

Commissioner Of Income-Tax, Ernakulam vs Managing Trustee, Jalakhabai Trust on 23 March, 1967

Equivalent citations: [1967]66ITR619(SC)

Author: J.C. Shah

Bench: J.C. Shah

JUDGMENT

Shah J.

1. Under a deed of trust dated April 4, 1936, certain properties described in schedules A, B, and C were settled by one Jalakhabai for purposes mentioned therein, and trustees were appointed to administer the trust. Clauses 5, 12, 13(a) and 13(b) of the deed of trust provided :

"(5) Hereafter, all the properties comprised in the A, B, C schedules and future acquisitions of properties in the name of the said charity fund shall be administered and their income to be utilised by the trustees appointed hereunder as per the provisions contained in this deed.

(12) From the income realised from 'B' and 'C' schedule properties, the amount should be spent in the first instance, for the maintenance and improvements of such property, for payment of land revenue pattam, municipal tax, etc., and the remaining shall be divided into 4 equal parts and expended in the manner hereinafter described.

(13) (a) One share of the 4 parts referred to above should be utilised for effecting improvement to any of the existing buildings and for putting up new buildings for being let out on rent.

(13) (b) There are now 3 equal parts remaining to be dealt with. Half of one of these 3 parts should be utilised on the indigent members of the Kutchi Memon community and the widows of such indigent members for giving them food, clothing, etc., imparting religious instruction to poor children and also other general education, contributing for the marriage of poor girls, etc. The remaining half of said one part should be added on and utilised for equating of new properties as described in paragraph 13-A. But, if there are poor members among our descendants suffering on account of financial distress, the said half of the one part should be utilised for giving food, clothing, education, marriage, funeral expenses of such members. And if any residue is left after incurring such expenses, such residue amount should be added and disposed of as described in paragraph 13(a) above."

2. In proceedings for assessment of tax by the Income-tax Officer, Special Circle, Ernakulam, the trustees claimed that the entire income of the properties in schedule A and 7/8th income of the properties in schedule B and C was exempt from tax under section 4(3)(i) if the Indian Income-tax Act 1922. The Income-tax Officer partially accepted the contention, and brought to tax the unspent balance of income of schedule A properties and a 3/8th share of the income from properties in schedules B and C. By the 3/8th share of the income from B and C properties the Income-tax Officer referred to the 2/8th share directed to be applied for repairs and improvement in clause 13(a) of the deed, and by the 1/8th share the share directed to be applied for the same purposes in clause 13(b).

3. The decision of the Income-tax Officer was confirmed by the Appellate Assistant Commissioner. The Tribunal reversed the order from the Appellate Assistant Commissioner. The Tribunal observed that section 4(3) (i) of the Income-tax Act, 1922, "does not set its face against accumulations of the income being invested and the income therefrom used for trust purposes" and that a trust does not cease to be a public charitable trust merely because the beneficiaries of the trust are poor descendants of the settlor.

4. The Income-tax Commissioner then applied to the Tribunal under section 66(1) of the Indian Income-tax Act to draw up a statement of case and refer the following question to the high Court :

"Whether, on the facts and circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the unspent balance of the income for the year from schedule 'A' properties, and three-eighth of the income from 'B' and 'C' schedule properties was exempt from income-tax under section 4(3) of the Income-tax Act, 1922 ?"

5. The Appellate Tribunal drew up a statement of case limited to 2/8th of the property in schedules B and C and declined to refer a question in so far as it related to 1/8th of the income of those properties.

6. The Commissioner then applied to the High Court for an order directing the Tribunal to submit a statement of case relating to the 1/8th share of the property in schedule B and C. The High Court rejected the application. Against the order rejecting the application for an order directing the Tribunal to submit a statement of case, the Commissioner appealed to this court with special leave.

7. In our judgment, a question arose out of the order of the Tribunal. The Tribunal was called upon to interpret the directions contained in clause 13(b) of the deed and it proceeded to interpret that clause. The true legal effect of the directions contained in clause 13(b) of the deed of trust raises a question of law which arose out of the order of the Tribunal and the high Court erred in failing to direct that a statement of case in so far as it related to the 1/8th share of the income of properties in schedules B and C be submitted.

8. Mr. Shaukat Hussain on behalf of the trustees have invited our attention to the judgment of the High Court dated 31st July, 1964, on the question referred by the Tribunal in so far as it relates to the 2/8th share of the income from properties in schedules B and C. It appears from a copy of the

judgment of the High Court produced before us that from a copy of the judgment of the High Court produced before us that in their view the investment in property were meant to argument the assets of the trust for the benefit of charities mentioned in the deed of trust and they were no more that accumulations for application to the charitable purposed within the meaning of section 4(3) (i) of the Income-tax Act.

9. At this stage, we express no opinion on the correctness of that judgment. It must be pointed out that the High court in dealing with the application under section 66(2) of the Act is not called upon to decide whether the question may ultimately be decided in favour of the assessee; the High Court had only to consider whether a question of law which may be supported by reasonable argument, arose out of the order of the Tribunal. It is impossible to hold that such a question of law did not arise out of the order of the Tribunal.

10. We set aside the order of the High Court and direct that the High Court do call upon the Tribunal to submit a statement of case under section 66(2) of the Income-tax Act on the following question :

"Whether the Income-tax Appellate Tribunal erred in holding that 1/8th share of the income from properties described in schedule B and C was exempt from liability to pay income-tax under section 4(3) (i) of the Indian Income-tax Act, 1922 ?"

11. There will be order as to costs of the appeal.