(1987) 01 MAD CK 0039

In the Madras High Court

Case No : Tax Case Petition No''s. 446 of 452 of 1986

Sakthi Charities APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 29-01-1987

Acts Referred:
Income Tax Act, 1961 — Section 11

Citation : (1990) 182 ITR 483

Hon'ble Judges : M.N. Chandurkar, C.J;M. Srinivasan, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

M.N. Chandurkar, C.J.—The assessee filed a petition u/s 256(2) of the Income Tax Act, 1961, for directing the Tribunal to refer the

following questions of law :

(i) Whether the Appellate Tribunal was right in holding that the assessee-trust as originally constituted could not be regarded as a charitable trust

entitled to exemption u/s 11 of the Act ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that, in the absence of any power of revocation or

modification except to the limit provided in clause (xxx) of the concerned trust deed in this case, the trustees have no power to revoke or modify

any of the objects of the trust as originally constituted and, therefore, the deed of rectification is not valid or effective ?

2. All these tax case petitions have to be rejected in view of the decision of this court i n a reference case arising out of the assessment proceedings

in respect of the same assessee for the assessment year 1976-77. The decision is in Sakthi Charities Vs. Commissioner of Income Tax, Madras, .

In that decision, this court has taken the view that the founder of the trust did not provide for any alteration of the objects of the trust at any future

time as the amending power contained in clause (xxx) of the trust deed did not cover clause III which was the objects clause and that once a trust

had been founded with certain object, those objects could not be deleted even by the founder of the trust though it was possible to add some other

charitable objects without any detriment to the original objects and thus the deed of rectification dated January 31, 1969, deleting the objectionable

objects could not be said to be valid in law. The Division Bench further held that though the court u/s 92, Civil Procedure Code, can give a

direction which is necessary for the administration of any trust, it cannot in exercise of that power alter the objects of the trust. The court, therefore,

confirmed the view of the Tribunal that the assessee-trust was not eligible for exemption for the assessment year 1976-77.

3. In the instant references, we are concerned with the wealth-tax assessments for the assessment years 1970-71 to 1973-74 and with the Income

Tax assessments for the assessments years 1977-78 to 1979-80.

4. The questions raised having been concluded by the decision of the court referred to above, there is no case for asking the Tribunal to forward a

statement of the case with regard to the questions raised.

5. The petitions are, therefore, rejected. No order as to costs.

