

(1987) 01 AP CK 0021

Andhra Pradesh High Court

Case No: Ref. Case No. 181 of 1979

T. Bapanaiah
Vidyadharma Trust

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Jan. 28, 1987

Acts Referred:

Income Tax Act, 1961 – Section 11, 11(1), 11(2), 12, 12A

Citation: (1987) 01 AP CK 0021

Hon'ble Judges: M.N. Rao, J; K. Ramaswamy, J

Bench: Division Bench

Judgement

K. Ramaswamy, J.

This reference under s. 256(1) of the Income Tax Act, 1961, for short, "the Act", has been made at the instance of the

assessee which is as follows :

Whether, on the facts and in the circumstances of the case, the provisions contained in section 13(2)(h) of the Income Tax Act, 1961 disqualify

the assessee's claim for exemption of income u/s 11 of the Income Tax Act, 1961 ?

2. The facts set out in the statement of the case are that one T. Bapanaiah, a resident of Vijayawada constituted a trust of a sum of Rs. 20,000 for

charitable purpose by written indenture dt. 22-10-1965 and the said sum was invested in the partnership firm "M/s Jaya Textiles", Vijayawada in

which the assessee has substantial interest. Then he claimed exemption of interest derived from the trust property under s. 11 of the Act from

taxability for three relevant asst. yrs. 1972-73 to 1974-75. The ITO applied s. 13(2)(h) of the Act and held that it is to be included in the income

of the assessee. In appeal, the AAC and further appeal to the Tribunal, the view of the ITO was confirmed. At the instance of the assessee, the

reference is thus made.

3. Sri. Y. Ratnakar, Id. counsel for the assessee contends that what is sought to be tagged on for the purpose of the exclusion from computation is

the corpus by not the accumulation of the income derived from the corpus kept for the charitable purpose. The corpus was invested in the

partnership firm. Though the assessee has substantial interest in it, the income derived therefrom is laid out or sought to be expended for charitable

purpose. Therefore, what is sought to be excluded is the accumulation of the income derived from the corpus but not the corpus as such.

Therefore, this entire interest accrued is to be excluded from taxability. We are unable to agree.

4. Section 11 of the Act declares the income from property held for charitable or religious purpose shall not be included in the total income of the

previous year. Section 11(1) of the Act postulates thus :

Subject to the provisions of sections 60 - 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 purpose, to the extent to which such income is applied to such

purpose in India; and, where any such income is accumulated or set apart for application to such purpose 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;

(clause (b) thereof is not necessary for the purpose of this case and is, therefore, omitted)

Sub-s. (2) thereof provides thus :

Where seventy-five per cent of the income referred to in clause (a) of sub-section (1) read with the Explanation to that sub-section is not

applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart

either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total

income of the previous year of the person in receipt of the income provided the following conditions are complied with, namely :

(a) Such person specifies, by notice in writing given to the Income Tax Officer in the prescribed manner, the purpose for which the income is being

accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-s. (5).

Section 12A of the Act provides conditions as to registration of trusts, etc. It speaks thus :

The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are

fulfilled, namely :

(a) the person in receipt of the income has made application for registration of the trust or institution in the prescribed form and in the prescribed

manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust

or the establishment of the institution, whichever is later :

Provided that the Commissioner may, in his discretion, admit an application for the registration of any trust or institution after the expiry of the

period aforesaid;

(clause (b) therefore is not necessary for the purpose of this case and is, therefore, omitted).

5. Section 13(2) of the Act does not apply in certain cases. It postulates thus :

Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt

thereof -

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b)

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof -

(i) (Not relevant. Hence omitted).

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or

applied,

directly or indirectly for the benefit of any person referred to in sub-section (3).

(clause (d) is not necessary for the purpose of this case and is, therefore, omitted)

Sub-s. (3) thereof reads thus :

The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :

(a) the author of the trust or the founder of the institution.

(Other clauses are not necessary for the purpose of this case and are, therefore, omitted).

Sub-s. (2)(h) thereof provides thus :

Without prejudice to the generality of the provisions of clause (c) (Omitted as being irrelevant) of sub-section (1), the income or the property

of the trust or institution or any party of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for

the benefit of a person referred to in sub-section (3) -

Clauses (a) to (g) (Omitted as not relevant).

(h) if any funds of the trust or institution are, or continue to remain invested for any period during the previous year (not being a period before the first day of January, 1971) in any concern in which any person referred to in sub-section (3) has a substantial interest.

Substantial interest has been explained in Explanation 3 thereof which reads thus :

For the purposes of this section, a person shall be deemed to have a substantial interest in a concern, -

(i) (Omitted since not relevant).

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3)

are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

6. A conjoint reading of these provisions would make the legislative intention manifest that the income derived from property held wholly for

charitable purpose to the extent to which such income is applied to such purpose in India and where such income is accumulated or set apart for

application to such purposes in India to the extent to which such income so accumulated or set apart is not in excess of twenty-five per cent of the

income from such property, shall not be included in the total income of the previous year of the person in respect of the income from such

property. Under s. 11(2), the remaining seventy-five per cent, where it is accumulated or set apart either in whole or in part for charitable or

religious purpose and is not applied or is not deemed to have been applied to charitable or religious purpose in India in the previous year, shall not

be included in the total income of the previous year on compliance of the conditions mentioned here-under. The person must specify by notice in

writing given to the ITO in the prescribed manner the purpose of accumulation or setting apart. The period thereof shall, in no case, exceed ten

years. The money so accumulated or set apart shall be invested or deposited as enjoined in sub-s. (5) of s. 11. Section 12A further mandates that

the person on receipt of the income from such trust property shall make an application to the Commissioner in the prescribed manner for

registration of the trust before 1-7-1973 or before the expiry of the period of one year from the date of the creation of the trust or the

establishment of the institution, whichever is later or within extended period. Otherwise the benefit of s. 11 shall not apply to the income derived

from the property of the said trust. But s. 13 of the Act excludes the application of s. 11, provided the conditions prescribed thereunder are

satisfied, namely, s. 11 of the Act shall not operate so as to exclude from total income of the previous year of the person in receipt of, in the case

of a trust for charitable or religious purposes or charitable or religious institutions, any income thereof or any part of, if such income or any property

of such trust or institution is used or applied directly or indirectly for the benefit of any person referred to in sub-s. (3), namely, the author of the

trust or the founder of the institution if any funds of the trust or the institution are, or continue to remain, invested for any period during the previous

year in which the founder or the author has substantial interest. Sub-s. (2) of s. 13 of the Act makes the matter explicit. It speaks that without

prejudice to the generality of the provisions of clause (c), the income or the property of the trust or institution or any part of such income or the

property so invested shall not be excluded. Admittedly, the author of the trust has invested the entire corpus of Rs. 20,000 set apart for charitable

purposes in "M/s Jaya Textiles" in which he has substantial interest. Therefore, the income derived is not liable to be excluded from chargeability to

tax. Another question that arises for consideration is what is the meaning of the word "fund". The term "fund" includes both the corpus as well as

income derived therefrom. It is made manifest by sub-s.(2) of s. 13 of the Act itself which speaks of income or the property of the trust or

institution or any part of such income or property. Therefore, it is difficult to accept the contention that the Legislature has intended to apply the

word "fund" in a restricted sense only to the accumulated income but not to the corpus. Therefore, not only the corpus but also the income derived

therefrom shall not be excluded in the computation of the total income of the author for the purpose of the Income Tax of the previous year.

Therefore, the authorities below have rightly computed the interest in the chargeable total income of the assessee. Accordingly, the reference is

answered in favour of the Revenue and against the assessee. There shall be no order as to costs.