(1990) 12 AHC CK 0053

Allahabad High Court

Case No: Income-tax Reference No. 747 of 1978

Commissioner of Income Tax		APPELLANT
	Vs	
Panchayati Akhara Nirmal		RESPONDENT

Date of Decision: Dec. 18, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 10, 11, 11(1)

Citation: (1991) 190 ITR 121

Hon'ble Judges: B.P. Jeevan Reddy, C.J; V.N. Mehrotra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

B.P. Jeevan Reddy, C.J.
u/s 256(1) of the Income Tax Act, 1961, the Appellate Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the agricultural income of the assessee-trust could not be considered for the purposes of Section 11(1) of the Income Tax Act, 1961 ?"

2. The reference has been made at the instance of the Revenue. The assessment years concerned herein are 1971-72 and 1972-73.

3. The assessee is a trust assessed as an association of persons. It derives income from agricultural land, donations and offerings, house property, interest on securities, bank interest and ground rent. The accounting year is the financial year. The assessee-trust was created in the year 1925.

4. For the assessment year 1971-72, the Income Tax Officer found that out of the total income derived by the assessee (including agricultural as well as non-agricultural income), an amount of Rs. 1,40,761 had been applied to charitable/religious purposes and an amount of Rs. 28,475 had been incurred by

way of general expenses. He found that the agricultural income during the said year was Rs. 2,10,890, which was, of course, exempt by virtue of Section 10(1) of the Act. He was, however, unable to find how much of the amount applied towards charitable/religious purposes was out of the agricultural income and how much of it was out of the taxable income. He, therefore, allocated the said amount as between the agricultural income and the taxable income in proportion to the respective amounts of the two types of income. On that basis, he completed the assessment and levied the tax. (We are not concerned with other aspects dealt with in the assessment order). For the assessment year 1972-73, he adopted a similar process and completed the assessment.

5. The assessee appealed to the Appellate Assistant Commissioner against both the assessment orders. The Appellate Assistant Commissioner agreed with the assessee that the agricultural income being exempt u/s 10(1) cannot be taken into consideration for the purpose of allocating any portion of the amount applied towards charitable/religious purposes. He redetermined the taxable income as well as the amount spent on religious/ charitable purposes and found that, for both the assessment years, no surplus was left and hence no question of assessment to Income Tax arose. Accordingly, he cancelled the assessment orders. The Department went up in appeal to the Tribunal. The Tribunal agreed with the Appellate Assistant Commissioner and dismissed the appeals, whereupon the present reference was obtained by the Revenue.

6. Section 11(1) of the Act reads :

"11. (1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India ; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property ;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India ; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent. of the income from such property ;

(c) income derived from property held under trust-

(i) created on or after the first day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to

which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India :

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution ;

Explanation.--For the purposes of Clauses (a) and (b) :--

(1) in computing the twenty-five per cent. of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in Section 12 shall be deemed to be part of the income ;

(2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of seventy-five per cent. of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount-

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason,

then-

(a) in the case referred to in Sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount ; and

(b) in the case referred to in Sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,

may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under Sub-section (1) of Section 139 for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived ; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes in the case referred to in Sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in Sub-clause (ii), during the previous year immediately following the previous year in which the income was derived."

7. A reading of the sub-section shows that the rule contained therein is made subject to Sections 60 to 63. According to the rule contained in the sub-section, income derived from property held under trust wholly for charitable or religious purposes is exempt to the extent such income is applied to such purposes in India. Even if the income is not actually applied but is accumulated or set apart for application to such purposes in India, it is exempt provided such accumulation or setting apart is not in excess of twenty-five per cent. of the income from such property. Section 10 declares that "in computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--(i) agricultural income ;" Sections 60 to 63, occurring in Chapter V, sets out the situations in which income of other persons is includible in the assessee''s total income. So far as the controversy before us is concerned, they have no relevance. The question arising before us has to be answered keeping in view the above provisions. The question is whether, in applying the rule contained in Section 11(1), the Department is entitled to allocate the amount applied to charitable/religious purposes as between agricultural income and taxable income derived by the assessee in proportion to these respective incomes or whether the Revenue is obliged to exclude the agricultural income altogether from its consideration. The assessee''s case is that since agricultural income is not includible in the total income of the assessee, no question of allocation can arise, while the Revenue says that since both the agricultural income as well as the non-agricultural income are meant for being applied to specified charitable/religious objects and it is not possible to predicate how much of the income applied to such purposes is drawn from out of the agricultural income and how much from out of the taxable income, the proper course would be to allocate the same between both the types of income.
7. Both Sections 10 and 11 occur in Chapter III which specifies "incomes which do not form part of total income". Section 10 so far as it is relevant reads thus :

"10. Incomes not included in total income.--In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included.

(1) agricultural income ;"

8. Section 11, so far as it is relevant for the present purposes, reads thus :

"Income from property held for charitable or religious purposes.--(1) Subject to the provisions of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income,--

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India ; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent. of the income from such property ;...."

9. A reading of the opening words of Section 10 as well as Section 11 shows that both the provisions exclude certain types of incomes from being included in the total income of a person. Section 10(1) excludes agricultural income while Section 11(1) excludes income derived from property held under trust to the extent specified. Now we are concerned with an assessee who has got both the types of income, namely, income from agricultural and income derived from property held under trust wholly for charitable or religious purposes. However, the exemption u/s 11 is not an absolute one. The exemption is available only to the extent such income is applied for such purposes in India or is accumulated to the extent permitted. What the Income Tax Officer had to determine was how much income derived by the assessee from non-agricultural property held under trust for charitable or religious purposes has been applied for such purposes in India. The assessee had not maintained a separate account of the income derived from non-agricultural property. He had mixed up both the agricultural income (which was derived from the property which was also held under trust wholly for charitable/religious purposes) and income from other trust properties (which too were held under trust wholly for charitable/religious purposes). Out of the income so received, he had spent a certain amount towards the specified charitable/religious purposes. The question is whether the agricultural income should be excluded altogether from consideration when determining the extent of income applied for the said purposes within the meaning of Section 11(1)(a). We are of the opinion that, in such a situation, it is not so much a question of law but one of applying a fair and equitable rule. It is to be remembered that both the agricultural properties and non-agricultural properties are held under trust for specified purposes. Had the income from both these sources been kept apart, it would have been possible to know how much income derived from non-agricultural properties has been applied towards the specified purposes, but in the absence of separate accounts, the Income Tax Officer had no option but to allocate the amount spent between agricultural and non-agricultural income in an appropriate ratio. For this purpose, it is not necessary that there should be a provision in the Act and Rules. If the assessee''s contention is accepted and the agricultural income is excluded from consideration altogether, the result would be that no part of the agricultural income would have been applied to the specified purposes. In other words, the Income Tax Officer must proceed on the assumption that only the income derived from non-agricultural properties has been applied towards a specified purpose but in the state of accounts maintained by the assessee (where the agricultural and non-agricultural income is mixed up), it is not possible to say so. It would be unrealistic to say so, besides being unreasonable. Since the assessee has chosen to treat its agricultural and non-agricultural income as one and spent the amounts out of such pool, the Income Tax Officer was perfectly justified in allocating the amount applied in proportion to the agricultural and non-agricultural income.

10. Both counsel have brought; to our notice certain decisions. Counsel for the Revenue has relied upon the decision of the Madhya Pradesh High Court in PARSI ZORASTRIAN ANJUMAN TRUST MHOW Vs. COMMISSIONER OF Income Tax., and of the Calcutta High Court in COMMISSIONER OF Income Tax, WEST BENGAL Vs. SAMNUGGER JUTE FACTORY CO. LTD. AND ANOTHER., , whereas learned counsel for the assessee relied upon the decision of the Orissa High Court in Sailendra Narayan Bhanja Deo Vs. Commissioner of Income Tax, , of the Madras High Court in His Holiness Silasri Kasivasi Muthukumaraswami Thambiran and Another Vs. Agricultural Income Tax Officer, Kumbakonam and Others, and of the Calcutta High Court in Commissioner of Income Tax, Central I Vs. Ashoka Charity Trust, . There is an evident conflict of opinion. For the reasons stated hereinbefore, we are in respectful disagreement with the decisions cited by learned counsel for the assessee. We must, however, point out that in Commissioner of Income Tax, Central I Vs. Ashoka Charity Trust, , a Division Bench of the Calcutta High Court has proceeded under the assumption that, in the absence of a provision in the Act or the Rules, such apportionment is not possible. But we have observed hereinabove that no provision of law is necessary for this purpose. The Income Tax Officer has to take a reasonable and realistic view of what has happened which means that the amount applied towards specified purpose has necessarily got to be allocated in an appropriate proportion between agricultural and non-agricultural income and then the rule contained in Section 11(1)(a) applied. So far as the decision of the Madras High Court in His Holiness Silasri Kasivasi Muthukumaraswami Thambiran and Another Vs. Agricultural Income Tax Officer, Kumbakonam and Others, is concerned, it was rendered with reference to Section 4(b) of the Tamil Nadu Agricultural Income Tax Act. Moreover, it appears that the learned single judge has, in the said decision dissented from his own view taken earlier in another case. So far as the decision of the Orissa High Court in Sailendra Narayan Bhanja Deo Vs. Commissioner of Income Tax, is concerned, the issue was one of apportionment of donation made by the assessee to an approved charitable institution. The learned judges held that it should not be apportioned between agricultural and non-agricultural income derived by the assessee.

11. For the above reasons, the question referred is answered in the negative, i.e., in favour of the Revenue and against the assessee. No costs.