

Before : G. C. Mital and S. S. Sodhi, JJ.

M/S. GANDU MAL DHARAM ARTH TRUST,—Applicant.

versus

COMMISSIONER OF INCOME-TAX, HARYANA, ROHTAK,
—Respondent.

Income Tax Reference No. 142 to 144 of 1982

11th April, 1989.

Income Tax Act, 1961—S. 11, 256 (1)—Assessee Trust stating Charitable Objects in Trust deed—Trust Money to remain with trustees at nominal interest—In 15 years only Meagre amount of Rs. 2,002 donated to unnamed school—Income of trust not utilized for charitable purposes—Income of such trust not exempt.

Held, that in order to qualify for the exemption claimed, it was incumbent upon the assessee to show that the predominant object of the activity, it was involved in, was to subserve some charitable purpose, and not to earn profit. Here, as shown earlier, though the Trust Deed was drawn as far back as 1960 and the Trust thereafter acquired this business, the only amount shown to have been spent for some charitable purpose was this donation of Rs. 2,002 and that too to some unnamed school. There is no material on record, that other than this, any part of the income of the assessee—Trust was utilized for any charitable purpose. The income of the trust was thus not exempt under section 11 of the Income-tax Act, 1961.

(Para 9).

Reference under Section 256(1) of the Income-tax Act, 1961, by the Income Tax Appellate Tribunal, Delhi Bench 'B', Delhi, to the Hon'ble High Court of Punjab and Haryana at Chandigarh for its opinion on the following questions of law arising out of the Tribunal's consolidated order dated 26th June, 1981 in R.A. Nos. 1324 to 1326 (Del)/81 in I.T.A. Nos. 1307 & 1308(Del)/80 & 133(Del)/81; Assessment Years : 1974-75, 1975-76 and 1977-78 :

“Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the income of the assessee trust was not exempt u/s 11 of the Income-tax Act, 1961?”

Rajinder Chhibber, Advocate, for the Applicant.

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Respondents.

JUDGMENT

(1) The assessee—Messers Gandu Mal Dharam Arth Trust claims to be a charitable trust and thus entitled to exemption under section 11 of the Income Tax Act, 1961.

(2) The record shows that the assessee-Trust is said to have been originally founded by one Giano Devi, wife of Gandu Mal in 1944. As the Trust Deed was not forthcoming another Trust Deed was drawn up and executed on December 12, 1960. Smt. Giano Devi donated Rs. 30,000 to the Trust. The objects of the Trust as set forth in the Trust Deed briefly stated being following :—

- (i) to run dispensaries hospitals or maternity homes for helping human beings and animals and to provide meals and clothings to the patients;
- (ii) To dig wells to provide water to men and animals also install *chhabil* of drinking water and arrange for bathing arrangements and provide food and accommodation for travellers;
- (iii) To render financial aid to male and female students and to give scholarships loan and alms to the poor and deserving students;
- (iv) To give loans to the helpless and the poor including orphans and widows, to open reading rooms and library and arrange for supply of books and newspapers; and
- (v) To spend money on around welfare of the human race, particularly sufferers on account of earth-quakes, floods etc.

(3) The Trust Deed further provided that it would be the duty of the Trustees to invest the trust funds wholly or in part in some business. It was in pursuance of this clause that the trustees came to acquire the business known as Messers Amrit Ice and General Mills, Rohtak and this business thereafter is being run by the trustees. It is in respect of the income derived by the Trust from this business that exemptions was claimed under Section 11 of the Act.

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(4) It is the finding of the Tribunal that no part of the income of the Trust was ever actually utilized for any charitable purpose except a sum of Rs. 2,002 shown to have been paid as a donation to some school, the name of which was not disclosed and that except for acquiring business and investing therein, no charitable purpose was sought to be pursued.

(5) While dealing with this matter, it would also be relevant to advert to clauses (iii) to (vii) of the Trust Deed, the English Translation of which reads as under :—

“(iii) Shrimati Giano Devi donates Rs. 30,000 at present which will be considered as trust property and has in fact been dedicated for this purpose;

(iv) the cash amount of the trust will remain in the custody of the legal representatives L. Gandu Mal who are also the trustees of the trust and they will be responsible for paying interest @ 3 annas P.C.P.M. on the amount with them to the trust fund ;

(v) it shall be the duty of the trustees by the opinion majority to invest a part of the trust fund in some business;

(vi) the trust shall not have the authority to spend the cash capital. The capital shall remain the custody of the trustees who would spend by majority opinion to the extent of its interest or income according to the circumstances require for spending for the purpose of the trust;

(vii) if the income of the trust funds cannot be spent in a particular year, it may be spent next year along with the income of the said next year in part or full. And, if the trustees deem it proper they may add the unspent income to the trust capital fund or reserve it to be taken over to next year.

(6) Particular note deserves to be made of clause (iv) in terms of which the trustees have been made liable for paying interest on the Trust amount at the rate of 6 per cent per annum and not the market rate as is prevalent from time to time.

(7) It is, taking these aspects of the matter into account that the Tribunal declined exemption under Section 11 of the Act as claimed by the assessee and this is what has now led to the following question being referred for the opinion of this Court :—

“Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the income of the assessee trust was not exempt U/s 11 of the Income-Tax Act, 1961 ?”

(8) No other answer except one in favour of revenue and against the assessee is possible with regard to the question referred.

(9) As is well-known, in order to qualify for the exemption claimed, it was incumbent upon the assessee to show that the predominant object of the activity, it was involved in, was to subserve some charitable purpose, and not to earn profit. Here, as shown earlier, though the Trust Deed was drawn as far back as 1960 and the Trust thereafter acquired this business, the only amount shown to have been spent for some charitable purpose was this donation of Rs. 2,002 and that too to some unnamed school. There is no material on record, that other than this, any part of the income of the assessee-Trust was utilized for any charitable purpose.

(10) This reference is thus disposed of accordingly. In the circumstances, however, there will be no order as to costs.

P.C.G.

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, HARYANA, ROHTAK,
—Applicant.

versus

AMRIT LAL.—Respondent.

Income Tax reference No. 38 and 39 of 1983.

12th April, 1989.

Income Tax Act, 1961—Ss. 80 (J), 256 (1)—Deduction under S. 80(J) not claimed by assessee—Assessee claiming set off under revised return in subsequent year—Carry forward of deduction—Whether can be allowed.