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(2002) 3 BomCR 607 : (2002) 2 BOMLR 390 : (2002) 174 CTR 493 : (2002) 254 ITR 709 : (2002) 254 ITR 708 : (2002) 2 MhLj 797 : (2002) 121 TAXMAN 598

Bombay High Court

Case No: Income Tax Appeal No"s. 901 and 902 of 2001

The Director of Income Tax	APPELLANT
Vs	
The Bombay Bullion Association Dharam No Kanto Trust	RESPONDENT

Date of Decision: Jan. 15, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 11(4A), 11A, 260A

Citation: (2002) 3 BomCR 607 : (2002) 2 BOMLR 390 : (2002) 174 CTR 493 : (2002) 254 ITR 709 : (2002) 254 ITR 708 : (2002) 2 MhLj 797 : (2002) 121 TAXMAN 598

Hon'ble Judges: V.C. Daga, J; J.P. Devadhar, J

Bench: Division Bench

Advocate: R.V. Desai, P.S. Jetly and B.M. Chatterjee, instructed by H.D. Rathod and Co, for the Appellant; P.V. Nichani, for the Respondent

Final Decision: Dismissed

Judgement

V.C. Daga, J.
These Tax Appeals have been filed at the instance of the Revenue.

Heard finally by consent of parties at the stage of admission on the following substantial question of law arising from the impugned orders passed by the Income Tax Appellate Tribunal (Tribunal for short):

"1. Whether, on the facts, and in the circumstances of the case and in law, the Tribunal was right holding that no part of income of the Trust is taxable under the provisions of Sub- Section (4A) of Section 11 of the Income Tax Act without appreciating the fact, that after the insertion of Section 11(4A) of the Income Tax Act from the financial year 1983

that is from 01/04/1984 exemption in respect of profits and gains of business is available only those institutions whose business, is carried on for charitable purpose by the beneficiaries of trust.

FACTS

The short facts involved in the present

appeals are as under :-

2.The Respondents herein, The Bombay Bullion Association Dharam No Kanto Trust, Mumbai (Trust for short), claimed to be the charitable Trust earning income from weighing activities. The Trust claimed exemption u/s 11-A of the income tax Act (Act for short). The exemption claimed by the Trust was denied by the Assessing Officers for both the assessment years 1989-90 and 1991-92. The orders of the Assessing Officers were confirmed by the Appellate Authority for both the assessment years in question. The appeals were carried to the Tribunal and the Tribunal was pleased to allow appeals. The Tribunal while allowing the appeals held that the business activities of Trust having being conducted by the Charitable Trust for charitable object, without any object of earning profits and gains out of the charges collected by it from the weighment facility provided to the public, was entitled to claim exemption u/s 11(4A) of the Act. Accordingly, the Tribunal allowed both appeals and set aside the orders of both the authorities below. The above orders of the Tribunal are the subject matter of challenge in the appeals filed u/s 260-A of the Act at the instance of Revenue.

THE ISSUE

3.The short issue sought to be raised in the present appeals is as under:

Whether the Respondent/assessee-Trust is entitled to claim exemption u/s. 11(4A) of the Act when the business activities of the Trust are not carried on by the beneficiaries of the Trust ?

STATUTORY PROVISION

Before proceeding to consider the above issue in the backdrop of the question of law extracted in the opening part of the Judgment, it would be proper to read the relevant provision of law prevailing at the relevant time in this regard.

"(4A) Sub-Section(1) or sub-section(2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income, being profits and gains of business, unless-

(a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution and separate books of account are maintained by the trust or institution in respect of such business."

THE ARGUMENTS

4. The learned Counsel appearing for the Appellants relying on the text of sub-clause (b) of Sub-section (4A) contended that though the business was being carried out by the Charitable Institution for charitable purpose, but the same not being carried out by the beneficiaries of the Institution. the Trust is not entitled to claim the exemption u/s 11(4A) of the Act.

5. The learned Counsel for the Respondent-assessee (Trust) tried to support the orders of the Tribunal and made following submissions to support the orders thereof :-

(a) The facility for authoritative weighment of bullion or jewellery for a nominal charge is a great benefit to the public.

(b) The charges charged are incidental and not with the intention to make profit.

(c) The activities of the Trust as per Trust deed specifically provides for the same.

(d) The business is mainly carried on by the beneficiaries of the Institution through their employees and servants, whose work is supervised by the Committee of Management appointed by the trustees through Board of Directors. Hence, the Respondent/assessee answers the requirements of Sub-Section 4-A(b) of Section 11 of the Act.

6. The learned Counsel for the Trust in order to highlight the above submissions, has taken us through the Trust Deed produced at the time of hearing. The relevant clauses of the Trust Deed for appreciation of submissions are reproduced herein below:-

"TO ALL TO WHOM THESE PRESENTS SHALL COME, The Bombay Bullion Association Limited, a Company limited by guarantee and registered under the Indian Companies Act, 1913 and having its registered office at 185, Sheikh Memon Street, Bombay-2, hereinafter referred to as "the Trustee" SEND GREETINGS. WHEREAS in or about 1951 M/s. Bullion Exchange Limited (In voluntary liquidation) through their Solicitors Messrs. Motichand & Devidas, handed over to the Trustee the equipments for the purpose of weighing precious metals known as " Sheth Gordhandas Ranchhoddas Bhagatwalla Kanto" and subsequently known as "Dharmano Kanto" which was established at 1st Agiary Lane, Bombay-2, in rented premises in the property belonging to Seth Dossabhai Maganlal Bullion Association Dispensary for the purpose of maintaining and running the said Dharmano Kanto for the benefit of the public in general. AND WHEREAS the Trustee accepted the said Dharmano Kanto and has been maintaining and running the said Dharmano Kanto for the purpose of weighing precious metals for the

benefit of the public in general through a Committee of Management appointed by the Board of Directors of the Trustee from time to time; AND WHEREAS nine persons are employed for the purpose of running the said Dharmano Kanto; ....AND WHEREAS a Provident Fund account has been maintained in the books of account of Dharmano Kanto for the benefit of the staff; ....1. This Trust shall be called Bombay Bullion Association Dharmano Kanto Trust. The management of the Bombay Bullion Association Dharmano Kanto shall be carried out as follows:- 2. The Trustee through their Board of Directors hereinafter referred to as the "Board" shall every year appoint a committee of Management (hereinafter referred to as the "Committee") of 5 (five) members in the maximum for the purpose of efficiently maintaining and running the said - Dharmano Kanto for the benefit of the public in general. The members of the Committee shall be from amongst the Directors of the Trustee and subject to the approval of the Board one from amongst the heirs of Seth Gordhandas R. Bhagat. If such heir of Seth Gordhandas is not available the Board may appoint any other person whom it likes in his stead. The tenure of the Committee and shall continue to function after the expiry of the year till a new committee is appointed..... ....."

7. The Submission of the learned Counsel for Respondent Trust is that reading of the above relevant clauses in particular and the Trust Deed as a whole it is clear that the Trust was established for managing and running the activities popularly known as Dharam No Kanto; a service of weighing precious metals provided for the benefit of public in general. In his submission, it is clear from the Trust Deed that the beneficiaries of the Trust are the general public. The Trust Deed also provides for mechanism to run the activities of the Trust and makes a provision for carrying on the business activities of Trust. In his submission a specific provision is to be found in the Trust Deed to the effect that the committee of Management appointed by the Board of Directors consisting of of the Trustees is to carry on the business through the employees engaged for the purpose. He, therefore, submits that the Trust is entitled for exemption u/s 11(4A) of the Act.

FINDINGS

8. The crux of the controversy is: can it be said that a method followed by the trust for running business activities of the Trust in the stated manner answers the requirement of sub-clause 4A of Section 11 of the Act; can it be treated that the business activities carried on in the manner provided in the Trust Deed are being carried on by the beneficiaries of the Trust. In order to deal with the question, it would be necessary to examine the operation of the sub-clause 4-A(b) and of Section 11 of the Act, application thereof to the various type of Trusts. Let us consider the case of a Trust in which beneficiaries are the handicapped or blind persons or the Trust, wherein the beneficiaries are the minors. If sub-clause (4A) (b) is to be implemented in its literal sense, then the question is how such beneficiaries of such Institution or Trust; themselves, can be expected to carry on the business activities of the Trust. The Trust wherein beneficiaries are general public in such a case the beneficiaries themselves because of their peculiarity are not expected to carry on business activities of the Trust. The activities of Trust meant

for benefit of handicapped or blind persons cannot be carried on by them personally because of their physical incapacity. The Trust wherein minors are beneficiaries minors cannot carry on business of the Trust because of their legal infirmity. No activities of such trust can be carried on by their beneficiaries because of the peculiar class of beneficiaries to which they belong. The crucial question is can such a Trust be kept away from the benefits by adopting literal interpretation of sub-section (4A) (b) of Section 11 of the Act on the spacious ground that they do not fulfill the literal compliance of Sub-section 4-A(b) extracted above. No provision of law can be interpreted in such a manner which would take away the very spirit, object and purpose of the provision itself and make it a dead letter. It will have to be interpretation in a manner which will not only put the life in the provision, but would make it workable.

9. In our view, the reading of the Trust Deed as a whole, answers the requirement of sub-section 4-A(b) of Section 11 of the Act. In the instant case, the general public is the beneficiary The business activities are carried with the assistance of employees under the supervision of the Committee of Management appointed by the Board of Directors. The adequate mechanism provided in the Trust Deed makes it clear that the business activities of the Trust are being carried on through servants and employees of the Trust may be under the supervision of the Managing Committee appointed by the Board of Directors, who act for and on behalf of the beneficiaries namely general public or public at large. If such device is adopted by the Trust, we are of the view that it would be a sufficient and substantial compliance of the provision of Sub-section (4A) (b) of Section 11 of the Act. In this view of the matter, we are of the opinion, the Respondent assessee has complied with the provision of Sub-clause (4A) (b) of Section 11, which stood on the statute book at the relevant time and, therefore, no fault can be found with the order of the Tribunal and the Respondent-Trust was rightly held to be entitled for the exemption. In this view of the matter, we answer the question accordingly affirm the view taken by the Tribunal and dismiss the appeals with no order as to costs.