(1987) 10 MP CK 0014

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 130 of 1983

COMMISSIONER OF Income Tax		APPELLANT
	Vs	
MADHYA PRADESH ANAJ TILHAN VYAPARI MAHASANGH.		RESPONDENT

Date of Decision: Oct. 20, 1987

Acts Referred:

- Income Tax Act, 1961 - Section 12, 139, 148, 2, 28

Citation: (1988) 68 CTR 13 : (1988) 171 ITR 677 : (1988) 37 TAXMAN 230

Hon'ble Judges: N. D. Ojha, C.J

Bench: Division Bench

Judgement

N. D. OJHA C.J. - The Income Tax Appellate Tribunal, Indore Bench, Indore, had referred the following three questions to this court for its opinion u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee, Mahasangh, is a public charitable institution and that its objects are covered within the meaning of section 2(15) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the contributions to the extent of Rs. 2,96,361 received by the assessee, Mahasangh, from its members at 50 paise per quintal of gulabi chana and pulses exported outside Madhya Pradesh were voluntary contributions exempted u/s 12 of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 2,87,231 (out of Rs. 2,96,361) is not liable to tax u/s 28 of the Income Tax Act, 1961, and that it is exempt u/s 12 of the Income Tax Act, 1961 ?"

The assessee M/s. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh, Bhopal (hereinafter referred to as "the Mahasangh"), is a non-trading Corporation registered under the M.P. Non-trading Corporation Act, 1962. Initially, no return was filed by the Mahasangh u/s 139 of the Act, but is response to a notice u/s 148, it did file a return, along with a written claim to the effect that it was a charitable institution within the meaning of section 2(15) of the Act and the sum of Rs. 2,96,361 received by it from the Anaj Tilhan Vyaparis of M.P. was a voluntary donation and was exempt u/s 12 of the Act. The plea raised by the Mahasangh did not find favour with the Income Tax Officer and the order of the Income Tax Officer was upheld in appeal by the Appellate Assistant Commissioner. Aggrieved by these orders, the Mahasangh preferred second appeal before the Tribunal which was allowed and the pleas of the Mahasangh that it was a charitable institution within the meaning of section 2(15) of the Act, that the sum of Rs. 2,96,361 received by it as aforesaid was voluntary donation and that it was consequently exempt u/s 12 of the Act, were accepted. However, the Tribunal, at the instance of the Commissioner of Income Tax, referred the aforesaid three questions to this court for its opinion.

It has been urged by learned counsel for the Department that the findings recorded by the Tribunal that the Mahasangh was a charitable institution within the meaning of section 2(15) of the Act is, on the facts of the present case, erroneous. It has also been urged by him that the aforesaid amount received by the Mahasangh was not a voluntary donation and was consequently not exempt u/s 12 of the Act.

Having heard learned counsel for the parties, we find it difficult to agree with the submission made by learned counsel for the Department. The Tribunal in its appellate order, has recorded the following findings :

(i) The objects of the assessee, Mahasangh, are set out in its constitution according to which the predominant object is to protect the interest of its members, to assist, regulate and control the trade in grains and oilseeds and to advise in the settlement of disputes.

(ii) The assessees predominant object is not only to promote the interest of its members, but also to assist, regular and control the trade ingrains and oilseeds in which its members were dealing and according to object No. 5 of its objects, its income or other property whenever received was totally to be applied to the objects of the trust and it could not be distributed amongst its members.

(iii) The assessee, Mahasangh, is not a profit-making body. It is not running any business as such. It is only acting for the benefit of the traders who are its members.

(iv) It is evident that the contributions were made not merely to meet the administrative expenses, but to promote the objects of the assessee, Mahasangh, which was a charitable institution. The administrative expenses were necessary to run the assessee-institution. In the absence of the administrative staff and the minor expenses on salary, etc. paid to them, the institution could not begun at all.

The contributions in order to be voluntary, had to be made willingly and without compulsion and the money was to be gifted or given gratuitously without consideration and these tests were satisfied on the facts of the present case.

The aforesaid findings are apparently findings of fact based on an appraisal of the material on record and on these findings the law laid down by the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, is squarely applicable. It was held that the true meaning of the words "not involving the carrying on of any activity for profit" used in section 2(15) of the Act is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit. So long as the purpose does not involve the carrying on of any activity for profit, the requirement of the definition would be met and it is immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not. It was further pointed out, "the test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to sub-serve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit." It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation, but would also reflect an unsound principle of management.
The principle laid down in the aforesaid case was applied by the Supreme court in the following three later decisions :

(i) Commissioner of Income Tax, Bombay Vs. Bar Council of Maharashtra,

(ii) Commissioner of Income Tax, Madras Vs. Andhra Chamber of Commerce and Others, ; and

(iii) Commissioner of Income Tax, New Delhi Vs. Federation of Indian Chambers of Commerce and Industries, New Delhi, .

In view of the findings of fact recorded by the Tribunal and the law laid down by the Supreme court as stated above, our answer to the three questions referred to us is in the affirmative, in favour of the assessee and against the Department. In the Circumstance of the case there shall be no order as to costs.