

KERALA HIGH COURT

Commissioner of Income-Tax

Vs

Dharmodayam Co

(K.K Usha, C.J. G Sivarajan, J.)

10.01.1997

JUDGMENT

K.K. Usha, J.

1. This is a reference made by the Income-tax Appellate Tribunal, Cochin Bench, at the instance of the Revenue. The following is the question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case and also on an interpretation of Section 11(4A) of the Income-tax Act, the assessee is entitled to exemption under Section 11(1) of the Income-tax Act, 1961 ?"

2. The relevant facts of the case in brief are as follows :

The respondent/assessee-company was being held to be a charitable institution entitled to claim exemption under Section 11(1) till the assessment year 1983-84. For the year 1984-85, the assessing authority took the view that the company is not eligible for exemption under Section 11(1) in respect of the income earned from its kury business in view of the introduction of Section 11(4A). The assessee has computed its net profit from kury business at Rs. 2,64,939 and deducted the amount spent for charity, scholarship, etc., from the business income. The assessing authority took the view that in the light of Section 11(4A) deductions claimed by the assessee are not admissible and the entire amount would be subjected to tax as the assessee's income from business. On appeal, the Commissioner of Income-tax (Appeals) upheld the assessment order and took the view that the decision of the Supreme Court in the assessee's own case in *CIT v. Dharmodayam Co^l*. is of no help to the assessee for the year 1984-85, since Section 11(4A) came into force with effect from April 1, 1984.

3. On second appeal, the Tribunal upheld the contention of the assessee. It took the view, following the decision of the Supreme Court referred to above, that the kury business itself is held in trust by the assessee and, therefore, it cannot be denied the benefit of exemption under Section 11(1) of the Income-tax Act, 1961, in respect of the income from the kury business. It is

from the above finding, the Revenue has come up in reference.

4. It is contended by learned standing counsel for the Revenue that the provisions contained in Section 11(4A) of the Income-tax Act, 1961, would directly apply to the case of the assessee. The assessee is not entitled to the exemption provided under Clauses (a) and (b) of Section 11(4A), since it is not conducting a business of the type referred to therein and that the business is not carried on by the beneficiaries of the assessee. On the other hand, learned counsel for the assessee submitted that the provisions of Section 11(4A) would not apply in respect of business which is held under trust for promotion of charitable objects. The kury business of the assessee was held under trust for promotion of its objects. It has been so held by the Supreme Court in *CIT v. Dharmodayam Co*².

5. Therefore, according to the assessee, the introduction of Section 11(4A) will not make any difference to the claim put forward by it under Section 11(1).

6. This court had occasion to consider the claim made by the assessee-company for exemption of its income from the kury business under Section 4(3)(i) of the Indian Income-tax Act, 1922, as amended by Act 25 of 1953 in *Dharmodayam Co. v. CIT*³ The relevant provisions of Section 4(3) read as follows :

"4. (3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

(i) Subject to the provisions of Clause (c) of Sub-section (1) of Section 16, 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 :

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."

7. After examining the memorandum and articles of association of the assessee-company this court took the view that the business of kury carried on by the assessee-company is held under a trust for religious or charitable purposes and it is not a case where the business is conducted on behalf of a religious or charitable institution. This court observed that it was 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. After referring to an earlier decision of this court in *CIT v. Krishna Warriar*⁴ this court rejected the contention raised by the Department that such an income received by the assessee would be governed by the proviso as well and thus brought back into the net of taxation. In *CIT v. Dharmodayam Co.* [1977] 109 ITR 527(Supra), the Supreme Court considered the case of the assessee after the Income-tax Act, 1961, came into force, The relevant provisions under the Income-tax Act, 1961, read as follows :

"11. Income from property held for charitable or religious purposes.--(1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –

(a) 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 India ; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent, of the income from such property."

8. Section 2(15).

"2. In this Act, unless the context otherwise requires,--

(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

9. The Supreme Court rejected the contention raised by the Revenue that in view of the change brought about by the Income-tax Act, 1961, in the definition of the expression "charitable purposes" the decision of this court in *Dharmodayam Co. v. CIT* [1962] 45 ITR 478 (Ker)(supra)(Suupra), is no longer good law. In *Dharmodayam Co. v. CIT* [1962] 45 ITR 478 (Ker)(supra)(Supra), this court had taken the view that the kury business itself was held under a trust for religious or charitable purposes. This decision was taken in appeal before the Supreme Court by the Revenue ; but it was later withdrawn. Even though the relevant legislative provision had undergone a change, the nature of the respondent's activity remained what it was when this court gave its judgment in *Dharmodayam Co. v. CIT* [1962] 45 ITR 478 (Ker)(supra). The Supreme Court, therefore, held that the decision of this court in *Dharmodayam Co. v. CIT* [1962] 45 ITR 478(Supra), concluded the point that the kury business is not conducted by the assessee in order to advance or for the purpose of advancing any object of general public utility.

10. Reference was also made to an earlier decision of the Supreme Court in *CIT v. P. Krishna Warriar*⁵ where the provisions contained under Section 4(3)(i) of the Indian Income-tax Act, 1922, were considered and it was held that Clause (b) of the proviso to the section did not apply

to cases in which the business itself was held in trust. In this decision of the Supreme Court, the judgment of this court in *Dharmodayam Co. v. CIT*⁶ was referred to approvingly. After considering all these aspects in *CIT v. Dharmodayam Co.* [1977] 109 ITR 527(Supra), the Supreme Court took the view that there is no change in the position regarding the claim of the assessee for exemption even by applying the provisions under the Income-tax Act, 1961. Thus, the decision of this court in the assessee's case in *CIT v. Dharmodayam Co*⁷., granting the benefit of exemption was affirmed by the Supreme Court.

11. In the light of the above discussion, we will consider whether there is any change in the legal position regarding the claim of the assessee after the introduction of Sub-section (4A) under Section 11 of the Income-tax Act, 1961, by the Finance Act of 1983 with effect from April 1, 1984. It is also relevant to note that under the very same Finance Act, the definition of "charitable purposes" under Section 2(15) has also undergone a change. Section 2(15) as amended reads as follows :

" 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility."

12. The words "not involving the carrying on of any activity for profit" were deleted and provisions similar to the proviso to Section 4(3)(i) under Indian Income-tax Act, 1922, were incorporated in Sub-section (4A) which reads as follows :

"(4A) Sub-section (1) or Sub-section (2) or Sub-section (3) or Subsection (3A) shall not apply in relation to any income, being profits and gains of business, unless -

(a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette ; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution."

13. Along with the introduction of Sub-section (4A), Section 13(1)(bb) which read as follows :

" (bb) in the case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any business, any income derived from such business, unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution ;"

14. was deleted. A reading of Sub-section (4A) would show that it does not deal with the income being profits and gains of business which is held in trust for public religious purposes or a business carried on by an institution wholly for charitable purposes. If the business of kury is to be treated as a business carried on by the assessee for the purpose of achieving its objects, the

assessee will have to satisfy the conditions contained under Clauses (a) and (b) to be eligible for exemption. But if the kury business is held in trust the income therefrom would not be governed by Sub-section (4A) as has been held by the Supreme Court in *CIT v. Dharmodayam Co.* [1977] 109 ITR 527(*supra*). It has become conclusive that the kury business is held in trust by the assessee and that it is not a business carried on by the assessee. The provisions contained under Section 4(3)(i)b(ii) of the Indian Income-tax Act, 1922, as amended by Act 25 of 1953 are more or less similar to Sub-section (4A)(b) of the 1961 Act. We, therefore, find no reason to take a different view from what had been taken by this court in *Dharmodayam Co. v. CIT* [1962] 45 ITR 478(*supra*) while considering the case of the assessee under the 1922 Act. The contention raised by the Revenue that Sub-section (4A) would take in profits and gains of any business including a business held in trust cannot be accepted in the light of the clear language of the section. By Sub-section (4A) the benefit due to an assessee in the case of an income from a business held in trust is extended to an income from a business carried on by it on its satisfying the conditions laid down under Clauses (a) and (b). The Tribunal has correctly held that the assessee is entitled to claim exemption under Section 11(1) of the Income-tax Act, 1961, in respect of its income from the kury business.

15. In the light of the above, we answer the question in the affirmative, in favour of the assessee and against the Revenue.

16. A copy of this judgment under the seal of the court and the signature of the Registrar shall be forwarded to the Income-tax Appellate Tribunal, Cochin Bench.

Cases Referred.

1[1977] 109 ITR 527

2[1977] 109 ITR 527

3[1962] 45 ITR 478 (Ker)

4[1962] 44ITR 828

5[1964] 53 ITR 176

6[1962] 45 ITR 478

7[1974] 94 ITR 113