

Commissioner Of Income Tax vs Gujarat Maritime Board on 5 December, 2007

Bench: S.H. Kapadia, B. Sudershan Reddy

CASE NO. :
Appeal (civil) 5656 of 2007

PETITIONER:
Commissioner of Income Tax

RESPONDENT:
Gujarat Maritime Board

DATE OF JUDGMENT: 05/12/2007

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:

JUDGMENT ORDER Leave granted.

Gujarat Maritime Board is a statutory Authority constituted under Section 3(2) of Gujarat Maritime Board Act, 1981.

Before 13.11.2002, the Board was registered as "Local Authority" as defined under Section 3(31) of the General Clauses Act, 1897 which was a very wide definition. Prior to 2002, the Board was availing exemption as Local Authority under Section 10(20) of the 1961 Act. Accordingly, prior to 2002 the income of the Board was not exigible to income-tax under Section 10(20) of the Income-tax Act, 1961.

By Finance Act, 2002, an Explanation was added in Section 10(20) by which "Local Authority" was defined. It gave a restricted meaning to the word "Local Authority". By reason of the said Explanation, the expression.

"Local Authority" was confined to Panchayats, municipality, municipal committee, district board and cantonment board. Thus, Maritime Board did not come within the definition of the expression "Local Authority".

Under the circumstance, Gujarat Maritime Board made an application to the Commissioner for registering it (Board) as a "Charitable Institution" as defined under Section 2(15) of the Income-tax Act, 1961(hereinafter for the sake of brevity as "1961 Act"). Accordingly, they claimed exemption as Charitable Institution in respect of income derived from their property/business under Section 11 of the 1961 Act. This has been denied by the Department.

The short controversy which we are required to decide in this case is:

whether the Maritime Board is entitled to the status of a Charitable Institution under Section 11 of the 1961 Act. We may clarify that in this case we are concerned with registration and not with application of income.

Before analyzing various provisions of the 1961 Act, we are required to analyse the provisions of Gujarat Maritime Board Act, 1981 ("1981 Act" for short).

As can be seen from the preamble of the 1981 Act, it is clear that the Board has been constituted, inter alia, for purposes of development and maintenance of minor ports. Under the said Act the Maritime Board also renders services like stevedoring, transport of goods, storage, shipping etc. It is also incharge of upkeepment of jetties, wharfs, roads, lights, etc. However the main object of the said Act is development of minor ports in the state of Gujarat. the income, accruing to the Maritime Board, including reserves and surplus are also required to be deployed and credited to a separate fund to be utilized for development of minor ports within the State. In this connection, we quote Sections 73, 74 and 75 of the 1981 Act hereinbelow which read as under:

"73. All moneys recieved by or on behalf of a Board under the provisions of this Act and all moneys received by it as the Conservators of the Ports and of their approaches or as the body appointed under Section 36 of the Indian Ports Act, 1908 shall be credited to a fund called the General Account of the Minor Ports.

74. (1) The moneys credited to the general account under section 73 shall be applied by the Board in payment of the following charges, namely:-

(a) the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the repayment of which the Board may be liable and payments to the sinking fund established for such loan;

(b) the salaries, fees, remunerations, allowances, pensions, gratuities, compassionate allowances or others moneys due to-

(i) the Chairman, and other member of the board;

(ii) the employees of the Board; and

(iii) the surviving relatives, if any, of such employees.

(c) the contributions, if any, payable to the Central Government or any State Government on account of the pension and leave allowance of any officer lent to the Board by such Government;

(d) the cost and expenses, if any, incurred by the Board in the conduct and administration of any provident or welfare fund or loan or special fund established by the Board;

(e) the contributions, if any, duly authorized to be made by regulations made under this Act to any such fund as is referred to in clause (d);

(f) such sums as may, from time to time, be agreed upon by the Board and the State Government or the Central Government or any other authority, as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the Police Force or the Central Industrial Security Force or any other Force which the State Government or the Central Government or any other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

(g) the cost of repairs and maintenance of the property belonging to or vested in the Board and all charges upon the same and all working expenses;

(h) the cost of the execution and provision of any new work or appliance specified in section 25 which the Board may determine to charge to revenue;

(i) any expenditure incurred under Section 26; (j) any other expenditure which may be incurred by the Board generally for the purpose of this Act;

(k) any other charge which may on the application of the Board or otherwise be specially sanctioned by the State Government or for which the Board may be legally liable.

(2) All moneys standing at the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in sub-section (1) shall-

(a) be deposited in the State Bank of India or any corresponding new bank as defined in clause (d) of section 2 of the Banking Companies Acquisition and Transfer of Undertaking Act, 1970 [or in any corporation or financial institution controlled and managed by the State Government], as the Board may decide, or

(b) be invested in such public securities as may be determined by the Board and the said securities shall be held in trust by the Board for the purposes of this Act.

75. The Board may, with the previous sanction of the State Government, apply any sum out of the moneys credited to the general account of the port towards meeting deficits, if any, in the particular or specified account such as pilotage account, if so maintained or transfer the whole or part of any surplus funds in such particular account to the general account of the port."

Coming to the provisions of the 1961 Act, the most important provision for the purpose of this decision is Section 2(15) and Section 11(1) & (4) of the 1961 Act. The said sections are quoted hereinbelow which read as under;

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

11. (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.

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty five per cent of the income from such property;

(c) income derived from property held under trust--

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

11. (4) For the purposes of this section "property held under trust"

includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the "Assessing Officer shall have power to determine the income of

such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes."

According to Section 2(15), the expression "charitable purpose" has been defined by way of an inclusive definition so as to include relief to the poor, education, medical relief and advancement of any other object of general public utility. In this case we are concerned with the interpretation of the expression "advancement of any other object of general public utility".

Under Section 11(1) income from property held for charitable purpose is not includible and does not form part of total income. Section 11(1) has three sub-sections (a), (b) and (c). In all the three sub-sections the words used are "income derived from property held under trust wholly for charitable purposes". Under Section 11(4) the expression "property held under trust"

includes a business undertaking so held. In other words, income from business undertaking held for charitable purposes can fall under Section 11 subject to such income fulfilling the requisite conditions of that section.

One of the objections raised on behalf of the Department was that Gujarat Maritime Board is not entitled to the benefit of Section 11 of the 1961 Act as the said Board was not a trust under Public Trust Act and, therefore, it was not entitled to claim registration under Section 12A of the 1961 Act. The Department's case was that the Maritime Board was a statutory Authority. It was not a trust. Its business was not held under a trust. Its property was not held under trust. Therefore, the Board was not entitled to be registered as a Charitable Institution. It was the case of the Department that the Board was performing statutory functions. Development of minor ports in the state of Gujarat cannot be termed as the work undertaking for charitable purposes and in the circumstances the Commissioner rejected the Board's application under Section 12A of the 1961 act. In the light of the above case of the Department, we are required to consider the expression "any other object of general public utility" in Section 2(15) of the 1961 Act.

At the outset, we may point out that Section 10(20) and Section 11 of the 1961 Act operate in totally different spheres. Even if the Board has ceased to be a "Local Authority", it is not precluded from claiming exemption under Section 11(1) of the 1961 Act. therefore, we have to read Section 11(1) in the light of the definition of the words "charitable purposes" as defined under Section 2(15) of the 1961 Act.

We have perused number of decisions of this Court which have interpreted the words, in Section 11(15), namely, "any other object of generally public utility". From the said decisions it emerges that the said expression is of the widest connotation. The word "general" in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the

public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose [Commissioner of Income-tax, Gujarat-III, Ahmedabad v. Ahmedabad Rana Caste association, (1983) 140 ITR 1 SC]. The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry [Commissioner of Income-tax Madras v. Andhra Chamber of Commerce, - (1965) 55 ITR 722 SC]. If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity- [Addl. Commissioner of Income-tax, Gujarat v. Surat Art Silk Cloth Manufacture Association, (1980) ITR SC].

The present case in our view is squarely covered by the judgment of this Court in the case of Commissioner of Income-tax, A.P. v. Andhra Pradesh State Road Transport Corporation, (1986) 159 ITR 1 SC in which it has been held that since the Corporation was established for the purpose of providing efficient transport system, having no profit motive, though it earns income in the process, it is not liable to income-tax.

Applying the ratio of the said judgment in the case of Andhra Pradesh State Road Transport Corporation (supra), we find that, in the present case, Gujarat Maritime Board is established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive, as indicated by the provisions of Sections 73, 74 and 75 of the 1981 Act. The income earned by the Board is deployed for the development of minor ports in India. In the circumstances, in our view the judgment of this court in Andhra Pradesh State Road Transport Corporation (supra) squarely applies to the facts of the present case.

Before concluding we may mention that under the scheme of Section 11(1) of the 1961 Act, the source of income must be held under trust or under other legal obligation. Applying the said test it is clear, that Gujarat Maritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor port in the State of Gujarat. Therefore, they are entitled to be registered as "Charitable Trust" under Section 12A of the 1961 Act.

For the aforesaid reasons, we see no infirmity in the impugned judgments of the High Court and Tribunal and consequently civil appeal stand dismissed with no order as to costs.