

The East India Industries (Madras) Private Ltd., Madras & Anr

Vs

The Commissioner of Income Tax, Madras

Civil Appeal No. 1399 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami – I JJ)

03.04.1967

JUDGEMENT

RAMASWAMI J.

This appeal is brought by special leave from the judgment of the Madras High Court dated October 25, 1961 in T. C. No. 62 of 1958.

The assessee the East India Industries Limited paid a donation of Rs. 7500 to a trust called "the Agastyar Trust" and claimed exemption from tax under s. 14-B of the Income Tax Act, 1922 hereinafter called the 'Act'. The trust had been created by the partners of a business firm, K. Rajagopal and Company. This firm had been carrying on business in waste paper. Under the terms of the partnership it was setting apart 80 percent of the profit for charitable and religious purposes. On July 1, 1944 a trust deed was executed by Venkatarama Chetti. The claim of the assessee to exemption from tax was rejected by the Income Tax Officer on the ground that the trust did not fulfill the conditions laid down under s. 15-B of the Act. The Appellate Assistant Commissioner to whom an appeal was preferred took the same view. The matter was taken up in further appeal to the Income-tax Appellate Tribunal which observed that in relation to the previous assessment year it had held that the Agastyar Trust was a Public trust and that any donation made to that trust was an allowable deduction under s. 15-B of the Act the instance of the Commissioner of Income-tax the Tribunal referred the following question of law for the determination of the High Court under s. 66(1) of the Act :

"Whether on the facts and in the circumstances of the case the assessee is entitled to claim deduction under Section 15-B in respect of the donation paid to the Agastyar Trust?"

The High Court answered the question against the assessee who has brought the present appeal to this Court by special leave.

Section 15-B of the Act provides for exemption from tax in respect of any sums paid by the assessee as donations to any institution or fund to which the section applies. Sub-section (2) reads as follows :

" (2) This section applies to any institution or fund established in the taxable territories for a charitable purpose-

(i) the income whereof is exempt under clause (i) of sub-section (3) of section 4;

Section 4(3) (i) of the Act States as follows :

(3) Any income profits or gains falling within the following classes shall not be included in the total income of the person receiving them;

(i) Subject to the provisions of clause (c) of sub-section (1) of section 16 any income derived from property held under trust or other legal obligation wholly for religious or charitable purpose in so far as such income is applied or accumulated for application to such religious or charitable purpose as relate to anything done within the taxable territories and in the case of property so held in part only for such purposes the income applied or finally set apart for application hereto :

Paragraph 2 of trust deed dated July 1, 1944 sets out the objects of the 'Agastyar Trust'as follows :

(a) to establish conduct and maintain residential schools colleges workshop and other institution for imparting general, technical, vocational, professional, industrial or other kind of education and training for the utility and welfare of the general public;

(b) to make pecuniary grants by way of scholarship, donation, subscription, allowance, gratuity, guarantee or otherwise to and for the benefit of student, scholars and other persons :

(c) to establish maintain and conduct hospitals, clinics, dispensaries, maternity, houses and other institutions for affording treatment, cure, rest, recuperation and other reliefs :

(d) to manufacture, buy, sell and distribute pharmaceutical, medical, chemical and other preparations and articles such as medicines, drugs, medical and surgical articles, preparations and restoratives of food;

(e) to establish and maintain choultries and resthouses, to provide food, clothes, medicines and other articles of necessity free or at concessional rates and to make money grants to the poor, needy for celebration of marriages or ceremonies of, for other purposes, floods and other causes;

(f) to collect, encourage, conduct research in, interpret and popularise Nadis (ancient manuscripts inscribed on palm leaves in Indian languages with authorship ascribed to Devas, rishis, saints, sages and seers)

(g) to promote and encourage the study of an research in religion and to propagate religious principles;

(h) to buy and print publish sell for profit or distribute free or at concessional rate such literature as may be though beneficial for the objects of the trust;

(j) to do all such other things as may be necessary incidental conducive or convenient to the attainment of the above objects or any of them and the decision of the trustees that any particular things is necessary incidental conducive or convenient to the attainment of the above objects or any of them shall be conclusive.

The other clauses of the trust deed provide for the appointment of additional trustees the administration and management of schools colleges etc that may be set up investment of the money the power conferred on the trustees to alter the form of the properties and re-invest the funds to grant leases to borrow and lastly to conduct or carry on any business or undertaking alone or in partnership with any other person for the benefit of the trust.

The question to be considered is whether the property from which the income of the Agastyar trust is derived is held under trust or other legal obligation wholly for religious or charitable purposes within the meaning of s. 4(3) (i) of the Act. In the present case it appears from the deed of trust that one of the object of the trust namely item 4 is not for charitable or religious purposes. Item No. 4 is to manufacture buy sell and distribute pharmaceutical medicines drugs medical and surgical articles preparation and restoratives of food". It may be that most of the other objects of the trust are religious and charitable in nature but if item 4 is not charitable then the conditions envisaged by s. 4(3) (i) of the Act are not fulfilled and the exemption conferred by s. 15-B the Act cannot be applied Clause 5(i) of the trust deed states that "the trustee shall have power to apply the whole or any part of the trust property or fund whether capital or income in or towards payment of the expenses of the trust or for or towards all or any of the purposes of the trust provided any property or money held in special trust shall be applied only for that purpose and not otherwise. In the present case there is no special trust that is to say no particular item of property has been burdened with the performance of any specific object of the trust. It is therefore manifest that under cl. 5(i) of the trust deed it is 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 violation of the trust if the trustees devoted the entire income to the carrying on a business of manufacture sale and distribution of pharmaceutical medical and other preparations. In our opinion this particular object of the trust is neither charitable nor religious in character. If the trustees can under a trust held validly spend the entire income of the trust property is held under a trust or other legal obligation wholly for religious or charitable purposes within the meaning of s. 4(3) (i) of the Act.

It was argued by Mr. Swaminathan on behalf of the appellant that this particular object must not be read isolated from the other objects of the trust but having read to the immediately preceding object which is to run hospital and dispensaries the impugned object viz. the manufacture of pharmaceutical and medicinal preparation must be deemed to be for the purpose of carrying out the earlier object viz running of hospital and dispensaries. We are unable to hold that there is any connection between the two objects of the trust and upon an interpretation of the document taken as a whole it is impossible to accept the appellant's contention that cl. 2(c) is the dominant object of the trust and cl. 2(d) is a subsidiary object. The argument of the appellant is in fact contradictory of the last clause of para 2 of the trust deed which states that the objects shall be independent of each other notwithstanding that any of the objects shall be void for any reason whatsoever the trust shall be valid and operative with respect to the other objects. This clause expressly provides that the trustees shall have discretion to apply the property of the trust in carrying out all or any of such objects of the trust as the trustees may deem fit. Having regard to the language of paragraph 2 of the trust deed in the context of other paragraphs of the document we are of opinion that the trust deed on a proper interpretation gives an absolute power of selection to the trustees to choose between charitable and non charitable objects of the trust for spending the entire income of the trust properties. It follows that the Agastyar trust does not fulfill the conditions imposed by s. 4(3) (i) of the Act and the donation made by the assess to the Agastyar trust cannot therefore be exempted under s. 15-B of the Act.

The view that we have expressed is borne out by the decision of the Judicial Committee in

Mohammad Ibrahim Riza v. Commissioner of Income-tax Nagpur in which it was held that if there are several objects of the trust some of which are charitable and some non-charitable and the trustees have unfettered discretion to apply the income to any of the object the whole trust would fail and no part of the income would be exempt from tax. The same view has been expressed by the Court of Appeal in Oxford Group v. Inland Revenue Commissioners. In that case the memorandum of association of the Oxford Group a company guarantee set out the following as the objects of the company :

"3. (A) The advancement of the Christian religion and in particular by the means and in accordance with the principles of the Oxford Group Movement founded in our about the year 1921 by Frank Nathan Danniell Buchman (B) The maintenance support development and assistance of the Oxford Group Movement in every way... (c) (9) To establish and support or aid in the establishment and support of any charitable or benevolent association or institution and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes of the association may think conducive to the attainment of the above objects or any of them."

The Oxford Group sought exemption from income tax on the ground that it was a body of persons established for charitable purpose only. It was admitted by the Crown that if object A of the object clause of the company's memorandum of association stood alone the company would be established for charitable purpose only. It was however held by the Court of Appeal that the words in cl. 3(B) the memorandum of association the maintenance support development and assistance of the Oxford Group Movement in every way" extended beyond purely religious activities permitted the company to engage in secular activities and authorised the expenditure of its funds on matters which were not charitable and therefore the company could not be said to be formed for charitable purposes only. It was also observed that although a religious body might without losing its religious character engage in a number of subsidiary activities which were not purely religious a trust which was so worded as to permit the expenditure of income by such a body in such subsidiary activities was not a good charitable trust. It was further held that the object set forth in cl. 3(C) paras (9) (10) of the memorandum of association were not merely ancillary to the main object expressed in sub-cl. (A) and (B) but themselves conferred powers on the company which were so wide that they could not be regarded as charitable. The Principle has been clearly expressed by Lawrence L. J. in Kern Kaymeth Le Jisroel Ltd. v. Inland Revenue Comrs. as follows :

The instrument with which this case is concerned consists of the memorandum of association of the company and its essential to bar in mind that in order to obtain exemption from income tax under the section it is not enough that the purposes described in the memorandum must be confined to those purpose so that any application by the company of its funds to non-charitable purposes would be ultra vires. The extensive power conferred on the company by sub-cl. (2) to (22) (to some of which I have referred in order to indicate their character) although purporting to be secondary to the character), although purporting to be secondary to the objects for which the company is established. The company can exercise any or all of these powers whenever it is minded to so and whether such exercise is in fact conducive to the attainment of that object or not as neither the court nor any one else can control the company's opinion or otherwise interfere with the manner in which it chooses to carry out its object. It would be difficult in any case to determine whether any particular enterprises undertaken by the company under its wide power was or was not in fact conducive to the attainment of the primary object but when the question of whether it is or is not so conducive is left to the decision of the company itself. I cannot avoid the conclusion that the object mentioned in sub-cl. (1)

and that there is no substantial difference in degree between them"

As we have already stated on a proper interpretation of the terms of the trust deed in the present case we are satisfied that paragraph of 2(d) is not subsidiary in character to paragraph 2(c) and the trustees have been expressly granted to the discretion to apply the income of the trust wholly to a non charitable object to the exclusion of charitable objects. It follows therefore that in view of the absolute power of selection granted to the trustees to select between charitable and non charitable objects the provisions of s. 4(3) (i) of the Act cannot be applied to the Agastyar trust and no exemption can be granted to the assessee under s. 15-B of the Act. We accordingly hold that the High Court rightly answered the question of law against the assessee and in favour of the Commissioner of Income tax.

It was however contended by Mr. Swaminathan on behalf of the assessee that the High Court had no jurisdiction to go into the question whether the Agastyar trust was held for a wholly religious or charitable purpose under s. 4(3) (i) of the Act. It was pointed out that the only question of law arising from the order of the Tribunal was confined to the question whether the income from the business owned by the trust was entitled to exemption under s. 4(3) (b) of the Act and whether the conditions of that proviso were satisfied. It was submitted that the High Court acted in excess of jurisdiction in raising a new question which was not raised by the Appellate Tribunal namely whether the trust itself was constituted for wholly religious or charitable purposes within the meaning of s. 4(3) (i) of the Act. We are unable to accept the argument put forward on behalf of the appellants as correct. It appears that before the Appellate Tribunal there was no detailed examination of the question of law. The Tribunal merely referred to an earlier case it had dealt with regarding the same assessee. The Tribunal apparently took the view in the earlier case that even if the income which the trust earned in business was not exempt from tax the income derived from donation which was utilised for charitable purpose would be eligible for exemption. So far as the assessment for the year 1955-56 is concerned the question was not considered by the Appellate Tribunal at any length. But the Income Tax Officer held that the trust did not fulfill the conditions laid down by s. 15-B of the Act. The Assistant Commissioner however in appeal specifically stated that one of the conditions was that the income of the institution or fund should be exempt under cl. (1) of sub-s(3) of s. 4 and dealt with the argument relating to the business carried on by the trust and observed :

"'Property' as used in Section 4(3) (i) includes business also and unless the business also is exempt donation to such an institution will not be eligible for concession given in Section 15-B".

The question therefore before the Tribunal was whether the trust come was exempt under s. 4(3) (i) of the Act. In the course of its order dated July 27, 1957 for the assessment year 1955-56 the Appellate Tribunal stated as follows :

"With reference to the first contention we have held in I. T. A. No. 5707 of 1955-56 that the Agastyar Trust was a public trust and hence any donation made to the said trust is an allowable concession under Section 15-B. Therefore, the claim of the assessee is allowed on this contention."

We are therefore unable to accept the contention of the appellants that the question whether s. 4(3) (i) of the Act applies to the Agastyar trust was not within the scope of the question referred to the High Court by the Appellant Tribunal or that the High Court went beyond its jurisdiction in

answering that question. In Commissioner of Income tax Bombay v. Scindia steam Navigation Co. Ltd. this Court examined the scope of the jurisdiction of the High Court in a reference under s. 66(1) and it was pointed out that even where a question of law was not raised before the Tribunal but the Tribunal deals with it it must be deemed to be one arising out of its order. Applying the principle to present case we hold that the High Court was within its jurisdiction in examining the question whether the Agastyar trust was eligible for exemption from income tax under s. 4(3) (i) of the Act. We accordingly reject the argument of the appellants on this aspect of the case.

For these reasons we hold that this appeal is without merit and must be dismissed with costs.

Y. P. Appeal dismissed

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