

Commissioner Of Income-Tax

Vs

U. P. Forest Corporation.

Civil Appeals Nos. 180-182 of 1989

(B. N. Kiepal, A. P. Mishra JJ)

02.03.1998

JUDGMENT

A. N. KIRPAL J. –

The question involved in these appeals is whether the respondent is a local authority and, therefore, its income is exempt from tax under section 10(20) of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

The U.P. Forest Corporation, the assessee herein, was constituted by a notification issued under section 3 of the U.P. Forest Corporation Act, 1974. This Corporation was established for better preservation, supervision, development of forest and better exploitation of forest produce within the State of Uttar Pradesh. It took over the work which was formerly done by the forest contractors and its income was from the exploitation of forest produce and sales thereof.

These appeals relate to the assessment years 1977-78, 1980-81 and 1984-85. During the course of assessment proceedings, the respondent had claimed its status to be that of "local authority" and, therefore, its income was liable to be exempted from levy of tax by virtue of section 10(20) of the Act. The Assessing Officer rejected the claim and, in respect of the assessment years 1977-78 and 1980-81, he taxed it in the status of "artificial juridical person" and in respect of the year 1984-85, as a "company".

The respondent then filed appeals in respect of the years 1977-78 and 1980-81 and the Commissioner of Income-tax (Appeals), following an earlier decision of the Allahabad High Court in Writ Petition No. 1568 of 1977 for the assessment year 1976-77, came to the conclusion that the respondent was a local authority and as such its income was exempted from tax. This order was challenged in appeal before the Tribunal which set aside the order of the Commissioner of Income-tax (Appeals) on the ground that the respondent was not a local authority in view of the decision of this court in the case of *Union of India v. R. C. Jain*, AIR 1981 SC 951; [1981] 2 SCR 854.

Instead of following the procedure prescribed by the Act by way of a reference under section 256 of the Income-tax Act, the respondent chose to file three writ petitions in the Allahabad High Court challenging the orders of the Tribunal in respect of the assessment years 1977-78 and 1980-81 and the order of the assessing authority for the assessment year 1984-85 which had been made by it. These writ petitions were entertained by the High Court which allowed the same. by coming to the conclusion that the respondent was a local authority and, therefore, its income was exempt from tax. Before the High Court, it was also contended by the respondent that it was a charitable institution and, therefore, its income was, in any case, entitled to exemption under section 11(1) of the Act.

This contention also found favour with the High Court.

In these appeals, by special leave, apart from contending that the High Court ought not to have exercised its jurisdiction under article 226 of the Constitution as the respondent should have availed of the alternative remedy open to it under the Act, it has been submitted on behalf of the appellant that the decision of the High Court on the merits is clearly contrary to the law laid down by this court and the respondent cannot be regarded as being a local authority. In support of this contention, strong reliance was placed by counsel for the appellant on the aforesaid decision in R. C. Jain's case, AIR 1981 SC 951, as well as the decisions in Valjibhai Muljibhai Soneji v. State of Bombay (now Gujarat), AIR 1963 SC 1890; [1964] 3 SCR 686 and Calcutta State Transport Corporation v. CIT [1996] 219 ITR 515 (SC).

On behalf of the respondent, Shri S. P. Gupta, learned counsel submitted that the respondent-Corporation had been set up to discharge Governmental functions and it was a local authority within the meaning of that expression in section 3(31) of the General Clauses Act. It was also submitted that section 3(3) of the U.P. Forest Corporation Act provides that the Corporation shall for all purposes be a local authority and furthermore according to section 17, the fund of the Corporation is regarded as a local fund. It was contended that the respondent satisfied the criterion of local authority as laid down by this court in R. C. Jain's case, AIR 1981. SC 951, and, therefore, the decision of the High Court calls for no interference. On the question, whether the Corporation exists and functions under a legal obligation for charitable purposes as defined by section 2(15) of the Act and, therefore, its income is exempt under section 11(1)(a) of the Act reliance was placed on the decision of this court in CIT v. Andhr

We will first consider the question as to whether the respondent is entitled to exemption under section 10(20) of the Act. The said clause reads as under :

"the income of a local authority which is chargeable under the head 'Income from house property', 'Capital gains' or 'Income from other sources' or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area."

The expression "local authority" is not defined in the Income-tax Act. Section 3(31) of the General Clauses Act, however, defines "local authority" as under :

"'Local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

This expression came up for consideration in the aforesaid cases of Valjibhai Muljibhai Soneji's case, AIR 1963 SC 1890, R. C. Jain's case, AIR 1981 SC 951 and Calcutta State Transport Corporation's case [1996] 219 ITR 515 (SC). In Valjibhai Muljibhai Soneji's case, AIR 1963 SC 1890, a contention had been urged that the state transport authority was a local authority, in the context of proceedings arising out of challenge to acquisition under the Land Acquisition Act. It had been contended that the State Transport Corporation was not a local authority but a company and that the provisions of Part VII of the Land Acquisition Act not having been complied with, the acquisition was bad. Dealing with this contention, it was observed by this court at page 696 of [1964] 3 SCR; page 1894 of AIR 1963 SC :

"The definitions given in the General Clauses Act, 1897, govern all Central Acts and Regulations made after the commencement of the Act."

While perusing the expression "local authority", as defined under section 3(31) of the General Clauses Act, it was observed at page 697 that the funds of the Corporation could not be regarded as a local fund. Dealing with the contentions that the Bombay State Transport Act, 1950, itself provided that the Corporation shall for all purposes be deemed to be local authority, it was observed that (page 1894 of AIR 1963 SC) : "No doubt, that is so. But the definition contained in this Act cannot override the definition contained in the General Clauses Act of 1897 which alone must apply for construing the expression occurring in a Central Act like the Land Acquisition Act unless there is something repugnant in the subject or context".

Applying the above principle in the present case, even though section 3(3) of the U.P. Forest Corporation Act regards the Corporation as being a local authority but for the purposes of the Act, the meaning of expression "local authority" as contained in the General Clauses Act, which is the Central Act, has to be seen. Merely because the U.P. Forest Corporation Act regards the respondent as a local authority, that would not, in law, make the respondent a local authority for the purposes of section 10(20) of the Act. Whether the respondent is a local authority or not has to be examined without regard to the fact that section 3(3) of the U.P. Forest Corporation Act regards it as a local authority. The test for determining whether a body is a local authority had been laid down by this court in R. C. Jain's case, AIR 1981 SC 951; [1981] 2 SCR 854. In the context of applicability of the Bonus Act, 1965, the question which arose there was whether the Delhi Development Authority was a local authority. In construing

"Let us, therefore, concentrate and confine our attention and enquiry to the definition of 'local authority' in section 3(31) of the General Clauses Act. A proper and careful scrutiny of the language of section 3(31) suggests that an authority in order to be a local authority, must be of like nature and character as a municipal committee, district board or body of port commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a municipal committee, district board, or body of port commissioners, but possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a municipal committee, district board or body of port commissioners shares with any other local authority? First, the authorities must have separate legal existence as corporate bodies. They must not be mere Governmen

This court then examined the provisions of the Delhi Development Act and came to the conclusion that the said authority had the above mentioned attributes of a local authority as defined by section 3(31) of the General Clauses Act.

The decision in R. C. Jain's case, AIR 1981 SC 951 was then followed in Calcutta State Transport Corporation's case [1996] 219 ITR 515 (SC) where the assessee had contended that it was a local authority. While holding that the definition of Corporation was not similar to the definition of the Delhi Development Act, it was observed as follows (page 520) :

"We do not think that the said decision is of any help to the assessee herein. The assessee is a road transport corporation constituted to render road transport services in the State. Sections 18 and 19 of the Road Transport Corporations Act which set

out the general duty and powers of the corporation establish clearly that the corporation is meant mainly and only for the purpose of providing an efficient, adequate, economical and properly co-ordinated system of road transport services in the State or part of it, as the case may be. It has no element of popular representation in its constitution. Its powers and functions bear no relation to the powers and functions of a municipal committee, district board or body of port commissioners. It is more in the nature of a trading organisation. Merely because it has a fund or for that matter merely because it is constituted to provide a public service and to employ persons in that connection, it cannot be said that its functions are similar to those of a municipal c

Applying the ratio of the aforesaid decisions to the facts of the present case, we find that it is not possible to hold that the corporation is a local authority within the meaning of that expression as contained in section 3(31) of the General Clauses Act, 1897. In R. C. Jain's case, AIR 1981 SC 951, it has been held that the "local authority" must have the nature and character of a municipal committee, district board, body of port commissioners. We are unable to accept the contention of Shri Gupta that in interpreting the scope and extent of the expression "other authority" in the definition of "local authority" in section 3(31) of the General Clauses Act the principle of ejusdem generis is not applicable because there is no distinct genus or category running through the bodies named earlier. The local authorities which are specifically mentioned in section 3(31) of the General Clauses Act clearly can be regarded as local bodies which are intended to carry on self-government. It is for this reason that thi istrict board or body of port commissioners. In R. C. Jain's case, AIR 1981 SC 951, at least five attributes or characteristics of an authority falling under section 3(31) of the General Clauses Act have been mentioned. At least three of the five attributes mentioned in the passage quoted above from R. C. Jain's case, AIR 1981 SC 951, are absent here. Firstly, the members of the respondent-Corporation are not wholly or partly, directly or indirectly, elected by the inhabitants of the area. According to section 4 of the U.P. Forest Corporation Act, the corporation consisted of a chairman and eight members. The chairman as well as the members are nominated by the State Government. Five members, so appointed, must be officers serving under the State Government and three non-official members appointed by the State Government must be belonging to the category, who in the Government's opinion, possess experience in matters relating to preservation and development of forests. It is too tenuous to contend as was sou

"In the first place when it is said that one of the attributes of a local authority is the power to raise funds by the method of taxation, taxation is to be understood not in any fine and narrow sense as to include only those compulsory exactions of money imposed for public purpose and requiring no consideration to sustain it, but in a broad generic sense as to also include fees levied essentially for services rendered. It is now well recognised that there is no generic difference between a tax and a fee; both are compulsory exactions of money by public authority. In deciding the question whether an authority is a local authority, our concern is only to find out whether the public authority is authorised by statute to make a compulsory exaction of money and not with the further question whether the money so exacted is to be utilised for specific or general purposes. In the second place the Delhi Development Authority is constituted for the sole purpose of the planned development of Delhi and no other purpose

In the case of the respondent-corporation, the Act does not enable it to levy any tax, cess or fee. It is the income from the sale of the forest produce which goes to augment its funds. It has no power

under the Act of compulsory exaction such as taxes, fees, rates or charges. Like any commercial organisation it makes profit from sale of forest produce and it has been given the power to raise loans. Whereas municipal or local funds are required to be spent for providing civic amenities, there is no such obligation on the respondent to do so. Merely because section 17 of the U.P. Forest Corporation Act states that the fund of the corporation "shall be a local fund" that would not make it a local fund as contemplated by section 3(51) of the General Clauses Act.

In our opinion, therefore, the High Court was not correct in coming to the conclusion that the respondent was a "local authority" and entitled to exemption under section 10(20) of the Act.

Coming to the question whether the income of the respondent is held for charitable purposes and, therefore, exempt from tax by virtue of section 11(1) of the Act, we find no such contention was raised by the respondent before the income-tax authorities. In order to take advantage of the provisions of section 11 of the Act, a trust or institution has to get itself registered. Whether the income of the institution can be regarded as being held for charitable purposes and whether the institution is entitled to registration under section 12A of the Income-tax Act requires investigation of facts. In the absence of this contention having been raised before the income-tax authorities, the High Court, in our opinion, ought not to have itself embarked upon examining this issue for the first time and then coming to a conclusion favourable to the respondent. We do realise that the respondent did not raise this contention before the income-tax authorities because it had contended that it was liable to exemption being a

These proceedings arise out of the writ petitions which have been filed challenging the correctness of the decision of the Tribunal in respect of the assessment years 1977-78 and 1980-81 and that of the assessing authority for the assessment year 1984-85. In our opinion, the proper course to adopt, while allowing these appeals, would be to require the assessing authority to examine the question as to whether the respondent is entitled to the benefit under section 11(1) of the Act. Before concluding, we would like to observe that the High Court ought not to have entertained the writ petitions when adequate alternative remedy was available to the respondent. Under the peculiar facts and circumstances of the present case and inasmuch as the litigation between the parties has been going on for a number of years, we do not think it will be appropriate to dismiss these appeals on this ground at this late stage. We, however, emphasise that petitioners should not normally short-circuit the procedure provided by the

For the aforesaid reasons, these appeals are allowed and the decision of the High Court is set aside. While holding that the respondent is not a local authority whose income is exempted from tax under section 10(20) of the Act, we, however, direct the assessing authority to consider the claim of the respondent that its income is not liable to be taxed in view of the provisions of section 11(1)(a) of the Act. This question should be decided by the assessing authority within six months from today and the liability of the respondent to pay tax would be subject to the outcome of that decision. There shall be no order as to costs.