Supreme Court of India
M/S. R.B. Shreeram Religious & ... vs The Commissioner Of Income-Tax, ... on 16 July, 1998
Author: M S Manohar.
Bench: Sujata V. Manohar, S. Rajendra Babu

PETITIONER:
M/S. R.B. SHREERAM RELIGIOUS & CHARITABLE TRUST

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME-TAX, VIDARBHA, NAGPUR

DATE OF JUDGMENT: 16/07/1998

BENCH:
SUJATA V. MANOHAR, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Mrs. Sujata V. Manohar. J.

The assessee M/S. R.B. Shreeram Religious and Charitable Trust, the appellant before us, is a registered public trust. For the assessment year 1966-67 the assessee disclosed in its income-tax return, a deficit of Rs. 32,126/-. The Income-tax officer, however, added to the income of the assessee voluntary contributions received by the assessee-trust amounting to a sum of Rs. 4,55,000/- for the relevant year. The Income tax officer held that the voluntary contributions amounting to Rs. 4,55,000/- received by the assessee during the relevant year were not applicable solely for charitable and religious purpose and were also not actually applied as such. In appeal, the Appellate Assistant Commissioner held that out of the sum of Rs. 4,55,000/-, a sum of Rs.4,00,000/- could not be treated as income derived from voluntary contributions. Both the revenue as well as the assessee filed appeals from the order of the Appellate Assistant Commissioner before the Income- tax Appellate Tribunal. The Tribunal allowed the appeal filed by the revenue and dismissed the appeal filed by the assessee.

At the instance of assessee, a reference was made to the High Court under Section 256(1) of the Income-tax Act. The questions before the High Court, as reframed by the High Court in the impugned judgement, were as follows:-

"(1) Whether on the facts and in the circumstances of the case and having regard to the relevant provisions of the I.T. Act, the voluntary contributions aggregating to Rs. 55,000/- received by the Assessee was income liable to be taxed under the I.T. Act, 1961? (2) Whether on the facts and in the circumstances of the case and having regard to the relevant provisions of the I.T. Act voluntary contributions aggregating to Rs. 4,00,000/- received by the assessee was income liable to be taxed under the I.T. Act, 1961? (3) Whether on the facts and in the circumstances of the case voluntary contributions aggregating to Rs. 55,000/- and Rs. 4,00,000/- were exempt u/s 12(1) of the I.T. Act, 1961?

(4) Whether on the facts and in the circumstances of the case the Tribunal mis-directed itself in holding that mere discharge of debt whether existing or new during the year from out of voluntary contributions of Rs. 55,000/- and Rs. 4,00,000/- does not render it a solely charitable purpose admissible to exemption? (5) Whether on the facts and circumstances of the case the levy of interest under Section 139 and 215 of the I.T. Act, 1961 was justified in law?"

Question No. 5 is not pressed. The High Court answered the remaining questions against the assessee and in favour of the revenue. Hence the present appeal is filed before us by the assessee-trust.

The amount of Rs. 4,55,000/- received as voluntary contributions consisted of the following:-

(1) A cheque for Rs. 25,000/- from Saraf Mor & Co. Ltd., dated 2.11.65.

(2) A cheque for Rs. 10,000/- from M/S. Ferro Alloys Corporation Ltd., dated 22.11.65.

(3) A cheque for Rs. 20,000/- from R.B. Shreeram Durgaprasad & Fetehchand Narsinghdas, dated 19.11.66.

These three cheques constituted the sum of Rs.

55,,000/- received by the assessee-trust as voluntary contributions. The assessee also had, during the material period, a loan account with M/s. R.B. Shreeram Durgaprasad (mining Firm). Amounts were lent to the assessee by the said mining firm from time to time. At the beginning of the relevant year pertaining to the assessment year 1966-67, the assessee owed to the said mining firm a sum of Rs. 7.65 lakhs under the said loan account. During the relevant year M/s. R.B. Shreeram Durgaprasad & Fetehchand Narsinghdas (Export Firm) gave to the assessee a total sum of Rs. 4,00,000/- which was shown as debited to the account of the donor Export firm. The amount was transferred to the said mining firm. By the transfer of the said amount to the mining firm, the liability of the assessee-trust to the mining firm under the said loan account was reduced. The sum of Rs.55,000/- was also similarly transferred to the mining firm, thus reducing the liability of the

assessee under the said loan account.

The Income-tax officer, after examining the balancesheet of the assessee for the years 1953-54 to 1966- 67 and after examining the amounts lent under the said loan account to the assessee-trust, held that out of the total income earned by the assessee-trust amounting to approximately Rs.24,00,000/- was these assessment years, only a sum of Rs.7,12,219/- was invested in a Dharamshala and the balance amounts were invested in other properties, advances and investments. The Income-tax officer came to the conclusion that the transfer of sum of Rs. 4,55,000/- to the said mining firm cannot be considered as application of money for religious or charitable purposes. The assessee had contended that the amount received by way of loans from the said mining firm had been utilised for the construction of a Dharamshala. The Income-tax officer, however, held that the amounts received as loans from the mining firm did not necessarily go into the construction of a Dharamshala. The funds of the assessee were allowed to grow side by side with the loans from the mining firm.

Looking to the totality of circumstances the Income-tax officer gave a finding of fact that the voluntary contributions were not solely applicable to religious and charitable purposes and were not actually applied as such. This finding has been ultimately upheld by the Tribunal. The Tribunal has also come to the conclusion that a close scrutiny of the balance-sheet of the assessee-firm reveals that the assessee used to transfer a substantial portion of its income to an account called Dharamshala and other Buildings Fund; and out of this Fund the investment in Dharamshala covered only a part of the amount. In these circumstances the use of voluntary contributions for discharge of liability under the loan account could not be considered as use of the money solely for charitable purposes, especially because a part of the advance which had been repaid was an advance of Rs. 2.51 lakhs by the mining firm of which interest was not charged. In this view of the matter the Tribunal held that the voluntary contributions were not applicable entirely for religious and charitable purposes and were not, in fact, applied entirely for religious or charitable purposes. The high court, in view of this finding of fact, has come to the conclusion that the said amount of Rs.4,55,000/- has been rightly considered as income of the assessee not exempt under Section 12(1) of the income-tax Act as it stood at the relevant time.

Section 12 of the Income-tax Act as it stood at the relevant time (Prior to its amendment in 1972) was as follows:-

> Section 12:
>
> "Income of trusts or institutions from voluntary contributions-(1) Any income of a trust for charitable or religious purposes or of a charitable or religious institution derived form voluntary contributions and applicable solely to charitable or religious purposes shall not be included in the total income of the trustees or the institution, as the case may be.
>
> (2) Notwithstanding anything contained in sub-section (1), where any such contributions as are referred to in sub-section (1), are made to a trust or a charitable

> or religious institutions by trust or a charitable or religious institution to which the provisions of Section 11 apply, such contributions shall, in the hands of the trust or institution receiving the contributions, be deemed to be income derived from property for the purposes of that section and the provisions of that section shall apply accordingly."

The assessee contends that Section 12(1) refers not to the voluntary contributions themselves but to any income derived from voluntary contributions so received. In other words, according to the assessee, the exemption under Section 12(1) is applicable to any amount realised as income from out of investment of any voluntary contribution received by the assessee during the year. Voluntary contribution itself is not income at all. In support, the assessee relies upon the definition of 'income' under Section 2(24) as in force at the relevant time. Section 2(24) at the relevant time did not expressly include in the definition of 'income' voluntary contributions received by a public religious or charitable trust. The definition of 'income' under Section 2(24) was, however, subsequently amended by the Finance Act of 1972 by including in the definition of 'income' under sub-clause (ii)(a) of Section 2(24), voluntary contributions received by a trust created wholly or partly for charitable or religious purpose or by an institution established wholly or partly for such purpose. The amended definition also excluded from the definition of 'income' those contributions which were made with a specific direction that they shall form a part of the corpus of the trust or the institution. The assessee, therefore, contends that Section 12(1) prior to the amendment of 1972 should be interpreted as referring only to any income which accrues to the trust by investing voluntary contributions which it has received.

In order to examine whether this interpretation is correct it is necessary to read Section 12 as a whole. sub- section (1) of section 12 excludes from the income of a trust for charitable or religious purposes, income derived from voluntary contribution and applicable solely to charitable and religious purposes. However, under sub- section (2) such income will be deemed to be income derived from property for the purposes of section 11 when the voluntary contribution is made by a charitable or religious institution or trust to another religious or charitable institution or trust. Sub-section (2), therefore, is an exception to sub-section (1). The language of sub-section (2) makes it clear that the subject-matter of sub-section (2) as well as sub-section (1) is the voluntary contribution itself. When such a voluntary contribution is made to a religious or charitable trust by another similar trust, then such a contribution in the hands of the receiving trust shall be deemed to be its income derived from property under Section 11, and the provisions of Section 11 will apply. Therefore, when sub-sections (1) and (2) are read together, the phrase 'income derived from voluntary contribution' in sub-section (1) refers to income in the form of voluntary contributions received by the recipient religious or charitable trust. It has no reference to the income which may later on be derived from such voluntary contributions as and when such contributions are invested, as contended by the assessee. Also when under section 12(2) voluntary contribution from one charitable trust to another charitable trust is treated as income of the recipient, there is no reason why under section 12(1), voluntary contribution from others to the charitable trust should not be treated as income.

In this connection our attention has been drawn to a number of decisions of various High Courts dealing with interpretation of Section 12(2). In the case of Sri Dwarkadheesh Charitable Trust V. Income-tax Officer, Company Circle, "C" Ward, Kanpur (98 ITR 557), the Allahabad High Court while interpreting Section 12(2) observed that section 12 is confined to voluntary contributions which should be treated as income. The Allahabad High Court was concerned with a case where the donor specified that the contribution was towards the corpus of the receiving trust's funds. The Allahabad High Court held that since the voluntary contribution was made expressly towards the corpus of the trust, it could not be considered as income. Hence it was not covered by section 12(2) which covers only income in the form of voluntary contributions. The same view has been taken by the Gujarat High Court in Commissioner of Income- tax, Gujarat-IV v. Bal Utkarsh Society (119 ITR 137). The Gujarat High Court, following the Allahabad High Court's decision in sri Dwarkadheesh Charitable Trust (Supra) has also observed that Section (12(1) covers voluntary contributions which are received as income. Sub-section (2) would apply if the voluntary contribution is from one public charitable trust to another. However, when the voluntary contribution is expressly towards the corpus of the receiving trust, it cannot be considered as income. A similar view has been taken by the Kerala High Court in Commissioner of Income-Tax V. Vanchi Trust & another (127 ITR 227), and by the Delhi High court in Commissioner of Income-Tax, Delhi-II V. Eternal science of man's Society (128 ITR 456). (See also Sukhdeo Gharity Estate, Ladnu V. Commissioner of Income-tax, Rajasthan, Jaipur 149 ITR 470 [Raj]).

The Madras High Court in the case of Commissioner of Income-Tax, Tamil Nadu-IV v. Shri Billeswara Charitable Trust (145 ITR 29) was also concerned with a case where a charitable trust had received a donation form another charitable trust towards its corpus. The Madras High Court also held that this cannot be treated as income of the receiving trust. However, in the course of its judgment, the Madras High Court has observed that Section 12(1) refers only to the income which is derived from voluntary contribution i.e. voluntary contribution, when invested, would fetch income. This income is covered by the provisions of Section 12(1). Therefore, voluntary contribution itself would not be income. These observations do not seem to be correct since they do not take into account the language of sub-sections (1) and (2) of section 12 read as a whole. The definition of income under section 2(24) of the Income-tax Act as it stood at the relevant time was an extensive definition. Although it did not expressly include voluntary contributions received by was of income by a religious or charitable trust, as the definition was not exhaustive, it would cover income in all forms. The fact that by a subsequent amendment of section 2(24), such income is expressly included, does not make any difference to the interpretation of Section 12.

Our attention was also drawn to a decision of the Travancore-Cochin High Court in the case of Rev. Father Prior, Sacred Heart's monastery v. Income-Tax Officer, (Ernakulam), and others (30 ITR 451). That case turns upon the provisions of the Cochin Income-tax Act and the language used in the relevant sections therein. It does not, therefore, throw any light on the present question.

Hence Section 12(1) refers to any income derived by a trust for religious or charitable purpose in the form of voluntary contributions. If such voluntary contributions are applicable solely to charitable or religious purposes, they shall not be included in the total income of the trust. Had such voluntary contribution been considered as not income at all, the need for section 12(1) would not have arisen.

Undoubtedly by a subsequent amendment in 1972 to the definition of 'income' under Section 2(24), voluntary contributions not being contributions towards the corpus of such a trust, are included in the definition of 'income' of such a religious or charitable trust. Section 12 as amended in 1972 also expressly provides that any voluntary contribution received by a trust for religious or charitable purposes, not being contribution towards the corpus of the trust, shall, for the purpose of Section 11, be deemed to be income derived from property held by the trust wholly for charitable or religious purposes. This, however, does not necessarily imply that prior to the amendment of 1972, a voluntary contribution which was not towards the corpus of the receiving trust, was not income of the receiving trust. It was. Even prior prior to the amendment of 1972, any income received by a religious or charitable trust in the form of a voluntary contribution would be income of the trust unless such contribution was expressly made towards the corpus of the trust's fund. Section 12, therefore, prescribed that such income would not be included in the total income of the trust if it was applicable solely to charitable or religious purposes. It would, however, be treated as income from property under Section 11 if it is received from another charitable or religious trust.

The assessee has relied upon a departmental circular No.20/10/67-IT(AI) dated 1.5.1967 which deals with exemption of income of a charitable trust under Section 11(1) of the Income-tax Act, 1961. Departmental circular, inter alia, states that provisions of Section 11(1) will not be applicable to capital receipts. It states, "The donations received by charitable trust from the members of the public, being capital receipts, cannot be regarded as income of the trust. Accordingly, the donations received by the trust should be excluded from the income of the trust for the purpose of calculating the accumulation limit of 25 per cent except in cases covered by Section 12(2) of Act" The Board circular was not dealing with Section 12. It was dealing with the application of Section 11(1). The Circular correctly pointed out that Section 11(1) would be attracted to cases covered under section 12(2). Under Section 12(1), as it stood then, income by way of voluntary contribution was totally exempt provided it was applicable for religious or charitable purposes. The Board Circular, therefore, must be read only as interpreting Section 11(1) and not as interpreting Section 12(1) which was not the subject-matter of the Board Circular.

To get the benefit of Section 12(1), the assessee was required to show that the voluntary contribution which it had received was applicable solely for religious or charitable purposes. The Tribunal, as well as the High Court, relying upon the Tribunal, have held that the voluntary contribution amounting to Rs.4,55,000/- was not applied and was not wholly applicable for religious or charitable purposes. In this view of the matter, the assessee, on the facts of the present case, cannot get the benefit of Section 12(1).

The appeal is, therefore, dismissed. There will, however, be no order as to costs.