
Hosiery Industry Federation Vs Commissioner of Income Tax

Income-tax References No"s. 62 and 63 of 1976

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 16, 1981

Acts Referred:

Income Tax Act, 1961 " Section 11(1), 2(15), 28

Citation: (1983) 140 ITR 983

Hon'ble Judges: S.P. Goyal, J; J.V. Gupta, J

Bench: Division Bench

Advocate: B.S. Gupta, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

1. The assessee is a registered society and its members are six different associations of hosiery manufacturing concerns. The receipt of the asses-

see consists of annual subscription, special subscription and allocation charges, collected from various hosiery manufacturing units. Special

subscriptions were raised by the assessee from its members when funds were required for a special item of expenditure other than the routine

expenditure, the allocation charges are received by the assessee at 25 paise per kilogram of woollen yarn allocated by it to its various members.

The assessee is allotted by the Union of India a bulk quota of woollen yarn, imported as well as indigenous which is further allocated by the

assessee to its various members. In this process, the assessee has to incur expenditure for procuring bulk quota as well as in making allocation to

its members. During the accounting year ending on March 31, 1969, special subscription received was Rs. 24,176.12, annual subscription Rs.

1,300 and allocation charges Rs. 69,329.82. During the next accounting year, the annual subscription was Rs. 5,600 and the allocation charges,

Rs. 1,19,419.71. The ITO on these facts held that the receipts of the assessee constituted income, as contemplated under Clause (iii) of Section

28 of the I.T. Act, and were assessable to tax as such. He further repelled the plea of the assessee that it was entitled to exemption from tax on the

said income by virtue of the provisions of Section 11(1)(a) of the I.T. Act. On appeal, the AAC confirmed the said findings but reversed the order

of the ITO qua the amount of Rs. 1,300 and Rs. 5,600 holding that the amounts of annual subscriptions were not covered by Clause (iii) of

Section 28 of the Act.

2. The Tribunal, after taking into consideration the memorandum of association of the assessee, dismissed the appeal with the following finding :

.....the assessee-society had been established for the purpose of encouraging scientific research in hosiery manufacture and for educating the

assessee's members and the public at large for an improvement in the design and industry of hosiery manufacture and further that, according to

Clause (23) of the said memorandum, the procurement and allocation of woollen hosiery yarn was one of the objects of the assessee and that such

allocation had to be done on no profit no loss basis even though some charges could be collected for the smooth running of the office of the society

and its administration. The Tribunal accepted the assessee's contention that the service of allocation of quantities of woollen yarn rendered by the

assessee to its members was not a business activity within the meaning of Section 28(i). The Tribunal, however, held that the assessee, even in the

absence of intention to make profit, derived assessable income from specific services performed for its members inasmuch as its receipts of fees in

respect of specific services rendered to its members exceeded the expenditure incurred by the assessee. The Tribunal further found that the annual

subscriptions or special subscriptions were not relatable to the distribution of woollen yarn and the receipts of those two items would, therefore,

not merit to be accounted towards income for the purpose of Section 28(iii), Income Tax Act.

2. Regarding the assessee's claim to exemption u/s 11(1)(a), Income Tax Act, the Tribunal agreed with the assessee that its activity fell within the

ambit of the definition of charitable purposes, as contained in Section 2(15), Income Tax Act, but the Tribunal did not feel satisfied that the

assessee's income covered by Clause (iii) of Section 28 was income from property within the meaning of Section 11(1)(a), Income Tax Act.

3. Still dissatisfied, the assessee moved an application u/s 256(1) of the I.T. Act and the following question has been referred for the opinion of this

court :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the amounts received by the assessee

on account of allocation charges were covered by Section 28(iii), Income Tax Act, and that the said receipts did not amount to income derived

from property held under trust within the meaning of Section 11(1)(a), Income Tax Act ?

4. As is evident from the above finding, although the Tribunal held that the activity of the assessee was covered by the definition, ""charitable

purposes", as contained in Section 2(15) of the Act, yet it held that it was not entitled to exemption nor its income covered by item (iii) of Section

28 because it was not income from property within the meaning of Section 11(1)(a) of the Act. The reason given was that the income derived from

the activity of rendering service to its members could not be said to be income from property as envisaged in the said clause. However, the view of

the Tribunal cannot be sustained because, by virtue of Sub-section (4) of Section 11. "property held under trust" includes a business undertaking

so held and the matter has since been concluded by a recent decision of the Supreme Court in Additional Commissioner of Income Tax, Gujarat

Vs. Surat Art Silk Cloth Manufacturers Association, . In that case, the assessee was the Surat Art Silk Cloth Manufacturers Association. Its aims

and objects were as under (head note):

(a) to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth ; (b) to carry on all and any of

the business of art silk yarn, raw silk, cotton yarn, as well as art silk cloth, silk cloth and cotton cloth, belonging to and on behalf of its members ;

(c) to obtain import licences for import of art silk yarn, raw silk, cotton yarn and other raw materials as well as accessories required by its

members for the manufacture of art silk, silk and cotton fabrics ; (d) to obtain export licences and export cloth manufactured by the members ; (e)

to buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the members :... (n) to do all other lawful

things as are incidental or conducive to the attainment of the above objects.

5. All income and property of the assessee derived from these activities were held to be covered by the provisions of Section 11(1)(a) and as such

exempt from Income Tax. In the present case, some of the aims and objects of the assessee, inter alia, were as under:

1. To promote, organise and encourage scientific research in the hosiery manufacturers' inventions, investments and design...

3. To find out ways and means of progress, development and improvement of hosiery industry and to safeguard and to protect its interests.

4. To procure, encourage and formulate means for a collective buying of industrial raw materials and machinery whether imported or indigenous

pertaining to the hosiery industrialists on no profit no loss basis.

5. To encourage and formulate ways and means for collective selling of hosiery products....

14. To make arrangement and approach the Central Government for setting up of woollen hosiery yarn spinning plant on co-operative basis in

order to provide the industry its basic raw material on fair prices....

18. To open fair price shops for sale of hosiery goods to consumers...

22. To devise ways and means for encouraging exports of the hosiery products.

23. To procure, allocate, distribute to hosiery manufacturers woollen hosiery yarn, their basic raw material from time to time on no profit no loss

basis. To impose, collect, charge, cess or handling charges for their smooth running of the offices of the society and its administration.

5. A perusal of the above-mentioned aims and objects would show that the present case is fully covered by the decision of the Supreme Court in

Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, and the income derived by the assessee

was income from property within the meaning of Section 11(1)(a) of the I.T. Act. The question referred is consequently answered in the negative,

in favour of the assessee and against the Revenue. No costs.