

Upper Ganges Sugar Mills Ltd.

Vs

Commissioner of Income Tax, Calcutta

(S.P. Bharucha, V.N. Khare JJ)

04.08.1997

JUDGMENT

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S.P. BHARUCHA, J.

1. A Division Bench of the Calcutta High Court answered the following question in the negative and in favour of the Revenue :

"Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in holding that the assessee was entitled to the relief under section 80G on the donations paid to Vishwa Mangal Trust?"

2. The assessee is in appeal by certificate.

3. We are concerned in the first appeal with the Assessment Year 1973-74, the relevant previous year having ended on 30th June, 1972. The assessee had made a donation of Rs.25,000/- to the Vishwa Mangal Trust (hereinafter called 'the Trust'). The assessee claimed a deduction under Section 80G in respect of that donation. The claim was allowed by the Income Tax Officer on 27th December, 1976. The assessment was then re-opened under Section 147(b) of the Income Tax Act and on 30th December, 1977 the Income Tax Officer disallowed the claim. The Appellant Assistant Commissioner dismissed the assessee's appeal. The Income Tax Appellate Tribunal allowed the appeal preferred by the assessee against the order of the Appellate Assistant Commissioner. Thereafter it referred the question set out above to the High Court. The High Court reversed the view of the Tribunal.

4. Much the same thing happened in a subsequent year and the High Court followed its said judgment.

5. Section 80G sets out the deductions to be made, in accordance with and subject to its provisions, in computing the total income of an assessee in respect of donations to certain funds, charitable institutions, etc. It applies, by reason of sub-section (5) thereof, to any other fund or any institution to which the section applies (sub-section (2)(a)(iv)) if it is established in India "for a charitable purpose" and fulfils the condition, inter alia, that it, "is not expressed to be for the benefit of any particular religious community or caste". Explanation 3 states, "In this Section, 'charitable purpose' does not include any purpose the whole or substantially the whole of which is of a religious nature".

6. The objects of the Trust are set out in clause (2) of the trust deed. They are :

"2(a) To establish, support and maintain schools, colleges, libraries, reading rooms, Lecture Halls, Public Museums and to grant aids to, support and maintain persons and institutions for the promotion of science or literature or Fine Arts or diffusion of useful knowledge or galleries of paintings and other works of art or collection of natural history, economic and scientific inventions and designs.

(b) To establish and maintain or grant aid to Hospitals, Medical Schools or Colleges, Nursing Institutions and such other institutions.

(c) To grant relief on the occasion of earthquakes and floods and other occasions of calamities of similar nature or to give donations to other institutions or persons doing such relief-works.

(d) To establish and maintain studentships, give prizes and to grant aid to poor students.

(e) To establish Boarding Houses and Hostels for students.

(f) To promote physical culture and education and to assist and promote sports and games and generally to do all acts for the improvement of general health and physical development.

(g) To establish and maintain and to grant aid to centres for diffusion of Indian Art and Culture.

(h) To establish, maintain and to grant and/or aid to public places of worship and prayer halls.

(i) To establish, support and maintain and/or to grant aid to alms houses and/or to give relief to the poor and needy persons.

(j) To establish, support and maintain and/or to grant aid to institutions for uplift of backward and depressed classes irrespective of caste, creed or nationality." (Emphasis supplied.) Clause (3) of the trust deed reads thus "The Trustees shall from time to time collect funds which and/or the income thereof will be utilised for the objects aforesaid. All investments and properties of t the Trust for the time being held by the Trustees is hereinafter referred to as the Trust Fund."

7. The High Court did not accept the assessee's argument that the establishment or maintenance of prayer-halls was not a religious object. The High Court also did not accept the assessee's argument that the object of clause 2(h) of the trust deed should not be considered to be a religious object because the trustees were not empowered to set up places of worship and prayer halls of a particular community or religion; it took the view that even if a trust was set up for the advancement of all the religions in the world, it would be a trust of a religious nature. The High Court rejected the assessee's argument that the Trust was not set up wholly or substantially for a religious purpose; one of the purposes, it said, was "to establish, maintain and grant aid to public places of worship and prayer halls", which was an entirely religious purpose.

8. Section 80G applies to donations to any institution or fund established in India "for a charitable purpose". "Charitable purpose, for the purposes of the section, does not include any purpose the

whole or substantially the whole of which is of a religious nature". (Emphasis supplied.)

Explanation 3, which uses this phraseology, takes note of the fact that an institution or fund established for a charitable purpose may have a number of objects. If any one of these objects is wholly, or substantially wholly, of a religious character, the institution or fund falls outside the scope of Section 80G and a donation to it does not secure the advantage of the deduction that it gives.

9. The judgment of this Court in Additional Commissioner of Income-Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, 121 I.T.R. 1, cited by learned counsel for the assessee, was delivered with reference to the true meaning of the words "not involving the carrying on of any activity for profits" occurring at the end of the definition of "charitable purposes" in Section 2(15) of the Income Tax Act. This Court said that if the primary or dominant purpose of the Trust was charitable, another object which by itself may not be charitable but which was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or the institution from being a valid charity. The judgment is of no assistance in construing Explanation 3 of Section 80G.

10. To reiterate, Explanation 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund's charitable purpose is of a religious nature. If it did it would read differently. It requires the ascertainment of whether there is one purpose within the institution or fund's over-all charitable purpose which is wholly, or substantially wholly, of a religious nature. There is little doubt that clause 2(h) of the Trust Deed which permits the trustees to support prayer halls and places of worship sets out a purpose the whole or substantially the whole of which is of a religious nature, and this has not been seriously disputed. Therefore, in our view, the Trust and the donation by the assessee to it fall outside the scope of Section 80G.

11. The appeals are dismissed. There shall be no order as to costs.