

(1997) 05 DEL CK 0072

**Delhi High Court****Case No:** Income-tax References No"s. 137 to 142 of 1976

Bhriguraj Charity Trust

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** May 30, 1997**Citation:** (1997) 228 ITR 50**Hon'ble Judges:** Kripa Shankar Gupta, J; Dr. M.K. Sharma, J; Devinder Gupta, J**Bench:** Full Bench**Advocate:** Deokinandan, Adv K.M.L. Majele and G.C. Sharma, R.D. Jolly and Ms. Prem Lata Bansal, for the Appellant;

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**Judgement**

Devinder Gupta, J.

These Income Tax references raise the question of the entitlement of Bhriguraj Charity Trust, New Delhi, to exemption from Income Tax for the assessment years 1965-66 to 1969-70 and 1971-72 under the provisions of section 11 of the Income Tax Act, 1961.

2. The question involved is whether the trust is a charitable trust within the meaning of sections 11 and 12 of the Income Tax Act, 1961. The claim of the assessed has been that it was a public charitable trust. The Revenue was of the opinion that it is a private charitable trust not entitled to exemption provided under sections 11 and 12 of the Act. The Income Tax Officer after examining the trust deed held that the objects of the trust were not wholly and exclusively charitable but only partly charitable. Following the same view, which had been taken in the earlier assessment years, where exemption was claimed and was not allowed, the Income Tax Officer brought the income to tax for the assessment years in question. The assessor's appeals were dismissed by the Appellate Assistant Commissioner after following the decision of this court in [The Commissioner of Income Tax Vs. Jaipur Charitable Trust](#), . An appeal was preferred by the assessed before the Tribunal. The assessed filed additional documents for consideration of the Tribunal, which included a copy of the plaint, judgment and decree in a suit filed for rectification of the trust deed in

question under the provisions of the Specific Relief Act. The assessor's suit had been decreed on October 5, 1972, by the civil court permitting rectification of the trust deed with retrospective effect from March 9, 1949. The Tribunal admitted the additional documents. The order of the Appellate Assistant Commissioner was set aside by the Tribunal. The cases were remanded with directions to dispose of the appeals on the merits in accordance with law. The Appellate Assistant Commissioner again dismissed the appeals. He observed that the decretal order passed by the sub-judge would not be binding upon the Income Tax authorities and held that the judgment of this court in [The Commissioner of Income Tax Vs. Jaipur Charitable Trust](#), will apply with full force to the facts of the case and that the assessed was not entitled to exemption under sections 11 and 12 of the Income Tax Act. The assessed preferred appeals to the Tribunal. The Tribunal also dismissed the appeals. The Tribunal agreed with the view expressed by the Appellate Assistant Commissioner holding that the compromise decree passed by the civil court could not have a binding effect on the Income Tax authorities and the Income Tax authorities are entitled to go behind the decree to get the real facts particularly when the decree was a consent decree. The Tribunal also considered the retrospective nature of the amendment of the trust deed and held that rectification deed cannot have any effect on the deeds already done in good faith by the trustees in the relevant assessment years. The Tribunal also held that the decision of the Delhi High Court in [The Commissioner of Income Tax Vs. Jaipur Charitable Trust](#), would fully apply to the facts of the case in respect of the amendment to the trust deed and the trust was not entitled to exemption. The following question has been referred to this court for opinion in these references :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income of the trust was not exempt under sections 11 and 12 of the Income Tax Act, 1961, on the ground that the trust was not a public charitable trust ?"

3. The question whether the rectification order of the civil court would be binding upon the Income Tax Department when the assessed-trust armed with the rectification order claimed exemption from Income Tax u/s 11 of the Income Tax Act, 1961, was examined by this court in [Jagdamba Charity Trust Vs. Commissioner of Income Tax, Delhi \(Central\)](#), . The trust deed in that case was got rectified by the assessed from the civil court, however, a suit had to be filed by the assessed in the light of the judgment of this court in [The Commissioner of Income Tax Vs. Jaipur Charitable Trust](#), , which had held that due to the provisions in certain clauses of the trust deed, the trust was non-charitable and was not entitled to exemption under the Income Tax Act. In the paint it was stated that since some doubts regarding the validity of some clauses of the deed had been raised, Therefore, it was necessary that the deed should be rectified. The court granted a decree and directed that the trust deed be rectified. This court took the view that the word "instrument" used in section 26 of the Specific Relief Act has a very wide meaning and includes every

document by which any right or liability is, or is purported to be created, transferred, limited, extended, extinguished or recorded. It was also held that the law obliges the trustees to act in accordance with the terms of the trust deed and they cannot commit a breach thereof and there is no reason why a trust deed cannot be rectified u/s 26 of the Specific Relief Act. It was also held that since there was an order of the civil court binding on the author and the trustees they could administer the trust only in terms of the amendment directed by the court and thus, the trustees were and must be deemed from the beginning to have been under a legal obligation to hold the properties only for the purpose and for the object and with the power set out in the trust deed as amended. Therefore, whatever might have been the correctness or otherwise of the order passed by the civil court u/s 26 of the Specific Relief Act, 1963, it was not open to the Income Tax Officer to say that the trustees could administer the trust in accordance with the original deed and that the claim for exemption had to be dealt with on the basis of the original deed. Similarly it was not open to the Income Tax Officer to say that in the relevant accounting year the trustees had held the property subject to the terms of the original and not the amended deed. The decision of this court in [Jagdamba Charity Trust Vs. Commissioner of Income Tax, Delhi \(Central\)](#), was upheld by the Supreme Court in [Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust](#). It was held that the decision of the Delhi High Court is based upon the correct legal position in connection with the proceedings for rectification of instruments like the trust deed, initiated before the competent civil court under the relevant provisions of the Specific Relief Act. On the question whether rectification had prospective or retrospective effect, the Supreme Court in [Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust](#), held that the rectification had no retrospective effect and would operate prospectively from the date when the rectification saw the light of the day.

4. On the ratio of the decision of [Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust](#), since the decree was passed by the civil court on April 5, 1972, the same will have only prospective operation and will not affect the assessment years in question, which are prior to the date of the civil court's decree.

5. The claim of the trust for exemption under the Act in relation to the earlier assessment years was considered and negated in [The Commissioner of Income Tax Vs. Jaipur Charitable Trust](#), which position was affirmed in [Yogiraj Charity Trust Vs. Commissioner of Income Tax, New Delhi](#). Thus, we hold that the assessor's claim for exemption for the assessment years in question, namely, 1965-66 to 1969-70 and 1971-72, are governed by the earlier decisions of this court in [The Commissioner of Income Tax Vs. Jaipur Charitable Trust](#), and [Yogiraj Charity Trust Vs. Commissioner of Income Tax, New Delhi](#). We, Therefore, answer the question referred to us in the negative (sic) and in favor of the Revenue. There will be no order as to costs.