

The Commissioner of Taxes, Assam

Vs

M/s. Jalannagar South Estate Ltd. and Others

Civil Appeal No. 1873-1876 of 1967

(K.S. Hegde, A.N. Grover JJ)

04.08.1971

JUDGMENT

HEGDE, J. -

1. These appeals by special leave arise from the decision of the High Court of Assam and Nagaland in Tax References Nos. 2 to 4 of 1965 on its file wherein the High Court of Assam and Nagaland, answered the two questions of law referred to it by the Assam Board of Revenue under Section 28(2) of the Assam Agricultural Income-tax Act, 1939 (Assam Act IX of 1939) (to be hereinafter referred to as the Act) in the negative. The two questions referred for the advisory opinion of the High Court are :

"(1) Whether on the facts and in the circumstances of the case the Board was competent in course of appeals preferred by the assessee to question the finding of Assistant Commissioner of Taxes to the effect that the amount donated to Jalan Charity Trust were amounts actually spent for 'Charitable purposes' within the meaning of Assam Agricultural Income-tax Act.

(2) Whether on the facts and in the circumstances of the case the Board was justified in holding that only 60 per cent. of the amounts actually spent by the assessee for 'Charitable purposes' from the Agricultural income was admissible as deduction under Rule 2(2) of the rules framed under the Assam Agricultural Income-tax Act."

Aggrieved by the decision of the High Court, Commissioner of Taxes, Assam has brought this appeal.

2. We shall now briefly set out the facts necessary for deciding the points in controversy in these appeals. Each of the three assesseees with whom we are concerned in these appeals has given certain donations to the Jalan Charity Trust in the relevant assessment years, which in the case of the case of two of the assessee is 1955-56 and in the case of the third is 1955-56 and 1957-58. The question for consideration is whether those donations can be considered as "amounts actually spent for charitable purposes" under Rule 2(1) of the rules framed under the Act.

3. The agricultural income of the assessee was computed at 60 per cent. of the total net income ascertained by the Income-tax officer under the Indian Income-tax Act, 1922. Before the Income-tax Officer the assesseees claimed exemption under Section 15-B of the Indian Income-tax Act of the provisions made by them to the Jalan Trust, but that Officer did not grant the exemption asked for the reserved that question for decision to a later date as he wanted to examine the nature of those

donations. He determined the income of the assessee for the years in question without taking into consideration those donations. Thereafter the Agricultural Income-tax Officer proceeded to assess the agricultural income of the assessee. Before that Officer the assessee again claims exemption under Rule 2(1) of the rules of the donations given by them to the Jalan Charity Trust. That Officer refused to grant the exemption asked for. Thereafter the assessee took up the matter in appeal to the Assistant Commissioner. The Assistant Commissioner granted to each of the assessee exemption to the extent of 60 per cent. of the amounts donated. Then the assessee took up the matter in the appeal to the Board of Revenue. The Department had no right to appeal against the order of the Assistant Commissioner. The Board of Revenue came to the conclusion that the assessee were not entitled to any exemption under the Act but all the same as the order of the Assistant Commissioner had become final in respect of exemption given, the assessee were entitled to retain the exemption granted by the Assistant Commissioner. Alternatively it also came to the conclusion that even if the assessee were entitled to any exemption under the Act and the rules, the exemption granted to them by the Assistant Commissioner was more than what they were entitled to. Thereafter the assessee moved the Board to refer to the High Court for its opinion the two questions mentioned earlier.

4. There is no substance in the first question referred to above. It is true that the exemption granted by the Assistant Commissioner could not be interfered with by the Board of Revenue. But all the same while considering whether the assessee were entitled to the further exemption claimed by them the Board of Revenue had to examine the true legal position under the Act and the Rules for the purpose of deciding the matter in issue before it. In our opinion the High Court was wholly in error in opining that the Board of Revenue was not competent to determine the true position under law in view of the decision of the Assistant Commissioner. The High Court overlooked the fact that for pronouncing on the claim made by the assessee before the Board of Revenue, the Board had to examine the legality of the claim. It is one thing to say that the Board could not reverse the decision of the Assistant Commissioner, which had become final but it is entirely a different thing to say that the Board was not competent to consider whether the Assistant Commissioner took a correct view of the law or not when the true position in law is necessary to be determined for deciding the issue before it.

5. Now coming to the second question unlike Section 15-B of the Indian Income-tax Act, 1922, which exempts any sums paid to an institution or a fund coming within the scope of that section up to the prescribed limit, under Rule 2(1), read with Section 8(g) of the Act, the assessee is entitled to deduct from his income only those sums actually spent by him for charitable purposes. Charitable purpose under that rule is defined as including relief of the poor, education, medical relief and the advancement of any other object of public utility.

6. Under Rule 2(1), read with Section 8(g) before an assessee can claim any exemption, he has to establish that in the relevant year, he had actually spent for one or the other of the charitable purposes mentioned in that rule the amount in respect of which he claims exemption. Mere contribution to a fund would not entitle him to the exemption claimed. It is true that the assessee in these cases are proved to have contributed certain amounts to the Jalan Trust Fund. It may also be true - about which we express no opinion - that the objects of Jalan Trust are similar to those mentioned in Rule 2(i). But there is no proof in these cases that the Jalan Trust had expended and amounts donated by the assessee to that fund or any charitable purpose during the relevant years. From the material placed before the Court, it appears that Jalan Trust had spent in the year in question some amounts for charitable purposes. But the amount spent is much less than the donations received. Further the assessee have not established any co-relationship between the amounts spent by the Jalan Trust and the amounts donated by them to the Trust. Under these

circumstances, it is not necessary for us to decide whether the actual spending referred to in Rule 2(i) must be by the assessee themselves or it may also be through some other agency. In our opinion before the assessee can claim exemption under Rule 2(1) in regard to any amount, they have to establish to the satisfaction of the assessing authority that they had actually spent that amount for charitable purposes. No such proof is forthcoming in these cases.

7. For the reasons mentioned above these appeals are allowed and the answers given by the High Court are revoked and in place of those answers we answer both the questions in the affirmative and in favour of the Revenue. The assessee to pay costs of the Commissioner - one hearing fee.

</html