

KERALA HIGH COURT

Dharmodayam Company

Vs.

Commissioner of Income-Tax

I.T.R. No. 10 of 1960

(M.S. Menon, Ag. C.J. and M. Madharan Nair, J.)

20.12.1961

JUDGMENT

M.S. Menon, Ag. C.J.

1. This is a reference by the Income-tax Appellate Tribunal, Madras Bench "A" under section 66(1) of the Indian Income-tax Act, 1922. The question referred is :

"Whether the income derived by the assessee trust from business in kuries is exempt from tax under the provisions of section 4(3) (i) of the Indian Income-tax Act, 1922, as amended by Act 25 of 1953 for the five years 1952-53 to 1956-57 ?"

2. The assessee is the Dharmodayam Company, Trichur, a company registered under the Cochin Companies Regulation. The licence granted to the company of January 21, 1919, under section 32 of that Regulation - the section corresponds to section 32 of the Companies Act, 1956 - is in the following terms :

"Under section 32 of the Cochin Companies Regulation, the Diwan is pleased to direct that the company named The Dharmodayam Company, Trichur which has for its objects the promotion of charity, education, industry, etc., and the doing of all such other things as are incidental or conducive to the attainment of the same, be registered with limited liability without the addition of the word limited to its name."

3. That the assessee is a trust is not disputed. The Income-tax Officer was also of the view that the trust was of a charitable character. He said :

"The company is a charitable institution and it is doing business of conducting kuries and advancing loans on interest."

4. There is no specific dissent by the Appellate Tribunal, and we think we will be justified in

proceeding on the assumption that the Tribunal took the view that the assessee company was not only a trust but a charitable trust as well. If the company is a charitable trust, the only question that arises for consideration is whether the proviso to section 4(3) (i) of the Indian Income-tax Act, 1922, is attracted as contended by the department or not.

5. Section 4 deals with the application of the Act. Sub-section (3) thereof directs that any income, profits or gains falling within the classes specified therein shall not be included in the total income of the person receiving them. The class of income specified in clause (i) of sub-section (3) is :

"... any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto."

The exclusion is subject to clause (c) of sub-section (1) of section 16. We are not concerned with that provision.

6. The relevant portion of the proviso to clause (i) sub-section (3) of section 4 reads as follows :

"Provided that such income shall be included in the total income -
(b) in the case of income derived from business carried on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either -
(i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or
(ii) the work in connection with the business is mainly carried on by beneficiaries of the institution."

It is settled law that a business itself can be held under trust for religious or charitable purposes and that the income derived from such a business will fall within the ambit of the exclusion granted by clause (i) of sub-section (3) of section 4. The contention that we are called upon to decide is the contention of the department that such an income can be governed by the proviso as well and thus brought back into the net of taxation.

7. We negatived a similar contention in *Commissioner of Income-tax v. Krishna Warriar*¹, and we see no reason to differ from what we said in that decision. In that case, we quoted the following passage from Raghavachariar :

"If the business itself is held under trust for religious or charitable purpose, then income is to be considered as falling under section 4(3) (i). But if the business is not itself the subject of the trust, but the business is carried on by an institution which he held under a trust, but the business itself does not form part of trust, then section 4(3) (i) (b) will apply

(Volume I, page 254):

¹1961 K.L.J., 213

and the following observation of Desai J. In *Dharma Vijaya Agency v. Commissioner of Income-tax*²,

"On a fair reading of clause (i), it must be held, in my judgment, that there is nothing in proviso (b) to clause (i) of section 4(3) which in any manner touches the case of a business which is held under trust for religious or charitable purposes. The income derived from such business is not to be included in the total income of the person receiving it.",

as embodying a correct statement of the law.

8. We are dealing with a case where the business itself is held under a trust for religious or charitable purposes; we are not dealing with a case where the business is conducted on behalf of the religious or charitable institution. This is abundantly clear from the memorandum of association. The first object of the company, as stated therein, is "to raise funds by conducting kuries with the company as the foreman; receiving donations and subscriptions; and by such other means as the company deems fit,"

9. In the light of what is stated above we must hold that the proviso is not attracted and that the question referred has to be answered in the affirmative and in favour of the assessee. We do so.

10. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Appellate Tribunal as required by sub-section (5) of section 66 of the Indian Income-tax Act, 1922.

² A.I.R. 1960 Bom 380