

J. K. Charitable Trust vs Commissioner Of Income-Tax, U. P. on 22 November, 1954

Equivalent citations: [1955]28ITR110(ALL)

JUDGMENT

MALIK, C.J. - This is a reference under section 66(1) of the Indian Income-tax Act and the question referred to us is as follows :-

"Whether on a true construction of the deed of trust dated 24th January, 1944, the Tribunal was right in holding that the trust was a void one for uncertainty and ambiguity ?"

The assessee, J. K. Charitable Trust, made an application for a refund of tax paid under section 48 read with section 4 of the Indian Income-tax Act. The application was rejected by the Income-tax Officer on 27th February, 1950. An appeal against that order was dismissed by the Appellate Assistant Commissioner on 31st July, 1950, and a further appeal to the Tribunal was dismissed on the 21st January, 1952, on the ground that it was not a valid trust, its terms being vague and uncertain. The reason given in the statement of the case for holding that the trust was not valid is that under the terms of the deed very wide powers were given to the trustees who could utilise the income for any religious or charitable purpose of a public nature.

The relevant portion of the deed of trust is as follows :-

"The Trustees..... shall pay, use and apply the balance of the said income, dividends, interest, rents and profits for and upon such religious and charitable purposes of a public nature as the trustees may think fit and in furtherance but not in limitation of and without prejudice to the generality of this provision for and upon one or more of the religious and charitable objects hereinafter mentioned."

Clauses (a) to (k) then set out the objects and learned counsel for the Commissioner of Income-tax admits that most of these objects are religious or charitable.

The relevant portion of section 4(3) of the Indian Income-tax Act, before its recent amendment, was as follows :-

"(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) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes,....."

At the end of the section the words "charitable purposes" are defined to include "relief of the poor, education, medical relief and the advancement of any other object of general public utility, etc." The Tribunal was, therefore, called upon to see whether the income was of trust property held wholly for religious or charitable purposes. The Tribunal has held that there was no valid, as it was vague and uncertain and the income was, therefore, not exempt from taxation under section 4(3) of the Act.

Mr. Pathak has urged that even if the trust deed had not specified any religious or charitable object but has merely provided that the property was being made a trust and the entire income was to be spent by the trustees of a religious or charitable purposes of a public nature, which they might select, the trust would be good. It is not necessary for us to consider a case where no object of religious or charitable nature is mentioned in the deed. In the deed before us a number of objects are set out, most of which are admittedly religious or charitable, and the trustees are directed to spend the income on those objects, but their choice is not limited to them and they are authorised to spend the income on any other religious or charitable purpose of a public nature. They have no spend the income on religious or charitable objects of a public nature. The deed only provides that the list is not exhaustive and other religious or charitable objects of a public nature can also be beneficiaries at the discretion of the trustees. If the discretion given to them is bad, the trustees will be confined to the objects mentioned in the deed and only to such of the objects as may be of a religious or charitable nature. The deed clearly provides that the income is to be spent for a religious or charitable purpose of a public nature, and, if the trustees made a mistake and spend the income on objects which are not religious or charitable objects of a public nature, they would be guilty of breach of trust. We must not be considered to be of the opinion that any of the objects mentioned in the deed is not a religious or charitable object. Mr. Jagdish Swarup, learned counsel for the Commissioner of Income-tax, U. P., suggested that the objects mentioned in clauses (e) and (f) of the trust deed are not of such a nature. These clauses clearly come under the definition of a charitable purpose as given in section 4 and can come under the head relief of the poor, education or advancement of any other object of general public utility.

Learned counsel has referred us to a recent decision of this Court in Commissioner of Income-tax v. Radhaswami Satsang Sabha. That case supports the view taken by us today. Mr. Jagdish Swarup has relied on certain objections that were raised in the case of Vallabhdas Karsondas Natha v. Commissioner of Income-tax, Bombay. The decision is, however, clearly against him. In that case the deed did not confine the trustees to any object of a religious or charitable nature. It left the decision in the trustees and by way of illustration the settlors mentioned eight objects, the last of which eight was in these terms :

"Such other purposes beneficial to the Hindu community and Indians in general not falling under preceding heads."

The trust was held to be a valid trust of a religious and charitable nature and under the provisions of section 4 of the Act the income was exempt from taxation.

The other case, Re : The Lokmanya Tilak Jubilee National Trust Fund, Bombay is not helpful. That was a case where the income was to be spent for such objects as might facilitate the attainment of

independence of the country and it was held that the object was neither religious nor charitable.

Our answer to the question, therefore, is that the deed of trust is not void for either uncertainty or ambiguity.

The assessee is entitled to its cost which we assessee at Rs. 1,000. The fee to the counsel for the department is also