioner held that under the provisions of the trust deed, there was nothing to prevent the trustees from spending the income of the trust only for the support and maintenance of the poor and indigent relations of the settlor and, therefore, it could not be said that the object of the assessee was only charitable. The orders of the Income Tax Officer were upheld.

4. The assessee went up on further appeal before the Income Tax Appellate Tribunal. It was contended before the Tribunal on behalf of the assessee that the impugned object, i.e., maintenance of the poor and indigent relations of the settlor was merely ancillary to the main object, viz., the relief of the poor, and, as such, the predominant object was public charity. In support of this contention, the decision of the Supreme Court in the case of *The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay*, was cited.

5. The Tribunal noted that in the trust deed no specific amount was set apart for public charity as distinguished from the private charitable object of the maintenance of poor and indigent relations of the settlor and it was open to the trustees to spend the entire income of the trust on the said private charitable object. The Tribunal distinguished the facts and the provisions of the trust deed in the case before the Supreme Court from the facts and the provisions of the deed in the instant case and rejected the contention of assessee. The orders of the Income Tax Officer and the Appellate Assistant Commissioner were upheld by the Tribunal and the appeals were dismissed.

6. On the application of the assessee u/s 256(1) of the Income Tax Act, 1961, the following question has been referred to this court as a question of law arising out of the order of the Tribunal, a common question in all the said assessment years :

"Whether, on the facts and in the circumstances of the case and on a correct interpretation of the deed of trust, the Appellate Tribunal was right in law in holding that the income derived from the property held under the trust was not exempt from tax u/s 11 of the Income Tax Act, 1961 ?"

7. At the hearing, the learned advocate for the assessee contended before us that on a proper construction of the provisions of the trust deed in the instant case, it would appear that the predominant object of the trust was public charity and the provisions made for the support and maintenance of the poor and indigent relations of the settlor were merely ancillary to the said predominant object and were merely an illustration thereof. He submitted that the Tribunal had failed to construe the relevant provisions of the deed correctly in the light of the said decision of the Supreme Court. In support of his contentions, learned advocate cited the following decisions.

(a) The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay, :

8. In this case, the trust deed set out the purpose and object of the trust, inter alia, as follows :

(a) the relief and benefit of the poor and indigent members of Jewish or any other community of Bombay or other parts of India ;

(b) the institution, maintenance and support of hospitals and schools, colleges or other educational institutions;

(c) the relief of any distress caused by natural calamities;

(d) the care and protection of animals useful to mankind;

(e) the advancement of religion ;

(f) other purposes beneficial to the community not covered by the above.

9. There was a proviso in the clause that in applying the income as aforesaid, the trustees should give preference to the poor and indigent relations of the members of the family of the settlor including distant and collateral relations.

10. The trust was assessed to Income Tax and the Income Tax Officer held that the income of the trust was not exempt from taxation u/s 4(3)(i) of the Indian Income Tax Act, 1922. The decision of the Income Tax Officer was confirmed by the Appellate Assistant Commissioner and the Tribunal. On a reference, the High Court took the same view and the questions referred were answered in favour of the Revenue.

11. On a further appeal, the Supreme Court, however, construing the provisions of the trust deed, noted that the relations of members of the family of the settlor were not direct recipients of any benefit under the provisions of the deed and that the main purpose of the trust was the relief and benefit of the poor members of different communities which expressed a general charitable intention. The Supreme Court held that the proviso directing the trustees to give preference to the relations of the settlor involved the selection of some poor and indigent persons out of a bigger class. It was only the poor and indigent relations or members of the family of the settlor who could claim to participate in the benefit under the trust and they had to come under the purview of the main object. The Supreme Court held that the deed created a public charitable trust and the income from the properties was exempt from Income Tax.

(b) Commissioner of Income Tax, Bombay City II Vs. Trustees of Seth Meghji Mathuradas Charity Trust, :

12. In this case, the trust deed directed the trustees to apply the income for certain purposes and to utilise the balance for certain specific charitable purposes including giving aid to deserving or poor Hindus of the three upper classes. There was a proviso directing the trustees that in carrying out the said object, preference should be given to the members of the caste of the settlor and also preference to the members of the family and the relatives of the settlor. Following the decision of the Supreme Court in *The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay*, , the Bombay High Court held that the property was held by the trustees wholly for religious or charitable purposes and the income of the trust was exempt from Income Tax.

(c) Commissioner of Income Tax Vs. Moosa Haji Ahmed and Others, :

13. In this case, a wakf deed provided that the surplus out of the income of the trust would be utilised, inter alia, to help the poor and that in doing so, help must first be given to the poor relations of the settlor. Following the decision of the Supreme Court in *The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay*, , it was held by the Gujarat High Court that the dominant intention of the trust was to provide relief to the poor. That preference be given to the relatives of the settlor would not affect the dominant object and it was held that the income of the trust was exempt from taxation.

(d) Commissioner of Wealth Tax, Bombay City II Vs. Trustees of The J.P. Pardiwala Charity Trust, :

14. In this case, the relevant clause in the trust deed empowered the trustees to expend money on certain religious ceremonies for the repose of the soul of the members of the settlor's family and to pay money towards the maintenance and support of the settlor's relatives and/ or other indigent persons. Construing the said provisions, it was held that the object of the trust was to support indigent

persons in general which could include relatives of the settlor. It was further held that the said clause meant that preference should be given to the indigent relatives of the settlor. Following the decision of the Supreme Court in *The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay*, it was held that the trust was a public charitable one and exempt from wealth-tax u/s 5(1)(i) of the Wealth-tax Act, 1957.

(e) *COMMISSIONER OF Income Tax, CALCUTTA Vs. BOARD OF MUTWALLIS TO THE WAKF ESTATE, EBRAHIM SOLAIMAN SALEJI.* :

15. In this case, the deed of wakf after setting out various public charitable objects like feeding of the poor, digging of wells, providing expenses to any mosque or mosques, laid down as an object, payment by the mutwallis for the support and marriage expenses of any of the children of any of the relations of the settlor who may be for the time being in poor and indigent circumstances. It was specified that the children or descendants of the settlor if they were poor would be entitled to participate in the benefits of the wakf and the fact that they were related to the settlor could not be a disability standing in their way of receiving such benefits. A Division Bench of this court held that the dominant object of the wakf was charitable and for the benefit of the public. The provisions giving benefit to the relatives of the settlor and their descendants were construed and it was held that the predominant object was not destroyed by such provisions inasmuch as the relatives were allowed to participate in the benefit of the trust not because they were relatives but because they were poor and indigent and ranked as objects of charity with other members of the public, poor and indigent. It was held that the income of the wakf was exempt from taxation u/s 4(3)(i) of the Income Tax Act, 1922.

(f) *Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax, Bombay* :

16. In this case, the Supreme Court construed the trust deed and came to a conclusion that the trust was intended primarily for the benefit of the family of the settlor and as such was not a public charitable trust exempt from taxation.

17. Learned advocate for the assessee also drew our attention to another decision of the Supreme Court in *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*. In this case, the Supreme Court held that where the main or primary objects of the activities of the assessee were distributive, each and every one of the objects must be charitable in order that the trust or institution may be upheld as a valid charity. But if the primary or dominant purpose of a trust or institution was charitable, another object which by itself may not be charitable but which was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity.

18. Learned advocate for the Revenue contended, on the other hand, that the

trust deed in the instant case had as one of the objects of the trust, support and maintenance of the poor and indigent relations of the settlor. This object was admittedly not a public charitable object. It was open to the trustees under the deed to spend the entire income of the trust on this particular object to the exclusion of others. The discretion of the trustees was unfettered as no particular amount has been earmarked specifically for any of the objects. Therefore, the income of the assessee in the instant case was not entitled to be exempted from Income Tax in view of the settled law. In support of his contentions, learned advocate cited several decisions considered hereafter as follows :

(a) Abdul Sathar Haji Moosa Sait Dharmastapanam Vs. Commissioner of Agricultural Income Tax, Kerala, . In this case, under the will of a testator, a trust was created where one-fourth of the income of the trust property was exclusively reserved for public charitable purposes. One-half was reserved for giving assistance to the poor relatives of the testator and the remaining one-fourth was earmarked for augmenting the corpus of the trust. The income of the augmented corpus was to be utilised in the same manner as the original income of the corpus. On these facts, it was held by the Supreme Court that three-fourths of the income from the property was earmarked for the benefit of the relatives of the testator and that part of the trust was not a public charitable trust.

(b) Yogiraj Charity Trust Vs. Commissioner of Income Tax, New Delhi, . This decision was cited for the following observations of the Supreme Court (at pp. 781 and 782) :

"The question is whether exemption can be granted where some objects are charitable and some non-charitable. Where there are "several objects of a trust, some of which are charitable and some non-charitable, and the trustees in their discretion are to apply the income to any of the objects, the whole trust fails and no part of the income is exempt from tax. Where the objects are distributive, each and every one of the objects must be charitable in order that the trust might be upheld as a valid charity. If no definite part of the property or its income is allocated to charitable purposes and it would be open to the trustees to apply the whole income to any of the non-charitable objects, no exemption can be claimed....If the primary or dominant purpose of a trust is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust from being a valid charity. A clear distinction must be drawn between the object of a trust and the powers conferred upon the trustees as incidental to the carrying out of the object. "

(c) Dharmadeepti, Alwaye, Kerala Vs. Commissioner of Income Tax, Kerala, . In this case, the memorandum of association of a company, the assessee, laid down the objects of the company to be (a) to give charity; (b) to promote education; (c) to establish or aid in the establishment of associations, institutions, funds, trusts with the object of promoting charity and/or education. It was further stated in the memorandum that an object incidental or ancillary to the

attainment of the above main objects was to run chitties, i.e., kurries. It was held by the Supreme Court on the construction of the said memorandum that power to run the business of chitties would be incidental or ancillary to the attainment of the main objects which were charitable. It was held further that the income from the business was intended to be applied only to charitable purposes and the assessee was entitled to exemption of the income of such business from Income Tax.

19. Learned advocate for the Revenue also cited *East India Industries (Madras) Private Limited Vs. Commissioner of Income Tax, Madras*, , *SHERVANI CHARITABLE TRUST Vs. COMMISSIONER OF Income Tax, U.P.*, , *The Commissioner of Income Tax Vs. Jaipur Charitable Trust*, and *Lakshmi Narain Lath Trust Vs. Commissioner of Income Tax*, . The decisions do not lay down any further or new principle and need not be considered in detail.

20. From the decisions cited, it appears that the law is settled that if the object of the trust is to help only the relations of the settlor, poor or not, the same will not be a public charitable object though the relations may be poor and indigent. Law is also settled that if a trust has more than one object and one of the objects is non-charitable, then, if the hands of the trustees have been left unfettered in the distribution of the income of the trust between charitable and non-charitable objects, the trust concerned would not be entitled to exemption from Income Tax.

21. An exception may be created in cases where the object of the trust is to provide relief to the poor and the indigent and the trustees have been, specifically directed that in carrying out this object, they would not withhold such relief from the poor and indigent relations of the settlor. It has been laid down by the Supreme Court in *The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay*, , that the general intention being charitable, the relief given to the poor relations of the settlor would come under the purview of the main object. It was made clear in that decision that the members of the family of the settlor were not the direct recipients of the benefit under the trust. Unlike the case before the Supreme Court where the trustees were directed to give preference to the poor and indigent relations, in the case before us, the trustees can spend the entire income of the trust for the support and maintenance of the relations of the settlor who were poor and indigent without exercising any preference. The poor relations of the settlor have been made direct recipients of the benefits of the trust.

22. For the above reasons, in our view, the assessee is not entitled to claim exemption from Income Tax on the authority of the decision of the Supreme Court in *The Trustees of The Charity Fund, Esplanade Road, Fort, Bombay Vs. The Commissioner of Income Tax, Bombay*, , which is distinguishable on facts and the provisions of the trust deed. We cannot construe the trust deed in the instant case to mean that the provision for relief to the relations of the settlor is ancillary and incidental to the main object of charity.

23. For the reasons, we answer the question referred in the affirmative and in favour of the Revenue.

24. There will be no order as to costs.

Ajit Kumar Sengupta, J.

25. I agree.