**(1969) 02 GAU CK 0005**

**Gauhati High Court**

**Case No:** Income-tax Reference No. 1 of 1967

| | | |
|---|---|---|
| Commissioner of Income Tax | | APPELLANT |
| | Vs | |
| P.K. Barooah, Vice-President | | RESPONDENT |

**Date of Decision:** Feb. 27, 1969

**Acts Referred:**

- Income Tax Act, 1922 - Section 4(3)
- Income Tax Act, 1961 - Section 10(23), 11, 11(1)

**Citation:** (1970) 77 ITR 967

**Hon'ble Judges:** S.K. Dutta, C.J; K.C. Sen, J

**Bench:** Division Bench

**Advocate:** J.P. Bhattacharjee, for the Appellant; D. Sarma, S.K. Sen and P.K. Goswami, for the Respondent

**Judgement**

K.C. Sen, J.
In this reference u/s 256(1) of the Income Tax Act, 1961, hereinafter called "the Act", the following question has been posed for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the assessee is a charitable institution within the meaning of Section 11(1) of the Income Tax Act, 1961 ?"

2. The relevant assessment years are 1961-62, 1962-63 and 1963-64. The respondent, Shri P. K. Barooah, hereinafter called "the assessee" is the vice-president of the Jorhat Races, an association of persons, chiefly engaged in horse-racing and similar equestrian activities. The association of persons declared and made a trust on March 4, 1959, by execution of a trust deed to which we shall refer to later. For the relevant years under appeal, the income tax Officer assessed the surplus funds of the association amounting respectively to Rs. 13,716, Rs. 12,309 and Rs. 11,800 u/s 143(3) of the Act. In the proceedings before the Income Tax Officer, the assessee claimed exemption from tax u/s 11(1) of the Act, on the ground

that the trust created under the deed of March 4, 1959, provided for the disposal of the surplus funds for charitable purposes. Such a claim was negatived both by the Income Tax Officer and the Appellate Assistant Commissioner.

3. The Tribunal construed the deed of trust and held that the "surplus funds" which formed the subject-matter of the trust came within the definition of the term "property". It is stated in the statement of the case that as regards the purpose and object of the trust, Clause (3) of the deed of trust lays down that the surplus funds are to be disposed of, "(i) by making improvements to the racing facilities available at Jorhat, etc., and/ or (ii) by making donations at the discretion of the trustees to any recognised institution for social, cultural and physical benefits of the people. According to the Tribunal, the first of the above objects, namely, promotion of racing facilities available to the members of the public of Jorhat, is an object of general public utility and, therefore, charitable in nature. As regards the second object, namely, the donation to recognised institutions for social, cultural and physical benefits of the people, it was undoubtedly a charitable object which comes within the purview of Section 11 of the Act.

4. In coming to its decision, the Tribunal noticed that in the relevant years of account, the bulk of the surplus made, had been utilised for making donations to such charitable institutions as the Christian Mission Hospital, Christian Leprosy Colony, Jorhat Music School, Jorhat Girl''s College, etc. Accordingly, it held that the income of the trust was exempted from tax u/s 11(1) of the Act and allowed the appeal of the assessee.

5. The question requiring interpretation of a document is a question of law. Accordingly, in the first instance, we have to refer to the terms and clauses of the trust deed as per annexure "D" of the paper book. It appears therefrom that the trust deed was created on 4th day of March, 1959, between Stephen Gilbert Bath Brown, etc. and M/s. Stephen Gilbert Bath Brown, I Prasanna Kumar Barooah, etc., the entire set of stewards of Jorhat Races executed a deed of trust in favour of some of them and the object of the trust was to provide for the disposal of surplus funds which came into their hands after the accounts in respect of each meeting of the races have been completed. Thus it appears that a trust was created in favour of the said trustees in respect of the surplus funds which might come into their bands and not in respect of the principal "property", namely, the Jorhat Races.

6. In order to answer the question, we are required to construe the third clause of the deed which runs as follows:

"The surplus funds referred to above may be disposed of in one or more of the following ways, (a) by making improvements to the racing facilities available at Jorhat by way of increased stake money, by increasing the facilities available to members of the public or in such other manner connected with the races as the trustees shall consider desirable, and/or (b) by making donations at the discretion of

the trustees to any recognised institutions for social, cultural ar,d physical benefit of the people."

7. This clause in our opinion envisages two important aspects, namely, making improvements to the racing facilities, etc., and/or making donations to charitable institutions for social, cultural and physical benefits of the people. It will be pertinent to note that the object of the trust in respect of the surplus funds was to dispose them of in any of the manners as stated in the said clause.

8. Mr. S. K. Sen, appearing for the assessee, has argued that the surplus funds as stated in the deed should come within the definition of trust, and this should be treated as a "property" in.terms of Section 11(1) of the Act, for which a trust may be created and, therefore, under each provision, the surplus funds should be exempted from assessment of tax. His second argument is that promotion of racing facilities available to the members of the public at Jorhat is an object of general public utility and, therefore, charitable in nature.

9. Mr. J. P. Bhattacharjee on behalf of the department has referred us to several provisions of the Act and has argued that the "surplus funds" as stated before can never come within the ambit of Section 11(1) of the Act.

10. Section 2, Clause 15, defines charitable purposes as follows :

" ''charitable purpose'' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

11. Now, the sheet anchor of the question involved is whether any or all the provisi! in Clause (3) of the trust deed regarding the surplus income should be treated as a "property" and it should be exempted from taxation and whether any property was the subject-matter of a trust towards advancement of any object of general public utility, not involved in any activity for profit. It is undoubtedly true, as appearing from the statement of the case, that the assessee is the vice-president of the Jorhat Races which is an association of persons generally engaged in horse racing and similar equestrian activities and, therefore, it is necessary to consider in the first instance whether Sub-clause (a) of Clause (3) of the deed should on the face of it come within the ambit of Section 10, Clause (23) of the Act, one of the exemption clauses, which provides that:

"Any income of an association or institution established in India having as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, foot-ball, tennis or such other games or sports as the Central Government may specify in this behalf from time to time by notification in the Official Gazette."

12. This clause does not include horse racing and, therefore, any income originating from horse-racing cannot on the face of it be exempted from the purview of the

taxation Act. The assessee claimed exemption u/s 11(1) of the Act which provides that in order to support a claim for exemption of income under this section, the principal object for consideration would be whether the property from which the income is derived should be the trust or other legal obligation. Secondly, the property should be so held for charitable or religious purposes which enures to the benefit of the public. Thirdly, the exemption is confined only to such portion of the trust income as is in fact applied to charitable and religious purposes.

13. Mr. Sen has laid great stress upon the expression "legal obligation" contained in Explanation 1 to Section 13 and has argued that even assuming that the object of the trust, namely, the surplus fund is not a property, it is a legal obligation on the assessee to apply the surplus fund wholly or in part for some religious or charitable purposes, and, therefore, when he is fastened with a "legal obligation" which is inseparably connected with the said fund, he should be exempted from tax liability. This argument has undoubtedly some force, but, in our opinion, the word "property" used in Section 11 is the criterion on which the entire decision should be based. The expression "legal obligation" cannot be separated from the "property" itself which in the instant case is a horse-racing concern, inasmuch as law enjoins that such property must be held under a trust or other legal obligation and not the fund derived therefrom. We have already shown that Jorhat Races were not the subject-matter of a trust and only a trust has been created in respect of the surplus fund. The surplus fund really emanates from a property which is not a subject-matter of the trust and as such in the absence of any legal obligation fastened thereto, no exemption can be allowed u/s 11 of the Act. In this connection, reference may be made to the well-known Privy Council case Mohammad Ibrahim Riza v. Commissioner of Income Tax, [1930] L.R. 57 I A 260 AIR 1930 P.C. 226.. It was held that if there are several objects of a trust of which some are charitable and some are non-charitable, and the trustees in their discretion are to apply income to any of the objects, the whole trust fails and no part of the income is exempted from tax. We shall later on discuss as to whether both the Sub-clauses in Clause (3) of the trust deed are charitable in nature or not.

14. In so far as the question whether "surplus lands" are properties within the meaning of Section 11(1) of the Act, reference may be made to a decision in RAJA P. C. LALL CHAUDHARY Vs. COMMISSIONER OF Income Tax BIHAR AND ORISSA., (Pat).. Their Lordships of the Patna High Court held that Section 4(3)(i) of the Indian Income Tax Act, 1922 (corresponding to Section 11(1) of the Act), confers an exemption on income from property only where the property itself is held under a trust or other legal obligation; it does not apply to cases where a trust or legal obligation is not created on any property, but only the income derived from any particular property or source is set apart and charged for a charitable or religious purpose.

15. We agree with the above decision and find that, as such, in the instant case also, the contention of the assessee is not maintainable. The Supreme Court also decided in The Guru Estate through Dwarkadas Guru and Others Vs. The Commissioner of Income Tax Bihar and Orissa, that the donations derived by the assessee through the annadan patras were neither derived from property held under a trust or other legal obligation solely for religious or charitable purposes nor income of a religious or charitable institution derived from voluntary contributions applicable exclusively to purposes, religious or charitable, and that, therefore, the donations were not exempt under Clause (i) or Clause (ii) of Section 4(3) of the Indian Income Tax Act, 1922. These two decisions are clear pointers to the fact that the surplus fund, whatever their applicability may be, is not hit by the provisions of Section 11(1) of the Act.

16. In view of our above decision, the question whether Sub-clause (a) of Clause (3) of the trust deed comes within the ambit of the definition of "charitable purposes" is more or less academic. Since the matter has been argued, we may refer to Sub-clause (a) of Clause (3) of the trust deed. This envisages that the surplus fund may be applied for making improvements to the racing facilities available at Jorhat by way of increased stake money, by increasing the facilities available to the members of the public or in such other manner connected with the races as the trustees shall consider desirable. By quoting the provisions of Section 10(23) of the Act, we have already shown that such object does not come within the said exemption Clause. When such fund does not come within its ambit, it goes without saying that the trustees had the indefeasible alternative right to apply the funds to such purposes, without making any donation to charitable purposes. In such circumstances, the matter is hit by the decision of the Privy Council as stated before and the contention of Mr. Sen in this respect is negatived.

17. We shall now turn to decide the application which was filed before this court u/s 258 of the Act. It provides that if the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf. In the petition before us, the assessee has asked us to call for a fresh statement of case for ascertainment as to whether the purpose of the case in Jorhat is to provide incentive in horse breeding and rearing. Horses are very essential for carriage of goods and men through paths where modern vehicles cannot ply. As such, the said horse race festival enthuse people t6 breed better horses. Further, it is stated that the Jorhat races are held only once a year and Polo and Tennis are played which can be testified from the books of account produced before the department and hence no additional evidence to prove the same is required The object of such a petition in our opinion is to bring the case u/s 10(23) of the Act on fresh facts. Furthermore, it appears that we are only required to find from the evidence as stated by the Tribunal whether the

surplus income should be exempted from tax on a proper consideration of the trust deed as per annexure "D", in the paper book. We have already found in this case that the surplus fund is not a "property" within the meaning of Section 11 of the Act, and as such the assessee cannot now turn round and say that the entire matter may come within the ambit of Section 10(23) of the Act, as the establishment is for encouragement of games. Apart from that, we are of the view that the High Court cannot send back the case to the Tribunal to find fresh facts and embark upon a fresh line of enquiry on practically a different subject-matter altogether. In such circumstances, the petition u/s 258 cannot, on the face of it, be allowed as we consider that this will be a clear deviation from the facts and circumstances as made out in the statement of the case and the assessee in order to suit his ends cannot be allowed to circumvent the entire issue and ask us to embark upon a new enquiry. In such circumstances, the petition u/s 258 of the Act must stand rejected.

18. In the result, the question posed before us is answered in the negative.

19. Each party is directed to bear its own costs in this reference.

S.K. Dutta, C.J.

20. I agree.