

# **BOMBAY HIGH COURT**

Commissioner of Income-Tax

Vs

D.D. Deshpande

(R Kantawala, C.J. V Tulzapurkar, J.)

26.06.1975

## **JUDGMENT**

### **Kantawala, C.J.**

1. At the instance of the revenue the following question has been referred for our determination :

"Whether, on the facts and in the circumstances of the case, the income from properties held under trust created by the assessee by the deed dated December 24, 1947, was exempt under section 4(3)(i) of the Indian Income-tax Act, 1922 ?"

2. The question relates to the assessment year 1960-61 for which the corresponding previous year is the financial year 1959-60. The assessee settled on trust certain properties by an indenture of trust dated December 24, 1947. The supreme object of the trust was to effect revival by spreading and giving currency to the Karma Marg mingled with Bhakti as substantiated by Shri Dnyaneshwar Maharaj and to the Tatwadnyan as expounded in Dnyaneshwari with the intention of annihilating the decline that had set in religion. The trust was to establish at the holy place of Alandi the institution of Shri Dnyaneshwar Maharaj and to the Tatwadnyan as expounded in Ddnyaneshwari Vidyapeeth and propaganda centres in Maharashtra, the whole of India and, if necessary, in foreign countries to accomplish its objects. The particulars of this charitable trust are specially to be found in clause 6 of the indenture of trust. With a view to carry out the objects of the trust, authority was given for framing necessary rules. The management of the trust is provided in a detailed manner and the settlor is to be a trustee for his lifetime. Reliance, however, is placed by Mr. Joshi upon a clause which appears a little later, where it is stated ".....it is the desire of the original founder and trustee Ra. Ra. D. D. Deshpande that his sons or daughters or the male or female descendents of those sons or those daughters, should be they or their grandsons be in poverty may, for obtaining proper and necessary deduction or for their maintenance and protection being continued well and steadily through this Trust Fund, through Vidyapeeth (university) or through industries and business connected with the Trust fund, be given financial aid" in any of the modes prescribed therein.

3. The Income-tax Officer included the income of the trust in the total income of the assessee on the ground that the income from the properties was the income of a private trust. On appeal by the assessee the order passed by the income-tax Officer was confirmed by the Appellate assistant Commissioner. In further appeal before the Tribunal the Tribunal held that the income of the properties held in trust was exempt under section 4(3)(i). It took the view that, if regard be had to the provisions of the trust deed, then the case was covered by the decision of the supreme Court in Trustees of the charity Fund v. Commissioner of Income-tax. It is against this order passed by the Tribunal that the revenue has asked for the present reference.

4. Mr. Joshi, on behalf of the revenue, has contended that since it is possible for the trust fund to give help to poor members of the family of the settlor in the manner indicated, the income of the trust cannot be regarded as exempt under section 4(3)(i). He submitted that making of a provision for giving financial aid to the members of the family of the settlor will indicate that the income of the trust cannot be regarded as exempt under the said section.

5. Under section 4(3) of the Indian Income-tax Act, 1922, any income, profits or gains falling within the various classes following shall not be included in the total income of the person receiving them. We are concerned with clause (i) therefore, which is as under :

"(i) Subject to the provisions of clause (c) of 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 :....."

6. There are certain provisos to this clause with which we are not concerned. If regard be had to the dominant intention of the trust it cannot be disputed that the whole of the income derived from property is held under trust for the religious and charitable objects therein mentioned. It will be useful in this connection to refer to the decision of the Supreme Court in the case of Trustees of the Charity fund v. Commissioner of Income-tax. In that case a trust for purposes of charity was executed by Sir Sassoon David, Bart., and four other persons under a deed of declaration of trust of that fund. Clause 13 of the deed of trust provided :

"The trust fund shall be held by the trustees upon the trusts to apply the net income thereof after providing for all necessary expenses in relation to the management of the trust funds for all or any of the following purposes, that is to say, (a) the relief and benefit of the poor and indigent members of Jewish or any other community of Bombay or other parts of India or of the world either by making payments to them in cash or providing

them with food and clothes and/or lodging or residential quarters or in giving education including scholarships to or setting them up in life or in such other manner as to the said trustees may seem proper or (b) the institution, maintenances and support of hospitals and schools, colleges or other educational institutions or (c) the relief of any distress caused by the elements of nature such as famine, pestilence, fire, tempest, flood, earthquake or any other such calamity or (d) the care and protection of animals useful to mankind or (e) the advancement of religion or (f) other purposes beneficial to the community not falling under any of the foregoing purposes :

Provided always that in applying the income as aforesaid the trustees shall give preference to the poor and indigent relations or members of the family of the said Sir Sassoon David, Bart., including therein distant and collateral relations."

7. The question that arose for consideration was whether the income from this trust fund was exempt from taxation as income from a charitable trust under section 4(3)(i) of the Act. The Supreme Court held that sub-clauses (a) to (f) of clause 13 of the deed of trust omitting the provisos constituted a valid public charitable trust and, as the relations or members of the family of Sir Sassoon David did not figure as direct recipients of any benefits under sub-clauses (b) to (f) and the circumstance that in selecting the beneficiaries under sub-clause (a) preference had to be given under the provisos to the relations or members of the family of Sir Sassoon David could not effect that public charitable trust, the income from the properties came within the scope of section 4(3)(i) and were exempt from taxation.

8. It is not disputed in the present case that the dominant object of the present trust is that of a religious and charitable trust. The only thing on which reliance is placed by Mr. Joshi on behalf of the revenue is the provision in the trust deed where the settlor has expressed a desire to give financial aid to poor members of the family of the settlor and their descendants. Construing the trusts properly this is only a desire and no fetter is placed upon the power of the trustees to utilise the income of the trust for charitable purposes. Even a direction is not given to give preference but simply a desire is expressed. When such is the case then the facts in the present case are even stronger than those in the Supreme Court case above referred to and, in our opinion, the Tribunal was right in taking the view that the income of the trust was exempt under section 4(3)(i) of the Act. Accordingly, the question referred to us is answered in the affirmative and in favour of the assessee. The revenue shall pay the costs of the assessee.

