

Delhi Stock Exchange Association Ltd

Vs

Commissioner of Income Tax, New Delhi

Civil Appeals Nos. 3432-38(NT) and 5648-50 of 1983

(S. C. Agarwal, G. B. Pattanaik JJ)

20.03.1997

JUDGMENT

1. The common question that falls for consideration in these appeals filed by the Delhi Stock Exchange Association Ltd. (hereinafter referred to as "the assessee") is whether the assessee is entitled to claim exemption from payment of income tax under Section 11 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the reason that the income of the assessee was derived from property held under trust for charitable purposes. The appeals relate to assessment years covering the period prior to December 1973.
2. The assessee is a company limited by shares. It was incorporated in the year 1947 with a view to acquire and take over; as a going concern the activities, functions and business of the Delhi Stock and Share Exchange Limited and the Delhi Stock and Share Brokers' Association Ltd. The object for which the assessee was established was generally that of conducting a stock exchange and thus to promote and regulate the business in stocks, shares, debentures and other securities, to frame rules and bye-laws for regulating the conditions subjects to which business on the Stock Exchange could be transacted and the like. The assessee derived income by way of membership fees, rent from property and interest on securities. The claim of the assessee for exemption under Section 11 of the Act was rejected by the Income Tax Officer and the Appellate Assistant Commissioner on appeal.
3. The Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") also rejected the said claim. It held that the running of a stock exchange was an object of general public utility and that its objects did not cease to be charitable because some surplus was realised by the stock exchange by reason of its receipts from its members or because it derived income from property. The Tribunal was, however, of the view that the income of the assessee could not be said to have been derived from property held under trust wholly for religious or charitable purposes. The Tribunal has referred to the judgment of this Court in Delhi Stock Exchange Assn. Ltd. v. a CIT' wherein after considering the Memorandum and Articles of Association of the assessee, this Court had observed that the surplus of the assessee could be distributed among the shareholders or employees or even their relations. The Tribunal was of the view that the aim and object of the trust has to be determined by reference to the manner in which the surplus derived from the activity could be disposed of and the absence of any prohibition for dividend to the shareholders and specific provision for creating funds for the benefit of shareholders, employees or their relations clearly showed that the surplus of the activity carried on by the assessee was definitely for the benefits of the shareholders, employees or their relations and could not by any manner or means be treated as held for charitable purpose. According to the Tribunal, the mere fact that no dividends were declared or that the assessee did not (sic) carry on the object of general public utility did not in any manner establish the trust for using the income for charitable purpose inasmuch as the income

could be used for distribution as dividends or for creating funds for the benefit of shareholders, employees and their dependants.

4. The High Court has agreed with the said view of the Tribunal. Proceeding on the assumption that all the objects of the assessee were charitable, as held by the Tribunal, the High Court has observed that the claim of the assessee for exemption had to fail for the reason pointed out by the Tribunal that there is no trust or legal obligation compelling the assessee to utilise its income only for such purposes. The High Court has stated that the assessee is a company limited by the shares and, like any other such company, is at liberty to distribute its entire profits or income by way of dividends. While taking note of the fact that in December 1973 the Articles of Association of the assessee company were amended and clause (xiv) of Article 103 was amended to prohibit the distribution of profits as interest or dividends in cash or to members so long as the Central Government prohibited such distribution, the High Court has observed that till December 1973 when Article 103(xiv) was amended, the assessee was at complete liberty to distribute its profits by way of dividends or to deal with its profits in any manner it liked and that it was not under any compulsion in law to hold those profits or to utilise them wholly or even in part only for religious or charitable purposes and it would have been perfectly legitimate for the company to have distributed its entire profits among its members and to have set apart or utilised no part of it for charitable purposes. That the company did not, in fact, distribute any dividends would not, in the view of the High Court, be of any help to the assessee as the requirement for the purposes of exemption is not the factual position, but whether in law the company is under any obligation to devote its profit only to religious or charitable purposes. Referring to the letters of the Central Government dated 28-8-1963 and 1-3-1973 wherein objection had been taken to presents being given by the assessee to its members on the ground that such presents amounted to distribution of dividends in specie, the High Court has observed that the said letters were merely advisory in nature and that they contained nothing more than a mere suggestion for implementation and that they had no compulsive or legal overtones.

5. Shri Harish N. Salve, the learned Senior Counsel appearing for the assessee, has urged that the nature of the activities of the assessee have to be considered as a whole. The submission is that since the objects of the assessee have been found to be of general public utility and that no dividend has been declared by the assessee, it should be held that the income derived by the assessee is from the properties held for charitable purposes. The learned counsel has placed reliance on the letters of the Central Government objecting to the giving of presents by the assessee to its members and also on the decision of this Court in CIT v. A. P. SRT. Shri Salve has also submitted that the earlier decision of this Court in Delhi Stock Exchange Assn. Ltd. ! related to the period prior to 1956 and that thereafter the Securities Contracts (Regulation) Act, 1956 has been enacted and the assessee has been recognised as a stock exchange under the said Act and is being treated as a public authority amenable to the jurisdiction of this Court and the High Court under Articles 32 and 226 of the Constitution.

6. In CIT v. Surat Art Silk Cloth Manufacturers Assn. 3, decided by a Constitution Bench of this Court, while construing the definition of the expression "charitable purposes" in Section 2(15) of the Act, the following test laid by Beg, J. (as the learned Chief Justice then was) in Sole Trustee Lok Shikshana Trust v. CIP has been approved :

"Does the purpose of a trust restrict spending the income of a profitable activity exclusively or primarily upon what is 'charity' in law ? 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'."

7. What is, therefore, required is that there must be an obligation created to spend the money exclusively and essentially on charity. In the present case, as found by the High Court, at the relevant period there was no obligation that the income from the properties derived by the assessee was to be exclusively used for charitable purposes. It was permissible for the assessee to distribute the whole or part of such income by way of dividends amongst its shareholders. Such a prohibition was imposed only in December 1973 by the amendment of Article 103(xiv) of the Articles of Association of the assessee. In other words, prior to the said amendment introduced in December 1973, the assessee was under no legal obligation prohibiting it from distributing the income derived by it by way of dividends amongst its shareholders. On that view of the matter it must be held that the High Court was right in holding that the assessee could not claim exemption under Section 11 read with Section 2(15) of the Act.

8. In A. P SRT the claim of the Road Transport Corporation for exemption was contested by the Revenue on the basis of the provisions of Section 30 of the Road Transport Corporations Act, 1950, which contains the following provision regarding disposal of net profits : (SCC p. 399, para 8)

"30. Disposal of net profits. -After making provision for payment of interest and dividend under Section 28 and for depreciation, reserve and other funds under Section 29, a Corporation may utilise such percentage of its net annual profits as may be specified in this behalf by the State Government for the provision of amenities to the passengers using the road transport services, welfare of labour employed by the Corporation and for such other purposes as may be prescribed with the previous approval of the Central Government, (and out of the balance such amount as may, with the previous approval of the State Government and the Central Government, be specified in this behalf by the Corporation, may be utilised for financing the expansion programmes of the Corporation and the remainder, if any, shall be made over to the State Government for the purpose of road development)."

9. It was contended that the Road Transport Corporation could issue shares even to the members of the public and that dividend would be paid to the shareholders and, therefore, profit would be made from the activity of the transport corporation by its owners, namely, the shareholders. Rejecting the said contention this Court pointed out that under sub-section (1) of Section 23 the capital of the Road Transport Corporation was to be provided by the Central Government and the State Government in such proportion as may be agreed to by both the Governments and under sub-section (2) of Section 23, where the capital of a Road Transport Corporation was not provided by the Central Government or the State Government, such Corporation may raise such capital by the issue of shares as may be authorised in that behalf by the State Government. In that case no share capital had been raised under Section 23(2) and the entire capital of the Road Transport corporation had been provided by the Government under Section 23(1) and the Government was paid interest thereon. Since no shares were issued under Section 23(2), there was no question of payment of any dividend. In these circumstances, it was held that Section 30 did not stand in the way of the Corporation claiming exemption. The said case has no application because in the present case admittedly shares had been issued by the assessee and dividend could be paid to the shareholders since prior to December 1973 there was no obligation on the part of the assessee not to distribute the profits by way of dividend among the shareholders.

10. As regards the provisions of the Securities Contracts (Regulation) Act, 1956, it is no doubt true that the said Act makes provision for recognition of a stock exchange. The expression "Stock Exchange" has been defined in Section 2Q) to mean any body of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities. We, however, do not find any provision in the said Act which imposes an obligation on a recognised stock exchange not to distribute any part of its profits by way of dividend to its shareholders.

11. Insofar as the letters of the Central Government are concerned, we are in agreement with the High Court that the said letters cannot be construed as imposing any legal obligation on the assessee not to distribute any part of its profits by way of dividends to the shareholders.

12. In the circumstances, we do not find any merit in these appeals and the same are accordingly dismissed. But in the circumstances, there will be no order as to costs.