(1980) 02 RAJ CK 0037

In the Rajasthan High Court

Case No : Income Tax References No''s. 14 of 1975 and 29 of 1976 and Income Tax Case No''s. 211, 212 and 213 of 1975 and 232 of 1976

Umaid Charitable Trust APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 27-02-1980

Acts Referred:
Income Tax Act, 1961 — Section 11, 11(4), 2(15)

Citation : (1980) 15 CTR 317 : (1980) 125 ITR 55 : (1980) 13 WLN 311

Hon'ble Judges : C.M. Lodha, C.J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : D. Pal and Sohan Lal Chaudhary, for the Appellant; L.R. Mehta and Rajendra Mehta, for the Respondent

Judgement

Lodha, C.J.—By this order we propose to dispose of two Income Tax References Nos. 14 of 1975 and 29 of 1976 as well as four applications u/s 256(2) of the I.T. Act, 1961 (hereinafter referred to as "the Act"). Both the references have been made by the Income Tax Appellate Tribunal, Jaipur Bench, at the request of the assessee, Umaid Charitable Trust, Pali-Marwar. Reference No. 14 of 1975 pertains to the assessment years 1967-68, 1968-69 and 1969-70 and Reference No. 29 of 1976 is with regard to the assessment year 1970-71. The question of law referred to us in Reference No. 14 of 1975 reads thus :

" Whether, on the facts and circumstances of the case, and also in view of the certificate granted by the Commissioner of Income Tax u/s 80G of the Income Tax Act, 1961, the income of M/s. Umaid Charitable Trust, Pali was entitled to exemption u/s 11 of the Income Tax Act, 1961, read with Section 2(15) of the same Act for the assessment years 1967-68, 1968-69 and 1969-70 ? "

2. The question referred in Reference No. 29 of 1976 is also the same except that the year of assessment is different, viz., the assessment year 1970-71. For all the four assessment years, viz., 1967-68, 1968-69, 1969-70 and 1970-71, the assessee, Umaid Charitable Trust, Pali-Marwar has also submitted

applications u/s 256(2) of the Act, which have been registered as Income Tax Cases Nos. 211/1975, 212/1975, 213/1975 and 232 of 1976, respectively, and it has been prayed that the Tribunal may be directed to refer one more question of law to this court. The question proposed in these cases is as follows :

" Whether there is any evidence or basis to support the finding of the Tribunal as a fact that one of the objects of ''the trust'' was to own property and carry on the business or activity for profit ? "

3. However, having addressed arguments on the question referred for our decision by the Tribunal, learned counsel for both the parties submitted that since the decision of the case turns upon the interpretation of the trust deed, it would not be necessary to direct the Tribunal to refer any more questions of law to this court. We, therefore, proceed to decide the references.

4. The assessee, M/s. Umaid Charitable Trust, Pali, was constituted under a trust deed dated August 27, 1963 (annex. '' A ''), by the Maharaja Shri Umaid Mills Ltd., a company having its registered office at Pali. During the assessment years under consideration, the assessee had earned commission as area managers of M/s. Laxmi Cement Distributors (P.) Ltd., but did not show the income in its return on the ground that the income earned by the assessee was not liable to Income Tax as the same had been derived from a business undertaking held under trust for charitable purposes, and had been applied to such purposes in India in terms of Section 2(15) and Section 11 of the Act, The ITO, however, did not agree with the assessee and assessed the income derived by the assessee from its business activity. Copies of the assessment orders dated March 24, 1972, for the assessment years 1967-68, 1968-69 and 1969-70 have been submitted along with the reference, and are marked annexs. '' B '', '' C '' and '' D '', respectively, in Reference No. 14 of 1975. Similarly, copy of assessment order dated March 25, 1973, for assessment year 1970-71 has been annexed to Reference No. 29 of 1976 and is marked annex. ''F''. Aggrieved by the orders of the ITO, the assessee filed appeals before the AAC against the assessment orders for all the four assessment years. The AAC by his order dated October 3, 1972 (annex. ''E''). allowed the appeal in respect of the assessment years 1967-68, 1968-69 and 1969-70, and held that the assessee was entitled to exemption from Income Tax under Sections 2(15) and 11 of the Act. A copy of the AAC''s order has been placed on the record and is marked annex. '' E '' (Reference No. 14 of 1975). Dissatisfied with the order of the AAC the department filed an appeal before the Tribunal which by its order dated January 31,1974 (annex. '' F ''), allowed the appeal, set aside the order by the AAC and restored that of the ITO holding that the business undertaking carried on by the assessee was one of the objects of the trust, and, therefore, the assessee was not entitled to the benefit of the provisions of Section 2(15) read with Section 11 of the Act. Thereupon, the assessee made an application to the Tribunal to state the case and refer the questions of law arising out of its appellate order to this court. The Tribunal allowed the assessee''s application and has thus referred the

question of law extracted above for the decision of this court in Reference No. 14 of 1975.

5. As already stated above, the assessee had also filed an appeal from the order of the ITO before the AAC in respect of the assessment year 1970-71, but by the time the appeal came up for hearing the Appellate Tribunal had already decided the case against the assessee in respect of the assessment years 1967-68 to 1969-70, and, therefore, the AAC by his order dated February 19, 1974 (annex. ''C''), dismissed the assessee''s appeal. Aggrieved by the order of the AAC, the assessee filed further appeal before the Appellate Tribunal which, following its earlier order dated January 31, 1974, dismissed the assessee''s appeal by its order dated July 26, 1975 (annex. ''E''--Reference No. 29 of 1976), in respect of the assessment year 1970-71 also. Consequently, the assessee made an application for making a reference to this court u/s 256(1) of the Act before the Tribunal and the Tribunal has referred the same question for the year 1970-71.

6. It appears that there was conflict of decisions among different High Courts in regard to the true interpretation of the words "not involving the carrying on of any activity for profit" occurring in Section 2(15), but fortunately now the controversy has been set at rest by a decision of the Supreme Court by a Bench of five judges in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, . Since, the said judgment is the last word on the point, we do not consider it necessary to delve into a discussion of the various authorities of the High Courts and the earlier authorities of the Supreme Court. The subject, it appears to us, has been discussed threadbare by their Lordships in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, and we shall, therefore, only state here the principles laid down by the Supreme Court in that case, and see whether after applying those principles to the present case, the assessee can be held to be entitled to the benefit of Clause (15) of Section 2 and Section 11 of the Act. But, before we do so, it may be proper to read Clause (15) of Section 2 as well as the relevant portions of Section 11 :

"2. (15) ''Charitable purpose'' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

"11. (1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

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

(2) Where seventy-five per cent. of the income referred to in Clause (a) or Clause (b) of Sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely :--...

(4) For the purposes of this section ''property held under trust'' includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income Tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes."

7. In Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, Bhagwati J., representing the majority view of four judges (Sen J., dissenting), observed as follows (pp. 13, 17, 25):

"If, therefore, the dominant or primary purpose of the assessee was charitable, the subsidiary objects set out in Sub-clause (b) to (e) of Clause (3) would not militate against its charitable character and the purpose of the assessee would not be any the less charitable....

It is clear on a plain natural construction of .the language used by the legislature that the ten crucial words '' not involving the carrying on of any activity for profit'' go with '' object of general public utility '' and not with '' advancement''. It is the object of general public utility which must not involve the carrying on of any activity for profit and not its advancement or attainment. What is inhibited by these last ten words is the linking of activity for profit with the object of general public utility and not its linking with the accomplishment or carrying out of the object. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the newly added words. What these words require is that the object should .not involve the carrying on of any activity for profit. The emphasis is on the object of general public utility and not on its accomplishment or attainment. The decisions of the Commissioner of Income Tax Vs. Cochin Chamber of Commerce and Industry, and Andhra Pradesh State Road Transport Corporation Vs. Commissioner of Income Tax, in our opinion, lay down the correct interpretation of the last ton words in Section 2, Clause (15). The true meaning of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit."

8. Then again, at page 25, his Lordship observed as follows :

"The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not. lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg J. when he said in Sole Trustee, The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, that:

''If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity.''

The learned judge also added that the restrictive condition ''that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit making is not the real object''. We wholly endorse these observations."

9. Thus, it would be clear that according to the latest view of the Supreme Court an activity involved in carrying out charitable purpose must not be motivated by a profit objective but it must be undertaken for the purpose of advancement or carrying out the charitable purposes. It would not be correct to draw invariably an inference that whenever an activity is carried on which yields profit, the activity must be deemed to be for profit and the charitable purpose involves a carrying on of activity for profit. In other words, the object must be of general public utility, that is, it must not involve the carrying on of any activity for profit, but if for advancement of that object it becomes necessary to carry on any activity for profit, such an activity could not detract from the charitable purpose. That the legislature did not intend to debar a trust created for charitable purpose from holding property under trust including a business undertaking is clearly borne out by the language of Sub-section (4) of Section 11 which lays down that for the purpose of this section property held under trust includes a business undertaking so held. Thus, taking into consideration the provisions of Sub-section (4) of Section II, it is clear that a business undertaking can be held for charitable purpose but the object of the trust must not be the carrying on of any activity for profit.

10. We have, therefore, to see, whether, in the present case, the predominant object of the activity of the trust was profit making ? In this connection, we may refer to the relevant clauses of the trust deed, annexure '' A ''. The objects and powers, so far as they are material, are mentioned as below :

" Whereas :

(1) The settlor is desirous of creating a fund for charitable purposes for the benefit of the public.

(2) In order to effectuate the said desire the settlor has paid and made over the sum of Rs. 5,100 (rupees five thousand one hundred) in cash to the trustees on or before the execution of these presents on trust and the trustees have agreed to the same, subject to the powers, provisions, covenants and conditions hereinafter declared and contained, of and concerning the same.

(3) The trustees have agreed to be the first trustees of these presents as is testified by their being parties to and. executing these presents.

Now THIS INDENTURE WITNESSETH and it is agreed and declared that in order to effectuate the said desire the settlor hath on or before the execution of these presents paid, delivered and transferred unto the trustees a sum of Rs. 5,100 (rupees five thousand one hundred) in cash, the payment and receipt whereof the trustees do and each of them doth hereby admit and acknowledge, TO HOLD the same unto the trustees UPON TRUSTS for the charitable object for the benefit of the public and subject to the powers, provisions, covenants and conditions hereinafter declared and contained, of and concerning the same, that is to :--

1. This trust shall be called "UMAID CHARITABLE TRUST".

2. The trustees shall hold the said sum of Rs. 5,100 (rupees five thousand one hundred) paid to them in cash by the settlor on or before the execution of these presents as hereinafter stated and all property including business undertaking vested in the trustees and all income therefrom and all contributions, collections and donations hereafter to be paid to and received by them from any other person and income thereof and any other moveable and/or Immovable property whatsoever which may hereafter come to or belong to the said trust (all of which are hereinafter for the sake of brevity collectively called "the trust property") on trusts for relief of the poor, advancement of education, medical relief, promotion of science, art and literature and any other object of general public utility for the benefit of the public.

3. The trustees shall be at liberty at their absolute discretion to accept any property, contributions, collections or donations for the. purposes of trust from any person or persons, firm or company.

4. The trustees shall be at liberty to hold any business undertaking upon trust as aforesaid and to administer and manage the same and furnish security, maintain

office and establishment and do and take all such steps and do all such acts and exercise all such powers as may be necessary for acquiring, holding, managing any business undertaking upon trust as aforesaid.

5. The trustees shall, out of the income of the trust in the first instance, pay all costs, charges and expenses and other outgoings of, and incidental to, the management and administration of the trust and of its properties and assets AND shall utilise the net income of the trust for such of the charitable objects or purposes as herein mentioned at such time or times and in such manner and on such proportions as the trustees may in their discretion think fit.

6. The general management and control of the trust, for the purposes of managing the trust affairs and properties which includes any business undertaking vested in the trustees and carrying out the objects of the trust aforesaid shall be vested in the trustees and for this purpose without prejudice to the general powers mentioned above, the trustees shall have powers to enter into contracts and borrow money as may be considered necessary by the trustees.

7. The trustees will also have the following powers :

(i) To get in and/or convert the trust property and/or to vary the investments for the time being.

(ii) To invest and keep invested the trust properties either in the purchase or mortgage of Immovable properties or in shares, debentures or other securities or any business undertaking and investments and to alter, vary or transpose such investments from time to time as the trustees shall in their absolute discretion think fit.

(iii) To set apart the whole or part of the income of the corpus or part thereof for any of the objects of the trust. The trustees shall also have powers by a majority of three-fourths of the trustees for the time being of the trust to have recourse to and utilise the whole or any part or parts of the corpus of the trust property for all or any of the charitable objects or purposes herein mentioned or any of them at such time or times and in such proportions as the trustees shall in their discretion think fit." Now for a proper appreciation of the objects of the trust, it is necessary that we should draw a line of distinction between what are the objects of the trust and what are the powers conferred on the trustees for achieving the objects. It would not be proper to mix the objects of the trust with the powers conferred on the trustees. The opening part of the trust says that " the settlor is desirous of creating a fund for charitable purposes for the benefit of the public ". In order to effectuate the said desire the settlor delivered and transferred to the trustees a sum of Rs. 5,100 as a corpus and the trustees agreed to hold the same for the charitable object for the benefit of the public and subject to certain powers conferred upon them.

11. It appears that while enumerating the powers in para. No. 2, it is mentioned

that the trustees shall hold all properties including business undertaking vested in them and all income therefrom and all contributions, etc., on trust for the relief of the poor, advancement of education, medical relief, promotion of science, art and literature, and any other object of general public utility for the benefit of the public. Thus, the objects of the trust may be enumerated as follows:

(a) Relief of the poor.

(b) Advancement, of education,

(c) Medical relief.

(d) Promotion of science, art and literature, and

(e) Any other object of general public utility for the benefit of public.

12. The subsequent clauses lay down the powers of the trustees for the achievement of the aforesaid objects, and these powers are:

(1) that they may accept any property, contributions, collections or donations from any person ;

(2) that they may hold any business undertaking and administer and manage the same and do all such acts as may be necessary for acquiring, holding, managing any business undertaking upon trust;

(3) that after defraying the necessary expenses of the management of the trust and its business, they shall utilise the net income of the trust for such of the charitable objects or purposes in such proportions as they think fit in their discretion ; and

(4) that the trustees shall have power to enter into contracts and borrow money as may be considered necessary by them.

13 . Some more powers have been conferred by Clauses (7) and (8). But it would be clear on a close reading of all these clauses that these powers which involve carrying on of any activity for profit are for the purposes of achieving the objects. In other words, the activity involved in carrying out the charitable object is not motivated by a profit objective. In these circumstances, the inhibition of the residuary clause or the exclusionary clause, as it has been characterised by the Supreme Court, would not be attracted.

14. Mr. Lekhraj Mehta, learned counsel for the revenue, contended that powers for profit-making activity conferred on the trustees by virtue of the trust deed must be deemed to be the object of the settlor. We are, however, unable to accede to this submission.

15. In Yogiraj Charity Trust Vs. Commissioner of Income Tax, New Delhi, the Supreme Court observed that 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. We may observe that if that line of distinction is kept

in mind while interpreting the various clauses of the trust deed there is no escape from the conclusion that profit making is not an end to which the activity of the trust is directed and by no stretch of imagination can it be said that the predominant object of the activity is making of profit.

16. Learned counsel for the revenue also urged that the Tribunal has found, as a matter of fact, that one of the objects of the trust was to carry on a business undertaking involving profit. It is, therefore, argued by the learned counsel that that finding of fact must be accepted as final. In support of his contention he placed reliance on Hazarat Pirmahomed Shah Saheb Roza Committee Vs. Commissioner of Income Tax, Gujarat, wherein it was held that the question as to what was the object of the wakf was essentially a question of fact and the High Court could not interfere with the finding of the Tribunal that the purpose of the wakf was wholly religious. On the face of it, the argument appears to be attractive, but it is to be noticed that in Hazarat Pirmahomed Hazarat Pirmahomed Shah Saheb Roza Committee Vs. Commissioner of Income Tax, Gujarat, the finding was based on evidence. In that case, the Appellate Tribunal elaborately examined the question and found that the purpose of the wakf was for a wholly religious purpose, that is, for maintenance of the Roza and the mosque and the observance of festive occasions such as urs, death anniversaries, etc., and there was no evidence before the Appellate. Tribunal to show that any portion of the income of the wakf was utilised for running madrassas and a library prior to the year 1942-43. The Tribunal, therefore, held that the original purpose of the wakf was confined to the maintenance of the roza and the mosque and celebrations of festive occasions, and, therefore, the wakf was established for a wholly religious purpose. In these circumstances, the Supreme Court observed that the question as to what was the object of the wakf was essentially a question of fact and The High Court had no justification for interfering with the finding of the Tribunal on this point. In the present case, the question as to what are the objects of the trust, depends upon the interpretation of the various clauses of the trust, and no evidence has been put on record on the point except the trust deed. It is not the case of the revenue nor it has ever been its case that the trust deed is a colourable document. In these circumstances, the question as to what are the objects of the trust is to be decided on the interpretation of the various clauses of the trust deed itself. It is trite law that the question of construction of a document is a question of law and not a pure question of fact.

17. In SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS., it was held thus (p. 50):

" When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court u/s 66(1)."

18. In this view of the matter, we are of the opinion that merely because the Tribunal has said that on facts one of the objects of the trust was to carry on

business undertaking involving profits would not debar this court from examining the terms of the trust deed for putting true construction on it. As already stated above., we are of opinion that on a proper construction of the terms of the trust deed there is no room for holding that there was any profit-making object of the trust in carrying on business activities. On the other hand, the trustees were empowered to undertake profit-making activity only for the purpose of achieving the object of general benefit and what was intended was that the profit must feed charitable purpose under the terms of the trust.

19. It was next contended by Mr. Mehta that the trustees have been given discretion to utilise the net income of the trust for such of the charitable objects or purposes as they may, in their discretion, think fit. In other words, his contention is that the trustees have been given liberty to utilise the income of the trust for charitable objects as well as for purposes other than charitable objects. In this connection, reliance has been placed on East India Industries (Madras) Private Limited Vs. Commissioner of Income Tax, Madras, wherein it was held that under the trust deed it was open to the trustees to utilise the income for any one of the objects of the trust to the exclusion of all other objects. In other words, it would not be a violation of the trust if the trustees devoted the entire income to the carrying on of a business of manufacture, sale and distribution of pharmaceutical, medicinal and other preparations. The court observed that in their opinion this particular object of the trust is neither charitable nor religious in character. We may point out even at the risk of repetition that the objects of the trust, in the present case, are relief of the poor, advancement of education, medical relief, promotion of science, art and literature and any other object of general public utility for the benefit of the public. None of these objects can be said to be other than charitable. Thus the ratio decidendi of East India Industries (Madras) Private Limited Vs. Commissioner of Income Tax, Madras, has no application to the facts and circumstances of the present case. We may also observe that the words " charitable objects or purposes, as herein mentioned " contained in Clause (5) of the trust deed do not include a purpose other than charitable. The adjective "charitable" occurring before the word "objects" qualifies both the objects as well as purposes and it would not be correct to read charitable with objects and not with purposes. In fact, here the words " objects " and "purposes " mean the same thing. This contention raised on behalf of the revenue is also without force.

20. Thus, having regard to the terms of the trust deed and to the correct interpretation of the term " charitable purpose " in Section 2(15) of the Act (as interpreted by their Lordships of the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, we answer the question referred to us in the affirmative in both the references, that is, in favour of the assessee and against the revenue.

21. In view of our decision of the question referred to us in the two references, the Income Tax cases u/s 256(2) of the Act have become infructuous and are

hereby dismissed as such. The parties are left to bear their own costs in all the cases.

