

State of Kerala

Vs

M. P. Shanti Verma Jain

Civil Appeal No. 3020(NT) of 1986

(Sujata V. Manohar, D. P. Wadhwa JJ)

08.05.1998

JUDGMENT

D. P. WADHWA, J. –

1. State of Kerala in this appeal is challenging the judgment dated 6-2-1986 of the Division Bench of the Kerala High Court holding that MSP Family Jam Trust ("Trust" for short), of which the respondent is the President, is exempt from payment of tax on its agricultural income under Section 4 of the Kerala Agricultural Income Tax Act, 1950 ("Act" for short) as amended by the Kerala Act 9 of 1974. The High Court in its impugned judgment reversed the findings of the authorities under the Act that the Trust was a private family trust and the dominant object of the Trust was to propagate a particular religion and to render service to the followers of that religion and it could not be treated as a public trust. The authorities had also found that most of the income of the Trust was spent outside the State of Kerala.

2. For the Assessment Year 1974-75 (Accounting Year 1973-74), the Trust filed its return of agricultural income under the Act showing net profit of Rs. 53,191.39 and claimed exemption for the entire income. The Assessing Officer by his order dated 24-3-1980 assessed the income of the Trust at Rs. 63,099.00. He declined the claim of exemption made by the Trust stating that under Section 4 of the Act as amended, the benefit was applicable only to the extent to which the income of the Trust was applied to charitable purposes within the State. Trust filed appeal against the assessment order before the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, who, by order dated 9-9-1980, dismissed the same. Further appeal was filed by the Trust before the Kerala Agricultural Income Tax Appellate Tribunal. It was also dismissed by judgment dated 6-8-1981. At the instance of the Trust the following questions of law were referred to the Kerala High Court under Section 60 of the Act for the opinion of the High Court :

"1. Whether on the facts and in the circumstances of the case, this Tribunal is right in holding that Section 4 of Act 22 of 1950 as amended by Act 9 of 1974 is applicable for the assessment of tax for the Accounting Year 1973-74;

2. Whether on the facts and in the circumstances of the case, this Tribunal is right in holding that since the object of the Trust being propagation of Jain religion and the service of its followers, the Trust is not entitled for the claim of exemption from tax under Section 4 as it stands after the amendment of the Act by Act 9 of 1974;

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that even the amount spent in this State in furtherance of the objects of the

Trust cannot be treated as allowable items of expenses; and

4. Whether on the facts and in the circumstances of the case, this Tribunal has any material in inferring and it is justified in entering into a finding that the object of the Trust is only to spend money for the propagation of a particular type of religion and for the service of its followers."

3. The High Court answered the first question in favour of the Revenue in view of the decision of this Court in *Karimtharuvi Tea Estate Ltd. v. State of Kerala* ((1966) 60 ITR 262 : AIR 1966 SC 1385). The High Court held that the Trust was both religious and charitable and even if it was construed as a private religious trust the benefit to the public provided for in the Trust Deed took it out of the exclusion of clause (a) of sub-section (3) of Section 4 of the Act. The High Court said that taken as a charitable trust, the benefits of the Trust were not confined to any particular religious community or caste and for the reason it did not fall under the exclusion in clause (b) of sub-section (3) of Section 4 of the Act as well. The High Court was, thus, of the view that the income of the Trust was entitled to exemption under Section 4 of the Act except to the extent to which its income was not applied for charitable or religious purposes within the State. The High Court answered Questions 2, 3 and 4 in favour of the Trust and against the Revenue.

4. The relevant part of Section 4 of the Act, on the basis of which the Trust claimed exemption, is as under :

"4. Total agricultural income. - (1) Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within the State and received by him within or without the State, but does not include -

#(a) \* \* \*##

(b) any agricultural income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in the State;

(c) any agricultural income derived from property held under trust in part only for such purposes, to the extent to which such income is applied to such purposes in the State.

#(2) \* \* \*##

(3) Nothing contained in clause (b) or clause (c) of sub-section (1) shall operate so as to exclude from the total agricultural income of the previous year of the person in receipt thereof -

(a) any part of the agricultural income from the property held under trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution, any agricultural income thereof, if the trust or institution is created or established for the benefit of any particular religious community or caste;

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5. It is not disputed that the Trust derived agricultural income from the property held under the Trust. The question is if the Trust is wholly for charitable or religious purposes to seek exemption from payment of tax on such income and further if such income is applied to such charitable and religious purposes in the State of Kerala. Exemption provided under Section 4(1) (b) can be denied under Section 4(3) (a) if any part of the agricultural income from property held under the trust for private religious purposes is not meant for the benefit of the public and (b) in the case of agricultural income of the trust for charitable purposes if it is established only for the benefit of a particular religious community or caste. As noted above, the Tribunal found that the Trust was a private family trust. That was not the subject-matter of reference in any of the questions referred to the High Court. But the High Court's finding was that the Trust was a public trust. The High Court fell in error in going into the question if the assessee was a public trust or a private trust. That being so Section 4(1)(b) and Section 4(1) (c) were not applicable to the assessee-Trust. The authorities under the Act including the Appellate Tribunal minutely examined various terms of the Trust Deed and found that for all intents and purposes the object of the Trust was to propagate a particular religion and to render service to the followers of that religion, particularly, with reference to the families, who created the Trust. The assessee, therefore, could not be considered for exemption, being a private trust, set up to promote a particular religion whose agricultural income does not enure for the benefit of the general public. It was also found that most part of the agricultural income was spent for several purposes outside the State of Kerala. The exemption is allowed to the extent to which such agricultural income is applied to such purposes within the State of Kerala, if it is a public trust. The High Court decided the questions referred to it only in the abstract without considering as to how much agricultural income of the Trust was spent in Kerala. We have also examined the Trust Deed which was produced at the time of arguments. The Deed of Trust and the rules run into more than thirty pages out of which six pages of the Trust Deed narrate the philosophy of Jain Dharma. The objects of the Trust clearly show that the Trust is meant for propagation of Jain religion and rendering help to the followers of Jain religion. Even medical aid and similar facilities are to be rendered to persons devoted to Jain religion and to non-Jains if suffering from ailments but the medical aid could be given to them only if any member of the families managing the Trust, shows sympathy and is interested in their treatment. The Tribunal, in our opinion, was right in its conclusion that the dominant purpose of the Trust in the present case was propagation of Jain religion and to serve its followers and any part of agricultural income of the Trust spent in the State of Kerala also could not be treated as allowable item of the expenses.

6. Accordingly we will set aside the impugned judgment of the High Court and answer Questions 2 to 4 in favour of the Revenue and against the assessee-Trust. There will be no order as to costs.