H.E.H. Nizam'S Religious Endowment ... vs Commissioner Of Income-Tax, Andhra ... on 26 October, 1965

Equivalent citations: 1966 AIR 1007, 1966 SCR (2) 384, AIR 1966 SUPREME COURT 1007, 1966 (1) ITJ 366, 1966 (1) SCJ 430, 1966 59 ITR 582, 1966 2 SCR 384

Bench: J.C. Shah, S.M. Sikri

PETITIONER:
H.E.H. NIZAM'S RELIGIOUS ENDOWMENT TRUSTHYDERABAD

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, ANDHRA PRADESH,HYDERABAD

DATE OF JUDGMENT:
26/10/1965

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 1007 1966 SCR (2) 384

ACT:
Indian Income-Tax Act, 1922 (Act 11 of 1922), s 4(3) (i)-Trust for religious and charitable objects some within taxable territories and some outside-Income not allocated-Exemption, if can be claimed.

HEADNOTE:
A trust was created for four religious and charitable objects, two of the objects were within taxable territories and the other two were outside the taxable territories. The income derived from the trust property was not allocated or set apart for the said purposes. The Trustees were assessed to Income-tax on income derived on the Trust property. The Trustees' claim for exemption under s' 4(3) (ii) of the Income-tax Act was not accepted by the Revenue and the High Court. In appeal to this Court the, Trustees contended that proviso (a) to s' 4(3) (i) of the Act would be attracted

only when the Trustees exctcised their option to apply the income to religious or charitable purposes outside the taxable territories, that in the present case the Trustees had not exercised the said option, and that therefore their case was directly governed by the substantive part of cl. (i) of s. 4(3) of the Act.

HELD : Under cl. (i) of s. 5(3) of the Act only income from the property wholly or in part held in trust actually applied or set apart for application for future spending on religious or charitable purposes within the taxable territories is exempted from inclusion in the: total income [390 G-H]

The substantive part of cl. (i) of s. 4(3) is in two parts : the first part relates to the income derived from property held under trust whooly for religious or charitable purposes and the second part to income derived from property held in part only for such purpose. The words "applied 'Or finally set apart for application" in the second part indicate that unless the income from the, said property is applied or finally set apart for the purposes within the taxable territories, the said income does not earn the exemption. There cannot be any reason why a different meaning should be given to the expression "applied or accumulated for application" in the first part of the clause, for, on principle, there cannot be any possible distinction between such income from the property wholly held under the trust or a part of the property held in trust. The words "applied" and "accumulated" , therefore, must mean "applied or finally set apart". "Applied" means that the income is actually applied for the said purposes in the taxable territories; and "accumulated" means that the income is set apart during the year for future spending on the said purposes. The expression "accumulated for a purpose" involves a conscious act in presenti and posits a clear indication on the part of the trustee to set apart the income for that purpose [390 B-G]

'Till the Trustee set apart the accumulation for the purposes within the taxable territories, it cannot be said that Me, purposes are within the taxable territories. [392 CT

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Mohammad Ibrahim Riza V. Income-tax Commissioner, Nagpur, (1930) L.R. 57 I.A. 260, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 491, 492 of 1964.

Appeal by special leave from the judgment and order dated September 14, 1962 of the Andhra Pradesh High Court in Case Referred No. 4 of 1961.

D. Narsaraju, Anwarullah Pasha, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant. A. V. Viswanatha Sastri, N. D. Karkhanis, R. H. Dhebar and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by Subba Rao, J. This appeal by special leave raises the question of the, true construction of the provision of S. 4(3) (i) of the: Indian Income-tax Act, 1922, hereinafter called the Act.

The relevant facts may be briefly stated. By an indenture dated September 14, 1950, H.E.H. the Nizam of Hyderabad created a trust known as "H.E.H. the Nizam's Religious Endowment Trust", hereinafter referred to as the Trust, under which he settled certain securities of the face value of Rs. 40 lakhs for implementing the objects described in the Trust deed. Under the Trust deed three trustees were appointed, including the settlor. It will be convenient at this stage to read the relevant provisions of the trust deed.

Clause 3. The Trustees shall hold and stand possessed of the Trust Fund upon Trust.

(a) To manage the Trust Fund and to recover the interest and other income thereof.

(b)

(c) During the life-time of the Settlor the balance of the income shall be accumulated and shall be added to the corpus of the Trust Fund.

(d) On and after the death of the Settlor the Trustees shall hold the accumulated corpus of the Trust Fund upon trust to spend the income thereof for any one or more of the following religious or charitable objects in such shares and proportions and in such manner as the Trustees shall in their absolute discretion deem proper.

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(i) For annual religious offerings to the sacred places of the Muslims outside India, in Hedjaz and Iraq, viz., Macca, Madina Najaf Karbala, Kazamain, Sirraman Raa and Mashad (in Iran) and Baghdad and Basra.

(ii) For help either in lump sum or by way of monthly allowances, to the Khuddam or the servants who are looking after the sacred Shrines, and also by way of charity to pious people residing at these holy places.

(iii) For the up-keep of the sacred buildings constructed in the life-time of the Settlor such as, masjids (mosques), Azakhana (mourning house, built to commemorate the name of His Exalted Highness's late mother), two Askurkhanas (where the Alam sits inside the City palace during Moharram and Ramzan), and the Maqbaras (Tombs) and particularly mentioned in the Second schedule hereunder written.

(iv) For the annual expenditure during the mourning period of Moharram and Safer and also during other religious months, when different kinds of ceremonies, religious discourses (Taqreers) Id Tagreebs, etc. are performed, including the religious offerings to the sacred Shrines at Ajmer and Gulbarga.

(v) It is the desire of the Settlor that the income of the Trust shall, as far as possible, be spent equally for the above mentioned four religious and charitable objects and purposes and in the event of there being any surplus then the same may be spent by the Trustees for any other religious and charitable objects for the benefit of Sunni Mohamedans with liberty X X to the Trustees in their absolute discretion to accumulate the surplus, if any, for any year or years and utilize the same for the purposes in this clause provided for any subsequent year or years.

Clause 4. It is hereby further agreed and declared that in all matters wherein the Trustees have a discretionary power the votes of the majority of the Trustees for the time being voting in the matter shall prevail and be binding on the minority as well as on those Trustees who may not have voted and if the Trustees shall be equally divided in opinion the matter shall during the life-time of the Settlor be decided according to the opinion of the Settlor and after his death according to the opinion of the Trustee most senior in age for the time being.

Briefly stated, under the deed the Trust fund was to be accumulated during the life-time of the settlor and, after his death, the Trustees should hold the said fund upon trust to spend the income therefrom for one or more of the four religious and charitable objects mentioned therein. Two of the said objects were for religious and charitable purposes within the taxable territories and the other two for purposes outside the taxable territories. It is important to notice that under the deed no power was conferred on the trustees during the life time of the settlor to set apart and allocate the accumulated income or a part of it from the Trust properties for any one or more of the objects mentioned therein : that could be done only by the Trustees after the death of the settlor. The said settlor is still alive. For the assessment years 1952-53 and 1953-54 the Trustees were assessed to income-tax on the income during the relevant previous years arising from the said Trust property. The Trustees claimed exemption under S. 4(3) (ii) of the Act. The Income-tax Officer, on appeal the Appellate Assistant Commissioner, and on further appeals the Income- tax Appellate Tribunal, Hyderabad, concurrently held that the assessee was not entitled to the exemption under the said section. At the instance of the assessee, the following question was referred to the High Court under s. 66(1) of the Act "Whether the income arising from property settled upon trust under the deed of settlement, dated 14-9-1950, or any part thereof is exempt from tax under Section 4(3)

(i) of the Indian Income-tax Act, 1922." A Division Bench of the Andhra Pradesh High Court, Hydera- bad, consisting of Seshachelapati and Venkatesam, JJ, on a consideration of the relevant provisions of the deed and the Act, came to the conclusion that on the terms of S. 4(3) (i) of the Act, the Trust was not entitled to the exemption. Hence the appeals.

Mr. Narasa Raju, learned counsel for the assessee, contended that proviso (a) to S. 4 (3) (i) of the Act would be attracted ,only when the Trustees exercised their option to apply the income to religious or charitable purposes without the taxable territories, that in the present case the Trustees

had not exercised the said option and that, therefore, the assessee's case was directly governed by the substantive part of cl. (i) of s. 4(3) of the Act. As the income was being accumulated by the Trustees, the argument proceeded, without setting apart the whole or any part thereof for one or other of the purposes mentioned in the Trust deed, it should be held that the Trustees were accumulating the income for religious or charitable purposes within the taxable territories, since two of the named purposes were admittedly within the taxable territories. He would say that if the Trustees exercised their option to apply the fund for the purposes without the taxable territories, the Income-tax authorities could, in terms of the proviso, include that income in the total income. Mr. A. V. Viswanatha Sastri, learned counsel for the Reve- nue, on the other hand, argued that the assessee would be entitled to exemption under S. 4(3) (i) of the Act only if the income was specifically accumulated for religious and charitable purposes within the taxable territories and that, as in the present ,case admittedly there was no setting apart of the income for the said purposes, the assessee could not claim any exemption thereunder. Let us now scrutinize the validity of the rival contentions. Section 4(3) (i) of the Act reads :

> "Subject to the provisions of clause (c) of subsection (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-
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> (a) if it is applied to religious or charitable purposes without the taxable territories, but in the following cases, namely :-
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> (i) where the property is held under trust or other legal obligation created before the ,commencement of the Indian Income-tax (Amendment) Act, 1953 (25 of 1953), and the income therefrom is applied to such purposes without the taxable territories; and
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> (ii) where the property is held under trust or other legal obligation created after such commencement, and the income therefrom is applied without the taxable territories to charitable purposes which tend to promote international welfare in which India is interested.

The Central Board of Revenue may, by general or special order, direct that it shall not be included in the total income.

Under this section a particular class or kind of income is exempted from taxation. It is settled law that the burden is on the Revenue authorities to show that the income is liable, to tax under the statute; but the onus of showing that a particular class of income is exempt from taxation lies on the assessee. To earn the exemption, the assessee has to establish that his case clearly and squarely falls within the ambit of the said provisions of the Act. A brief history of cl. (i) of S. 4(3) of the Act will be useful in the interpretation of its terms. The present cl.

(i) was substituted for the following clause by the Income- tax (Amendment) Act, 1953, with effect from April 1, 1952 :

> "(i) any income derived from property held in trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto."

Under the said clause,, trust income, irrespective of the fact whether the said purposes were within or without the taxable territories, was exempt from tax in so far as the said income was applied or finally set apart for the said purposes. Presumably as the State did not like to forgo the revenue in favour of charity outside the country, the amended clause described with precision the class or kind of income that is exempt thereunder so as to exclude therefrom income applied or accumulated for religious or charitable purposes without the taxable territories. The substantive part of cl. (i) is in two parts : the first pan relates to the income derived from property held under trust wholly for religious or charitable purposes and the second part, to income derived from property so held in part only for such purposes. But the necessary condition for attracting the first part of the clause is that the said income is applied or accumulated for application to such religious or charitable purposes within the taxable territories; and to attract the second part, the income from the property so held in part shall have been applied or finally set apart for application to the said purposes. A comparative study of the two part-, clarifies the scope of the provision. The expression used in the first part is "applied or accumulated for application" and the expression used in the second part is "applied or finally set apart for application". The words "applied or finally set apart for application" in the second part indicate that unless the income from the said property is applied or finally set apart for the purposes within the taxable territories, the said income does not earn the exemption. There cannot be any reason why a different meaning should be given to the expression "applied or accumulated for application" in the first part of the clause; for, on principle, there cannot be any possible distinction between such income from the property wholly held under trust or a part of the property held in trust. The words "applied" and "accumulated", therefore, must mean " applied or finally set apart". "Applied" means that the income is actually applied for the said purposes in the taxable territories; and "accumulated" means that the income is set apart during the year for future spending on the said purposes. The expression "accumulated for a purpose involves a conscious act in present and posits a clear indication on the part of the trustee to set apart the income for that purpose. It is, therefore, manifest that under cl. (i), only income from the property wholly or in part held in trust actually applied or set apart for application for future spending on religious or charitable purposes within the taxable territories is exempted from inclusion in the total income.

As has been pointed out by Craies in his book on Statute Law, 6th Edn. at p. 217, "The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it." The proviso to cl.

(i) excepts the two classes of income subject to the condition mentioned therein from the operation of the substantive clause. It comes into operation only when the said income is applied to religious or charitable purposes without the taxable territories. In that event, the Central Board of Revenue,

by general or special order, may, direct that it shall not be included in the total income. The proviso also throws light on the construction of the substantive part of cl. (i) as the exception can be invoked only upon the application of the income to the said purposes outside the taxable territories. The application of the income in presents or, in future for purposes in or outside the taxable territories, as the case may be, is the necessary condition for invoking either the substantive part of the clause or the proviso thereto.

The argument of Mr. Narasa Raju, namely, that as at the time the income was accumulated the Trustees did not exerciser the option, the accumulation would necessarily be for some of the purposes within the taxable territories, leads to a fallacy. If accepted, it would enlarge the scope of the exemption : while the section expressly exempts only such income as is applied or accumulated for application for such purposes within the taxable territories, the income would be exempted even though it was accumulated for mixed purposes, that is, for purposes both within and without the taxable territories. Purposes within the taxable territories are not the same as mixed purposes. At best the amounts are kept under a suspense account with an Options to the trustees to set apart at a later date for purposes within or without the taxable territories. Howsoever the option is exercised at a later stage, it is not an accumulation during the, relevant accounting year for purposes within the taxable territories.

Some of the cases cited at the Bar may not be of direct application, but the principle laid down therein may be helpful in construing the terms of the present Trust deed. The Judicial Committee in Mohammad Ibrahim Riza v. Income- tax Commissioner, Nagpur(1) held that where the purposes of a trust were not wholly charitable or religious and no portion of the property had 'been set aside for those purposes, the income from the trust could not be identified as appropriated exclusively thereto. The (1) (1930) L.R. 57 I.A. 260.

principle underlying this decision is, where a trust is for mixed purposes, some religious and other secular, with an option to the trustee to select one or other of the purposes, it is not possible to predicate till the selection is made that the object is for religious or charitable purposes. In the present case, an option is given to the Trustees to set apart the income for the purposes within the taxable territories or without such territories and till a selection is made it is not equally possible to predicate that the accumulation of income is for purposes within the taxable territories. Till the Trustees set apart the accumulation for the purposes within the taxable territories, it cannot be said that the purposes are within the taxable territories.

Mr. Narasa Raju attempted to argue that in the present case the income was set apart for purposes within the taxable territories. This aspect of the question was never raised till now. It involves a question of fact. Clause 3 (d) (v) of the Trust deed on which reliance is placed is only an expression of desire on the part of the settlor that the income of the Trust should be spent equally on the four religious and charitable purposes mentioned in the deed. The said desire does not amount to setting apart by the Trustees of the whole or a part of the income from the Trust for purposes within the taxable territories. Indeed, cl. 3

(d) of the Trust deed indicates that the Trustees have no power to set apart or accumulate the income for any of the purposes mentioned in the Trust deed till after the death of the settlor. We cannot, therefore, hold on the material placed before us that the Trustees have set apart the accumulated income for purposes within the taxable territories.

For the aforesaid reasons we hold that the answer given by the High Court to the question referred to it by the Income- tax Appellate Tribunal is correct. The appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.