

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Palghat Shadi Mahal Trust

C.A.Nos.4294-4303 of 2000

(S.P. Bharucha, Y.K. Sabharwal and B.N. Kumar JJ.)

19.07.2001

ORDER

1. These appeals by the Revenue arise upon a certificate of fitness given by the High Court of Kerala (see [1999] 236 ITR 722). The High Court answered in the affirmative and in favour of the assessee-trust the following question (page 725):

"Whether, on the facts and in the circumstances of the case, the assessee is a charitable institution whose income is exempt under Section 11 of the Income-tax Act, 1961 ?"

2. The assessee-trust is a public charitable trust. It was constituted under a trust deed dated April 14, 1975. The settlors of the trust were certain Muslim residents of Kerala. They constituted the trust "for the purpose of constructing and establishing at Palghat a Shadi Mahal and other institutions for the educational, social and economic advancement of the Muslims and for religious and charitable objects recognised by Muslim law..." Within a few days of the creation of the trust, i.e., on April 20, 1975, a special general body meeting of the trust was held and it was resolved thus:

"It was decided to further clarify the clause in the trust deed regarding the purpose of the trust as mentioned in page 5 of the trust deed as:

The income of the trust as well as the Shadi Mahal Building proposed to be erected shall be made available to all communities irrespective of religion, caste or creed."

3. Upon this basis, the trust made a claim for exemption from tax under Section 11 of the Income-tax Act, 1961. The matter went up to the High Court which restored the appeal to the Income-tax Appellate Tribunal with certain directions. Thereafter, the Tribunal came to the conclusion that the trust was entitled to the exemption by virtue of the provisions of the second Explanation to Section 13 of the Act. The High Court, in the judgment and order under challenge, has upheld this finding.

4. Section 11 deals with income from property held for charitable and religious purposes and sets out which income shall not be included in the total income of a trust. It does not apply when the provisions of Section 13 are attracted. Section 13(1)(b) is relevant here, and reads thus :

"13. (1) Nothing contained in Section 11 or Section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-- . . .

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste."

5. The second Explanation to Section 13 reads thus:

"Explanation 2.--A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of Clause (b) of Sub-section (1)."

6. It is an admitted position that in the State of Kerala the Muslims are notified to be a backward community and it is on that basis that the Tribunal and the High Court held that the trust was entitled to the benefit of the second Explanation to Section 13 and, therefore, the benefit of Section 11.

7. It was contended before us on behalf of the Revenue that the Tribunal and the High Court failed to take into account the fact that the trust provided benefits to Muslims all over the world and not only to the Muslims of Kerala so that it could not be said that the trust was covered by the provisions of the second Explanation to Section 13.

8. On behalf of the trust it was submitted that the resolution of the general body of the trust passed on April 20, 1975, operated and that, therefore, the benefits of the trust were not restricted to any particular community or religion. Reliance in this behalf was placed upon Clause (xiv) of the trust deed which entitles the general body of the trustees, by majority of the trustees attending the meeting, to "decide the meaning and scope of any of these clauses ..." The trust is created for the purposes of establishing institutions for the educational, social and economic advancement of the Muslims and for religious and charitable objects recognised by Muslim law; The resolution of April 20, 1975, purports to change the object of the trust so that the benefits thereof are made available to all communities, irrespective of religion, caste or creed. This is not deciding the meaning and scope of a clause of the trust deed but an attempt to alter the object of the trust deed, which is not contemplated by the said Clause (xiv) and is impermissible except by means of an amendment of the trust deed by the settlors.

9. It was also contended on behalf of the trust that the trust enures only for the benefit of the residents of the locality and is so used and, therefore, the income of the trust is saved by the second Explanation to Section 13. This contention also ignores the object of the trust which we have set out above. There is no limitation in the trust deed in regard to which Muslims can avail of the benefit of the trust. The benefit is available to Muslims from all over the world, none of whom, except in Kerala, are of backward classes. It is, therefore, not possible to accept the view taken by the High Court and the Tribunal that the trust is covered by the second Explanation to Section 13.

10. The trust attracts the provisions of Section 13(1)(b) and is not entitled to exemption under Section 11. The question, therefore, is answered in the negative and in favour of the Revenue.

11. The appeals are allowed and the judgment and order under challenge is set aside. The assessee-trust shall pay to the Revenue the costs of the appeals.

C. A. No. 5021 of 2000:

12. The question raised in this appeal is the question that was raised in C. A. Nos. 4294-4303 of 2000, which we have just allowed. This appeal is, therefore, allowed and the judgment and order under challenge is set aside.

13. No order as to costs.