

(1984) 08 MAD CK 0011

In the Madras High Court

Case No : Tax Case No"s. 261, 262, 265 to 269 of 1978

State of Tamil Nadu

APPELLANT

Vs

Moopanar Family Charitable Trust

RESPONDENT

Date of Decision : 07-08-1984

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1984) 08 MAD CK 0011

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Ramanujam, J.—Since all these cases relate to the same assessee and common issue arise in all these cases, they are dealt with together. All

these tax cases have been filed by the revenue against the common order passed by the TN Agrl. ITAT holding that the assessee respondent

Trust, Kabisthalam, is hereby public and partly private, that so far as that portion of the Trust which is public, there is no income chargeable in the

hands of the Trust and that as regards the portion of the Trust, which has been held to be private, the assessment has to be made in the hands of

the beneficiaries as their share are specific and ascertainable from the Trust deed.

2. For the asst. yrs. 1969-70 to 1975-76, the gross income, the net income and the tax levied for the asst. yrs. 1969-70 to 1975-76 from the

Trust have been found to be as follows :

Asst. Yr. Gross Net Tax

income income levied

Rs. P. Rs. P. Rs. P.

1969-70 12,531-95 7,721-00 458-15
1970-71 11,139-45 6,820-00 323-00
1971-72 10,530-71 5,705-00 155-75
1972-73 11,484-12 5,576-00 236-40
1973-74 13,484-63 7,644-00 396-60
1974-75 15,303-88 10,070-00 764-00
1975-76 16,388-74 11,780-00 1,106-00

The said trust was created by means of a registered settlement deed dt. 26-5-1916. An extent of 60.34 acres of land in Vilanthakandam village in Kumbakonam Taluka was endowed in favour of the Trust which was created for the performance of certain religious public charities and also for payment of annual allowances to six of the relations of the family of the founder. Subsequently for the purpose of better performance of the said charities, the said Trust properties were disposed of land a fresh deed was executed on 29-11-1959 by which 125.32 acres were endowed in trust for the same objects for which the earlier settlement deed had been executed. For the asst. yrs. 1958-59, the Managing Trustee of the Trust filed a composition application on 15-3-1959 declaring that he was not applying for exemption for the trust under s. 4(b) of the TN Agrl. IT Act as he considered the Trust to be a private family trust. However, in the subsequent years, the assessee changed his stand and filed an application for exemption under s. 4(b) of the Act. The exemption was originally granted for the asst. yrs. 1960-61 to 1971-72. However, the ITO (Agrl) later took the view that the Trust was not entitled to exemption under s. 4(b) of the Act as the Trust deed provided for the payment of annual allowance to the poor relations of the founder which cannot be taken to be a public charity exempted under s. 4(b) of the Act. In that view, the ITO (Agrl) issued notice under s. 35 of the Act on 25-3-1975 for the asst. yrs. 1969-70 to 1971-72 and passed orders on 19-1-1976 holding that the entire income from 124.87 acres of trust lands should be taken together and the expenses incurred for the religious public charities along with land

revenue and agent's salary alone could be treated as expenses in arriving at the annual net taxable income. Later, for the other years upto 1975-

76, similar assessment orders were made. The assessee took up the matters in appeal before the Asst. CIT (Agrl), Tanjajvur; but without success.

Thereafter, the matter was taken up to the Tribunal. Before the Tribunal, the assessee relied on the orders passed by the authorities under the

Tamil Nadu Land Reforms (Fixation and Ceiling on Land) Act, 1961 treating the trust as partly public and partly private and contended that the

same basis could be adopted in these proceedings as well. The Tribunal accepted the assessee's contention that the determination as to the nature

of the trust in the proceedings under the Tamil Nadu Reforms Act is binding on the authorities constituted under the TN Agrl. IT Act and that

therefore, the Trust in this case should be taken to be partly public and partly. Evan apart from the said determination as to the nature of the Trust

by the authorities constituted under the Tamil Nadu Land Reforms (Fixation and Ceiling of Land) Act, 1961, the Tribunal in this case has found on

the materials placed before it that out of the extent of 124.67 acres of land endowed under the trust deed dt. 29-11-1959 the equivalent to 70.17

standard acres, an extent of 44.20 standard acres had been exclusively set apart and used for public religious charities and that 25.97 standard

acres had alone been set apart and used for payment of allowances to the poor relations of the founder. The Tribunal also found that under the

Trust deed dt. 29-11-1959, there is no discretion on the parts of the trustees to spend the income exclusively for public religious charities or for the

payment of allowance to poor relations of the founder, that the founder himself has used the substantial portion of the lands i.e., 44.20 standard

acres for the object of religious charity and that the balance alone has been made available for payment of allowances to poor relations. This

arrangement made by the founder himself separately setting apart the properties for public charitable purposes and for private purposes, that the

Trust has been treated as partly public and partly private. Having held that the Trust is partly public and partly private, the Tribunal goes to the

question regarding the assessability of the income from the portion of the Trust which is public and private. The Tribunal found that the income from

44.20 standard acres set apart for public religious charity and the expenditure incurred therefore is taken into account, there is no net assessable

income in the hands of the Trust and therefore, that part of the Trust which is found to be public religious charity cannot be assessed as it has no assessable income. Then coming to the income from 25.97 standard acres, which have been set apart for payment of allowances to poor relations of the founder, the Tribunal has found that out of the six beneficiaries who were mentioned in the Trust deed, there are only five beneficiaries during the assessment years and that all the five beneficiaries have been paid 100 kalams each from the gross income from 25.97 standard acres and the balance is with the Trust; and that the said balance of income can be assessed in the hands of the beneficiaries as the clauses in the Trust deed specifically make it clear that the income from those properties goes to the beneficiaries hereditarily. The income from that portion of the Trust properties, which have been set apart for the payment of allowances to the beneficiaries, cannot revert to the other portion of the trust which has been held to be public. Based on these facts, the Tribunal held that in respect of the excess income from 25.97 standard acres, a separate assessment ought to have been made as against the beneficiaries because each of the beneficiaries should be taken to have a specified interest in the income from 25.97 standard acres. The Tribunal held that the assessment made directly against the Trust as regards the interest of the poor relations cannot be legally sustained. Hence, the Tribunal has set aside the assessment made on the Trust leaving it open to the assessing authority to assess the beneficiaries directly with reference to their specified interest in the income in each of the assessment years. The said order of the Tribunal has been challenged in these tax cases.

3. Firstly, it is contended by the Id. Government Pleader that the Tribunal is in error in treating the Trust as partly public and partly private and that the correct view that has to be taken, in the context of the case, is either to treat the Trust as an exclusively public trust or to treat the same as purely a private one. Secondly, it is contended that the decision as regards the nature of the Trust by the authorities constituted under the Tamil Nadu Land Reforms (Fixation and Ceiling of Land) Act is not binding on the authorities administering the TN Agrl. IT Act, and therefore, the Tribunal is in error in proceeding on the basis of the decision rendered by the authorities under the Tamil Nadu Land Reforms (Fixation and Ceiling

of Land) Act. Thirdly, it is contended that on the facts and in the circumstances of these cases, the principle of the decision in Lakshmi Narain Lath

Trust Vs. Commissioner of Income Tax, should have been applied by the Tribunal and the Trust should be treated as purely private in which case

the assessment made on the Trust could legally be justified.

3A. So far as the first contention referred to above is concerned, that in law, there cannot be a public-cum-private Trust as has been held by the

Tribunal, it is seen that such a contention cannot be accepted in view of the decision of the Supreme Court in Abdul Sathar Haji Moosa Sait

Dharmastapanam Vs. Commissioner of Agricultural Income Tax, Kerala, . In that case, under the will of the testator one-fourth of the income from

the property of which a trust was created was exclusively reserved for public charitable purposes, one half was reserved for giving assistance to

poor relatives of the testator and the remaining one-fourth was earmarked for the purpose of augmenting the corpus. The Kerala High Court held

that only one-fourth of the trust under the Will could be considered as a charitable trust and that the balance of three-fourths did not constitute a

public charitable trust within the meaning of s. 4(b) of the Kerala Agrl. It Act, 1950. On appeal to the Supreme Court the decision of the Kerala

High Court was affirmed and three-fourths of the income from the property which was primarily earmarked for the benefit of the relatives of the

testator was treated as income of public charitable trust. Thus, in that case the Supreme Court, in fact, treated the trust as partly public and partly

private. Having regard to the said decision, we are not in a position to agree with the Id. Government pleader when he says that a trust can either

be a public or private but it cannot be a public-cum-private trust. The Id. Government pleader may be right in a case where the discretion is given

to the trustees to spend the income of the trust exclusively for public charitable purposes or exclusively for non-charitable purposes, then it may be

possible to bring the trust either under charitable trust or private trust. But where the testator himself has set apart a part of the endowed properties

or the income therefrom to certain specified public charitable purposes and leaves the balance for other non-public charitable purposes, then the

trust should be taken to be of two characters, one public and the other private and the assessment has to be made accordingly.

4. Coming to the second contention put forward by the Id. Government pleader that the decision rendered by the authorities under the Tamil Nadu

Land Reforms (Fixation and Ceiling on Land) Act cannot bind the authorities under the TN Agrl. Act, we are of the view that it is not necessary

for us to deal with that contention as, on the facts of the instant cases, we are inclined to agree with the Tribunal that the trust is partly private and

partly public. The Tribunal, has, in fact, found that out of the total aggregate endowed property consisting of 125.32 acres, equivalent to 70.17

standard acres, 44.20 standard acres had been set up for the purpose of performance of public religious charities and the balance of 25.97

standard acres has been set apart for utilisation for payment of annuities to poor relations. Thus, the founder himself has set apart 44.20 standard

acres for public religious charitable purposes. Though the trust deed does not make an allocation of the properties or the income therefrom

separately for the public charitable purposes and private purposes, the authorised officer, after making due enquiries found that from the inception

of the trust, the trustees have made such as allocation and based on that allocation, the trust had been held to be public to the extent of 44.20

standard acres and private to the extent of 25.97 standard acres. We do not see any error on the part of the Tribunal relying on the materials

referred to by the authorities constituted under the Tamil Nadu Land Reforms (Fixation and Ceiling on Land) Act, Even assuming, as contended by

the Id. Government pleader, that the decision rendered by the authorities constituted under the Tamil Nadu Land Reforms (Fixation and Ceiling of

Land) Act is not binding on the authorities constituted under the TN Agrl. IT Act, still the order passed on the materials gathered by the former can

be relied on for the purpose of finding out nature and character of the trust and how the income from the trust have been utilised in the years past.

Lot is not the case of the revenue that the authorised officer did not conduct a proper enquiry on the question of the character and the nature of the

trust and therefore the materials gathered by him cannot at all be referred to and relied on by the Tribunal. The materials gathered by a duly

constituted authority under another statute containing analogous provisions constitute relevant material for purposes of determining the character

and the nature of the trust. In this view, we are not in a position to accept the second contention referred to above as tenable.

5. Coming to the third contention, we find that it is also covered by the decision of this Court in A.K.A.S. Trust v. State of Tamil Nadu (1978)

113 ITR 66 which is against the revenue. It is the contention on the Id. Government pleader that as regards the income from 25.97 standard acres

which had been utilised for payment of annuities for five relations of the founder, the assessment could be made on the trust and the Tribunal is in

error in stating that the assessment has to be made separately and directly on the beneficiaries to the extent of their respective shares. This

contention appears to overlook s. 8 of the TN Agrl. IT Act. Sec 8(1)(A) of the TN Agrl. IT Act says that in the case of agricultural income taxable

under this Act which the court of wards, administrator-general or official trustee or any receiver, administrations, executor, trustee, guardian or

manager appointed by or under any law or by an order of court or by written agreement is entitled to receive on behalf of any person, the tax shall

be levied upon and recoverable from the court of wards, administrator-general, official trustee, or from such receiver, administrator, executor,

trustee, guardian or manager, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from the

person on whose behalf such agricultural income is receivable, and all the provisions of this Act shall apply accordingly. Section 81(1)(b) of the TN

Agrl. IT Act provides that when the agricultural income received on behalf of any person by the Court of Wards, Administrator-General, Official

Trustee, receiver, administrator, executor, trustee guardian or manager referred to in clause (a) is part only of the total agricultural income of such

person, the agricultural income tax payable under this Act shall be assessed on the total agricultural income of such person and the amount of tax

so assessed shall be levied upon and recoverable from the Court of Wards, Administrator-General, Official Trustee, receiver, administrator,

Executor, trustee, guardian or manager, as, the case may be, and the portion received by such person. Thus, s. 8(1) of the TN Agrl. IT Act

contemplates two modes of assessment where a trustee is in receipt of income on behalf of one or more beneficiaries. Income has to be assessed

in the hands of the trustees to the extent of the interest of such beneficiary and there cannot be a single assessment on the entirety of the income

received by the trustee. However, if the person on whose behalf the trustee has been in receipt of the income has got other assessable in his hands,

then that beneficiary has to be directly proceeded against be making assessment in his name and that assessment should include the income

received by the trustee on his behalf. In the instant cases, the Tribunal, in fact, has given a direction to the assessing authority to find out whether

the beneficiaries are in receipt of any separate income apart from the benefit which they have derived from the trust. Depending upon that question,

it has directed the assessment to be made in the light of s. 8(1) of the TN Agrl. IT Act. In A.K.A.S. Trust v. State of Tamil Nadu (1978) 113 ITR

66 in respect of a trust, the Agricultural Income Tax Tribunal had held that the entire income of the trust had to be assessed in its hands in one

single assessment. The assessee appealed to the appellate authority contending that separate assessment should have been made of each

beneficiary and the income of all the beneficiaries could not be clubbed together in one single assessment, but that appeal failed. There was a

further appeal to the Tribunal but without success. When the matter was brought before this Court held that (1) where there is provision in a Wakf

deed that a part of the income should be set apart for the purpose of investment and not for performance of any charity, the trust cannot be held to

be wholly for charitable purposes and (2) under the Wakf deed the income is received only on behalf of the beneficiaries as the share of the

beneficiaries are ascertainable and clearly defined. The shares are specific and only their shares have to be ascertained in each year accordingly to

the circumstances prevailing in the particular year having regard to the number of descendents of the original author of the trust. The fact that the

existence of any surplus itself will not be known till the trustees have actually spent the monies for charitable purposes in each year would not affect

the applicability of s. 8(1)(a) of the TN Agrl. IT Act, 1955. Thus, s. 8(1)(a) was held to apply to the cases wherever the trustee is in receipt of

income on behalf of the beneficiary. It cannot be disputed in the instant cases that the trust has been in receipt of the income from 25.97 standard

acres only on behalf of the beneficiaries. Therefore, by the application of s. 8(1) of the TN Agrl. IT Act, it is open to the assessing authorities to

assess the beneficiaries direct with reference to their interest in the income of the trust or to assess the trustee separately with reference to the

income of each of the beneficiaries and the income of the beneficiaries cannot be clubbed and assessed in the hands of the trustee. In this view, we

find that the Tribunal has come to the right conclusion on all the aspects of the case. We do not think that any interference is called for with the order of the Tribunal. The tax cases are therefore dismissed. No order as to costs.