(1983) 04 MAD CK 0034

Madras High Court

Case No: Tax Case No. 1632 of 1977

Vellore Radha Jayalakshmi Funds (P) Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: April 7, 1983

Acts Referred:

- Income Tax Act, 1961 - Section 28

Citation: (1984) 147 ITR 480

Hon'ble Judges: G. Ramanujam, J; Fakir Mohammed, J

Bench: Division Bench

Advocate: K.S. Sivaraman, for the Appellant; J. Jayaraman, for the Respondent

Judgement

Ramanujam, J.
The assessee-company carries on business in chit funds. At the time of auctioning the chit, it invariably collects a fixed

amount, which it credits to a charity account in its books. Under an article of its articles of association, the amount collected as donations for

charity have to be utilised for the charitable objects specified therein. Whatever amount the assessee spends for such charitable objects is debited

in the same account.

2. The ITO, while completing the assessment originally for the year 1967-68, did not include the said charity. Later, he reopened the assessment

under s. 147(a) of the Act; 1961 hereinafter referred to as ""the Act"", on the ground that the charity collections amounting to Rs. 1,704 had

escaped assessment. He then completed the reassessment by including the income of Rs. 1,704 treating it as a trading receipt.

3. The assessee appealed to the AAC, who held that the receipts by way of charity have to be assessed to tax as a trading receipt but at the same

time the necessary relief under s. 80G will be given for the expenditure, if the assessee satisfies the necessary conditions. He, however, held on

merits that the conditions for granting relief under s. 80G are not satisfied.

4. The assessee appealed to the Income Tax Appellate Tribunal contending that the reassessment under s. 147(a) is not valid and that in any event

the donations to charity were not treated as trading receipts in any of the earlier years and that the amounts have been collected for charities by the

assessee as a trustee and, therefore, it cannot be included in its profits. The Tribunal, after referring to the tests laid down by this court in

Commissioner of Income Tax Vs. N.S. Pandaria Pillai, and applying those tests to the facts of this case, found that there was no material to

establish that the assessee got the amount in his capacity as a trustee, that the contributions appear to have been made by the purchasers of the

chit, that the chit amount is put up for auction on certain terms and conditions, one of which is to contribute a fixed amount to be utilised for the

purpose of charity, that the purchaser contributed that amount only because he was required to make it as a condition for purchase of fund for

discharging the contractual obligations undertaken by him and that, therefore, the purchaser did not transfer the money to the assessee as a trustee.

The Tribunal also found that the money was paid to the assessee to be utilised by it according to its discretion and that the payment of the amount

is not voluntary. Therefore, the Tribunal took the view that since all the tests laid down in Commissioner of Income Tax Vs. N.S. Pandaria Pillai, ,

have not been satisfied, the amount should be taken to be only as a trading receipt and as part of the assessee''s profits. Aggrieved by the decision

of the Tribunal, the assessee has sought and obtained a reference to this court on the following question of law for its opinion :

Whether, on the facts and in the circumstances of the case, the charity collections amounting to Rs. 1,704 were trading receipts so as to constitute

the income of the assessee and liable to tax ?

5. The basic and relevant facts as found by the Tribunal are that the business of the assessee-company is governed by the articles of association

and one of the articles of association provided that the amounts collected as donations for charity have to be utilised for certain named charitable

objects specified therein. The amounts collected as charity have been separately shown in the accounts and the amounts spent for charitable

objects referred to in the articles of association have also been debited in the same account. The amounts collected as charity have been treated as

a separate fund and have not been shown either as part of the capital or as a trading receipt. It is also found that the amounts paid were not

voluntary but have been usually and uniformly paid by the members, who are the successful bidders for the chit amount. The question is whether on

the facts found by the Tribunal, the collections made by the assessee as contribution towards charity were part of the trading receipts.

6. In Commissioner of Income Tax Vs. N.S. Pandaria Pillai, , the assessee collected from his customers half a per cent. of the sale price of the

goods sold by him, showing them separately in the bills as for charity, though no portion of the said collection appeared to have been actually spent

by the assessee towards charity. The ITO held that the collections were part of the income of the assessee. But the Income Tax Appellate Tribunal

held otherwise. On a reference, this court held that the creation of a trust included conveyance of the ownership in the fund from the owner to the

trustee and if such transfer is voluntary and with a view to constitute the sum so transferred as a trust for a specific purpose, the collections would

not form part of the income of the collector; but if the payment made by the customers is not voluntary and not intended as a gift to charity, the

collection would form part of the income of the person, who received the same, notwithstanding that the same was shown separately in the bills as

part of the bargain, as it would only indicate his intention to create a trust. In that case emphasis has been laid (1) on the intention to create a trust,

and (2) on the voluntary nature of the contribution. In Thakur Das Shyam Sunder Vs. Additional Commissioner of Income Tax and Another, , a

Full Bench of the Allahabad High Court had held that customary collections by a commission agent from the persons, whose goods are sold by

him as an agent as ""dharmadha"" and kept in separate account to be used exclusively for a specific purpose cannot be taken as his income. The Full

Bench expressed the view that in order to determine whether a particular receipt, by whatever name it is called, is or is not the income of an

assessee, its real nature and quality has to be considered; that if it was received under a custom, the answer to the question will depend on the

nature of the obligation created by the custom; that, in that case, the customers paid the ""dharmadha"" amount to the commission agent knowing that

the same was being collected over and above the commission, which was payable by them to the commission agent; that the said amout, under the

custom had to be spent on charities for which purpose a fund had been established, and merely because the legal ownership over the amount

collected as ""dharmadha"" vested in the assessee, it cannot be said that its position was not that of a trustee, that the discretion vested in a trustee to

spend the trust amount over charities will not affect the character of the deposit, and that, therefore, the collection could not be taxed as income of

the commission agent.

7. To the same effect is the decision of the Punjab High Court in CIT v. Gheru Lal Chand [1978] 111 ITR 134. In that case, a similar custom

creating an obligation to spend ""dharmadha"" exclusively on charitable purpose was invoked and resorted to by a certain from his constituents, and

he wad held to be acting more or less as a trustee of such amounts and as such those amounts were not includible in the dealer''s assessable

income.

8. In Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., , while considering a similar question, the Supreme Court

has approved the decision of the Full Bench of the Allahabad High Court in Thakur Das Shyam Sunder Vs. Additional Commissioner of Income

Tax and Another, and the decision in [1978] 111 ITR 134 . In an earlier decision, namely, Commissioner of Income Tax, West Bengal Vs.

Tollygunge Club Ltd., , a race club conducting horse races with amateur riders charged fees for admission into the enclosures of the club at the

time of the races. A resolution had been passed by the race earlier at the general body meeting of the club for levying a surcharge of eight annas

over and above the admission fees, the proceeds of which were to go to the Red Cross Fund. Late, this resolution was modified to the effect that

the surcharge should be earmarked ""for local charities and not solely for the Indian Red Cross"". The question was, whether the receipts on account

of the surcharge were to be treated as the income of the club. The Applellate Tribunal as well as the High Court had held that the respondent''s

receipts from the surcharge levied on admission tickets for purposes of charity could not be included in the respondent''s taxable income. On a

further appeal, the Supreme Court had held, confirming the decision of the High Court, that the surcharge was not a part of the price for admission

but was a payment made for the specific purpose of being applied to local charities. In that case, the payment of surcharge was held not to be

voluntary. But, according to the Supreme Court, the compulsory nature of the levy will not render the payment of surcharge as part of the

admission fee and that it is a fee made for the specific purpose of being applied to local charities. The view taken in that case has been reiterated

by the Supreme Court again in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., , referred to above, wherein

the Supreme Court has laid down the following tests : (1) If the amounts collected on account of charity have been shown separately in the bills

issued to the customers and have been kept in a separate account and not brought into the trading account, and the amounts spent for charities are

debited to that account, the said collections cannot be taken to be trading receipts. (2) The fact that the contributions have not been made

voluntarily will not make the collections straightaway a trading rec eipt. (3) The fact that the assessee had retained to himself a wide discretion

regarding the manner in which the amounts are to be spent for charitable purpose will not also make the collection part of his trading receipts.

9. In Commissioner of Income Tax, Coimbatore Vs. Coimbatore Cotton Mills Ltd., , a Division Bench of this court dealt with the nature of the

mahimai"" collection from the assessee who is a yarn dealer. The assessee claimed that the amount collected did not form part of his trading

receipts. The ITO rejected that claim and held that it is a trading receipt. The Tribunal, however, allowed the claim. Further, on a reference, this

court held that where the intention of the parties is that the ""mahimai"" or ""dharmadha"" is taken and given not as part of the purchase price but

towards charity, such amounts are not trading receipts, that there was no material in that case to show that the ""mahimai"" collection was intended

by the assessee as well as the yarn traders to be part of trading receipts and that, therefore, the ""mahimai"" collections could not be included in the

taxable income of the assessee. The Bench has disagreed with the view of this court in Commissioner of Income Tax Vs. N.S. Pandaria Pillai, ,

and followed the decision of the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., .

10. Following the above said tests laid down by the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills

(P.) Ltd., and adopting the reasoning in that judgment, we have to hold that the collections made by the assessee in this case cannot be regarded as

the assessee taxable business income. As already stated, the articles of association of the assessee-company have specifically provided for the

constitution of a fund for the purpose of carrying out certain charities. The customers of the company should be deemed to be aware of the same,

and there is no question of the assessee diverting the amounts collected for charity for the purpose of his business or for any other non-charitable

purpose. When the customer makes the payment towards charity, he is well aware of the purpose for which the amount paid by him will be

utilised. Therefore, the customer paying the amount as charity treats assessee as trustee. It is no doubt true, the payment made by the customer is

not voluntary. But that does not mean that the amounts paid are the trading receipts of the assessee. In this case, the amounts collected have been

kept separately and they have not been shown as trading receipts. Even the amounts spent for charities have been debited against the collections

which have been kept separately from the trading receipts. We have to hold, therefore, that the view taken by the Tribunal not correct and the

question is to be answered in the negative and against the Revenue. The assessee will have the costs from the Revenue Counsel''s Rs. 500.