

**(1993) 09 BOM CK 0059**

**Bombay High Court**

**Case No:** Income-tax Reference No. 12 of 1982

Trustees of Shri Kot Hindu Stree  
Mandal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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Date of Decision: Sept. 30, 1993

Acts Referred:

- Income Tax Act, 1961 - Section 11, 12, 12(1), 12A, 13

Citation: (1994) 116 CTR 22 : (1994) 209 ITR 396

**Hon'ble Judges:** D.R. Dhanuka, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** Ms. A. Vissanji, Dr. V. Balasubramaniaman, for the Appellant;

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### **Judgement**

D.R. Dhanuka, J.

By this reference made u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amounts of Rs. 9,565 and Rs. 8,105 received by the assessee for the assessment years 1973-74 and 1974-75, respectively, were voluntary contributions and hence income within the meaning of section 12 of the Income Tax Act, and therefore, liable to be included in the total income of the trust for the two years ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding alternatively that section 11 also applied to the facts of the case and that the subscription amounts received by the assessee for both the years partook of the nature of income even without reference to the provisions of section 12 when the case of the Revenue was that the income was only taxable u/s 12 ?"

2. The trustees of Shri Kot Hindu Stree Mandal are the assesseees in this reference. The reference relates to the assessment years 1973-74 and 1974-75. Sri. Kot Hindu Stree Mandal is a public charitable trust. It was a duly registered trust within the contemplation of section 12A of the Income Tax Act, 1961. The income of the trust is eligible for exemption u/s 11 of the Act subject to the conditions specified therein. At the material time, the assessee-trust was duly registered as a trust under the Bombay Public Trusts Act.

3. During the relevant previous years concerning assessment years 1973-74 and 1974-75, the assessee-trust received subscription amounts of Rs. 9,565 and Rs. 8,105 from its members. The question which arises for consideration of the court is as to whether the members' subscription fee received by the above-referred charitable trust can be characterised as "voluntary contributions received by a trust" within the meaning of section 12 of the Income Tax Act, 1961, and is liable to be included in the total income of the trust. The Tribunal took the view that the subscription amounts received by the assessee-trust from its members amounted to voluntary contributions within the meaning of section 12 of the Income Tax Act, 1961, and were liable to be included in the total income of the assessee for the assessment years in question. Learned counsel for the assessee has submitted the subscription fees received from the members of the trust could never be treated as voluntary contributions within the meaning of section 12 of the Act. Learned counsel for the assessee has submitted that the expression "voluntary contribution" must be interpreted to mean amounts paid in the nature of a gift or a gratuitous payment to the trust without any consideration. Learned counsel for the assessee has criticised the reasoning and observations of the Tribunal when it observed that subscription amounts paid by the members were nothing but donations. It must be stated here and now for the sake of clarity that prior to its substitution by the Finance Act, 1972, with effect from April 1, 1973, section 12(1) of the Act unconditionally exempted any income of a trust for charitable or religious purposes or of a charitable or religious institution derived from voluntary contributions. Section 12 of the Act, as amended, provides that voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific directions that they shall form part of the corpus of the trust or institution) shall, for the purposes of section 11, be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of sections 11 and 13 shall apply accordingly. Notwithstanding the amendment made to section 12 of the Act, cases decided by the courts interpreting the expression "voluntary contribution" used in the old section 12 of the Act will be of considerable assistance. The concept of "voluntary contribution" remains the same even under the amended section 12 of the Act.

4. Learned counsel for the assessee has invited the attention of the court to the observations made by the High Court of Madhya Pradesh in the case of

COMMISSIONER OF Income Tax Vs. MADHYA PRADESH ANAJ TILHAN VYAPARI MAHASANGH., in support of her contention concerning the interpretation of the expression "voluntary contribution" u/s 12 of the Act. N. D. Ojha C. J., speaking for the Division Bench (as his Lordship then was), observed at page 680 of the above referred judgment as under :

"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."

5. When a person pays membership fee or subscription to a society or a trust, he does not make a gift of the membership fee or subscription amount to the society. The amount of subscription paid by a member to the society can never be considered as gratuitous payment made by the member to the society or as a payment without any consideration.

6. There is considerable merit in the submission of learned counsel for the assessee. In *Russel v. Vestry of St. Giles* (3 E&B 416), Lord Campbell observed "voluntary contributions" here do not mean annual subscriptions (or entrance fees) paid for value received or expected to be received by the party paying, but means a gift made from disinterested motives for benefit of others. In *Society of Writers to the Signet v. IRC* [1886] 2 TC 257, the court held that the entrance fees and subscriptions paid by entrants to a society or institution as a condition precedent to their membership and as the price of admission to the privileges and benefits of the society or institution are given under a contract and are not voluntary.

7. We accept the above referred submission of learned counsel for the assessee. We accordingly hold that the membership and subscription amounts received by the applicant-trust/society from its members cannot be characterised as "voluntary contribution" within the meaning of the said expression u/s 12 of the Income Tax Act, 1961. The entire income of the trust is exempted u/s 11 of the Income Tax Act, 1961. In our opinion, the Tribunal was not justified in treating the receipt of subscription amounts from the members as voluntary contribution or a donation.

8. In view of the above discussion, we answer question No. 1 in the negative, i.e., in favour of the assessee and against the Revenue. We hold that the subscription amount received by the assessee-trust was not liable to be included in the total income of the trust for the relevant assessment years. In view of our firm conclusion in respect of question No. 1, we do not find it necessary to answer question No. 2. We, therefore, decline to answer question No. 1. The reference is disposed of in the terms aforesaid.

9. Having regarding of the facts and circumstances of the case, there shall be no order as to costs.