



IN THE HIGH COURT OF DELHI

I.T.R.No.454 of 1992

Date of Decision:- April 21, 2004

Commissioner of Income Tax.....Appellant

Through: Mr. R.C.Pandey with Mr.Rajeev
Awasthi, Advocates.

Versus

M/s.Divine Light Mission.....Respondent

Through: Mr.S.B.Gupta, Advocate.

CORAM:-

HON'BLE THE CHIEF JUSTICE
HON'BLE Mr.JUSTICE BADAR DURREZ AHMED

- xxii) Whether Reports of the local papers may be allowed to see the judgment?
xxiii) To be referred to the Reporter or not?
xxiv) Whether the judgment should be reported in Digest?

B.C.PATEL, CJ.

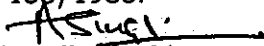
For orders see ITR No.158 of 1985.

Sd/-
CHIEF JUSTICE

Sd/-
BADAR DURREZ AHMED, J.

April 21, 2004
As

Detailed signed order
is placed in the file of
ITR No. 158/1985.


(Amrik Singh)
PS to HCJ
21.4.2004



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IN THE HIGH COURT OF DELHI

I.T.R.Nos.158/1985; 99-100/1986; 141 and 171/1989;
107 and 199/1990; 24/1991; 454/1992 and ITA
150/2001

Date of Decision:- April 21, 2004

Commissioner of Income Tax.....Appellant

Through: Mr. R.D.Jolly, Mr.R.C.Pandey,
Mr.Rajiv Awasthi, Ms.Prem Lata Bansal,
and Mr.Sanjiv Khanna, Advocates.

Versus

M/s.Divine Light Mission.....Respondent

Through: Mr.S.B.Gupta, Advocate.

CORAM:-

HON'BLE THE CHIEF JUSTICE
HON'BLE Mr.JUSTICE BADAR DURREZ AHMED

- i) Whether Reports of the local papers may be allowed to see the judgment?
- ii) To be referred to the Reporter or not?
- iii) Whether the judgment should be reported in Digest?

B.C.PATEL, CJ.

1. For the assessment year 1966-67 onwards, these references/appeals are before the Court. All the



2. The following are the questions referred by the Tribunal:-

"ITR No. 158/1985

1. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that provisions of Section 12 of the I.T. Act were applicable to donations of Rs.41,359/- which were credited to the suspense account?
2. Whether in the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition of Rs.2,00,739/- made by ITO on account of capital expenditure?
3. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition of Rs.7820/- and 1900/- being credits in the name of Mahatma Satyanand and Mahatma Gianand respectively?
4. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition of Rs.34,163/- made by the ITO on account of membership subscription?

ITR Nos.99/1986

1. Whether on the facts and in the circumstances of the case, the ITAT, was correct in law in deleting the addition of Rs.70,742/- made by the ITO on account of amount spent on acquiring/constructing capital asset?
2. Whether on the facts and in the circumstances of the case, the ITAT was



that it is income from property held under trust and not income from other sources?

ITR No. 100/1986

1. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding the interest income of Rs.2,582/- being interest earned on FD receipts as income from property held under trust?
2. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition of Rs.5,86,142/- on account of amount spent on acquiring/constructing capital asset?

ITR No. 141/1989

1. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition, made by the ITO as income received by the assessee-Mission, by way of subscription from its members by ignoring the material fact that this as a matter of fact, was a payment entitling contractual liability of the payer being entitled to the membership of the Mission and as such not voluntary in nature?
2. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition, made by the ITO of Rs.12,004/- being interest on fixed deposit and saving bank accounts of the assessee-Mission with various banks by ignoring the material fact that this income had not been set apart for any specific utilization?



Rs.4,09,917/- made by the ITO holding it as capital expenditure?

ITR No. 171/1989

1. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition, made by the ITO as income received by the assessee-Mission by way of subscription from its members by ignoring the material fact that this, as a matter of fact, was a payment entailing contractual liability of the payer being entitled to the membership of the Mission and as such not voluntary in nature?
2. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition, made by the ITO of Rs.10,919/- being interest on fixed deposit and saving bank accounts of the assessee-Mission with various banks by ignoring the material fact that this income had not been set apart for any specific utilization?
3. Whether on the facts and in the circumstances of the case, the ITAT was correct in law in deleting the addition of Rs.2,26,662/- made by the ITO holding it as capital expenditure?
4. Whether on the facts and in the circumstances of the case, the ITAT was correct in excluding the agricultural income of Rs.8,187/-?

ITR No. 107/1990

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the income received by the assessee by

ITR No.199/1990

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income received by the assessee-Mission by way of subscription from its members is not assessable to income tax?

ITR No. 24/1991

Whether on the facts and in the circumstances of the case the ITAT was correct in law in deleting the addition of Rs.34,163/- made by the ITO on account of membership subscription?

ITR No. 454/1992

1. Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that membership subscription, interest income, agricultural income and income from properties held under Trust are exempt within the meaning of Section 11 of the I.T.Act, 1961?
2. Whether on the facts and in the circumstances of the case, the ITAT is correct in law in holding that the receipt of donations of Rs.4,84,506/- is exempt under Section 11 of the I.T.Act, 1961?
3. Whether on the facts and in the circumstances of the case the ITAT is correct in law in directing to allow deduction of Rs.1,63,101/- being amount applied for the purpose of Trust?

ITA No. 150/2001

1. Whether ITAT was correct in law and on the facts in treating the receipts from the



of Section 11 when the A.O. treated the same income from other sources in view of the fact that the assessee was not entitled to the benefit of Section 11 of the Income Tax Act?

2. Whether ITAT was correct in law and on facts in treating a sum of Rs.2,31,943/- being the expenditure incurred by the assessee on construction of the college building of Ashram at Nasik, Hissar, Calcutta and Meerut as application of income within the meaning of Section 11 of the Act when the benefit of Section 11 was not allowable to the assessee?
3. Whether assessee is entitled to benefit under Section 11 of the Act?"

3. Considering the aforesaid questions, essentially there are four questions before the Court, which will cover some of the issues as under:-

- "1. Whether the income received by the assessee by way of subscription from its members was assessable to Income Tax Act, 1961 or was exempted under Section 11 thereof ?
2. Whether the amount spent on acquiring/ constructing capital asset was rightly deleted by the Tribunal?
3. Whether the ITAT was correct in law in holding the interest income earned on fixed deposit receipts as income from property held under trust?
4. Whether the ITAT was correct in law in holding that the agricultural income was income from property held under the trust?"



“Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in deleting the addition of Rs.2,26,,662/- (in ITR 171/89) and Rs.4,09,917/- (in ITR 141/89) by holding to be an application towards object of the trust?”

On behalf of the Revenue it is fairly stated that this question is required to be decided in favour of the assessee and against the Revenue on the question of facts as the amount has been spent for the object of the trust.

5. In ITR No. 454/1992 following question is carved out over and above the group of four questions:-

“Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the receipt of donations of Rs.4,84,506/- is exempt under Section 11 of the Income Tax Act, 1961?”

On behalf of the Revenue, it is fairly stated that this question is required to be answered in favour of the assessee and against the Revenue on the facts.

6. In ITA No. 150/2001, the following additional question is carved out over and above the aforesaid four questions referred in para 3:-

“Whether the ITAT was correct in law and on facts in treating the sum of Rs.2,31,943/- being the expenditure incurred by the assessee on construction of the college building of Ashram at



when the benefit of Section 11 was not allowable to the assessee?"

On behalf of the Revenue, it is fairly stated that this question is required to be answered in favour of the assessee as it is a question of fact and has been admitted and appreciated by the Tribunal and has answered in favour of the assessee that the amount so spend was towards the object of the trust.

7. With regard to question No. 2 of para 3, in respect of the amount spent on acquiring/constructing capital asset, it is no more required to be discussed as the same is covered by the decision of the Apex Court in S.RM.CT.M.Tiruppani Trust v. Commissioner of Income Tax (1998) 230 ITR 636. The question is required to be answered against the Revenue and in favour of the assessee.

8. So far as the question No. 3 of para No.3, with regard to interest on fixed deposit receipt is concerned, it is fairly stated that in view of the provisions of law, it is required to be answered in favour of the assessee and against the Revenue, in as much as, Section 11(5) mandates that the amount is required to be invested in



from the investment so made and, therefore, is not taxable.

9. So far as question No. 4 of paragraph No. 3 with regard to agricultural income is concerned, Section 10(5) of the Act specifically points out that agricultural income shall not be included in computing the total income of a previous year and hence the question is required to be answered in favour of the assessee and against the Revenue. This income is not required to be considered at all even for the purpose of Section 11 of the Act.

10. Over and above these questions, the following other question is required to be examined:-

ITR No. 158/1985

“Whether on the facts and in the facts and circumstances of the case, the ITAT was correct in law in holding that provisions of Section 12 of the Income Tax Act were applicable to donations of Rs.41,459/- which were credited to the suspense account?”

11. In ITR No. 158/1985, the question raised is whether the amount being kept in suspense account would qualify for the purpose of exemption under Section 12 of the Income Tax Act, 1961 or not? The amount cannot be separated and kept in suspense account but



for a particular object or it is required to be set apart for the said object. Over and above this, the amount set apart for the object of the trust is required to be communicated to the Assessing Officer in Form No. 10. The assessee, having not done so, the provisions of Section 12 cannot be attracted. If an assessee is seeking a benefit, then he can request for the benefit provided the procedure required to be followed under the Act or the Rules is followed by the assessee. In the instant case, by stating that the amount is kept in a suspense account, the assessee cannot get the benefit as the same was not kept in a separate account for a separate object by following the procedure indicated in the Act or the Rules and, therefore, this question is required to be answered against the assessee and in favour of the Revenue.

12. We now take up the only remaining question (question No. 1 in paragraph 3) with regard to income received by the assessee by way of subscription from its members and, that is whether such income was assessable to tax under the Income Tax Act, 1961 or was exempted under Section 11.

13. The amount received by way of subscription as well



case of Trustees of Shri Kot Hindu Stree Mandal v. Commissioner of Income Tax reported in (1994) 209 ITR 396 and in the case of Commissioner of Income Tax v. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh reported in (1988) 171 ITR 677.

14. The contributions are voluntary and are made willingly and without compulsion. Money is to be gifted or is given gratuitously without consideration. These tests should be satisfied for contribution. However, 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 consideration.

15. In the case of Trustees of Shri Kot Hindu Stree Mandal's case (Supra), High Court of Bombay examined a similar question. Voluntary contributions do not mean annual subscriptions. It amounts to gift made from disinterested motives for benefit of others. In Society of Writers to the Signet v. IRC (1886) 2 TC 257 (C Sess), the



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. In view of the Bombay High Court, membership and subscription amounts received by the assessee-trust/society from its members cannot be characterized as voluntary contribution within the meaning of the expression "fund" in Section 12 of the Income Tax Act, 1961.

16. Thus there is a distinction between voluntary contribution and subscription. When a sum is paid in the nature of gift or a gratuitous payment to the trust without any consideration it would be considered as voluntary contribution. Subscription is not to be treated as voluntary contribution.

17. Voluntary contribution is an act not coupled with compulsion. One may contribute or one may not contribute. Therefore, it is rightly said that it is in the nature of a gift. But so far as subscription is concerned, it is with some compulsion. If one wants to become a member of a trust and if he is required to pay



compulsion. Some times it becomes a question of prestige i.e. to say that a person is a member of a charitable institution. If a person had made voluntary contribution to the said trust, then on payment of such contribution he does not become a member. The membership may be coupled with benefits or duties and that all depends on the nature of the trust and terms and conditions of the contract.

18. Sometimes members are getting certain privileges or rights. Therefore, such subscription fee has been considered as income of institutions.

19. Coming to income derived from property and property held under trust, one has to consider the meaning of the word "income". Even by an Act (Finance Act No. 1972) with effect from 1.4.1973 voluntary contribution received by a trust has been included in the definition of "income". The amount of fee covers membership or subscription, which is not included in income. However, the term is very wide. It refers to receiving money or monetary benefits, perquisite, etc. Therefore, it is certain that it is an income..

20. Before us learned counsel for the assessee,



v. Commissioner of Income Tax, Bombay reported as (1944) 12 ITR 482 the subscription be considered as income.

21. In the case of Commissioner of Income Tax, Bombay City I v. Cotton Textiles Export Promotion Council reported in (1968) 67 I.T.R 539, Bombay High Court examined the question.

22. The Cotton Textiles Export Promotion Council was established with its principle object, as indicated in the memorandum of association, to promote, support, protect, maintain and increase the export of cloth and yarn. It undertook many other activities with the idea, as its name implied, of promoting the export in cotton textiles from this country. Market studies, collection of statistics and other information regarding the manufacture or trade in cloth and yarn in various countries, propagating information useful to that trade, laying down standards of quality in packing and so on. Where the activities with regard to income and property, in the form of mandate for application of income and property was solely for the promotion of the objects of the society, as indicated in the memorandum of association



utilized by way of dividends, bonus or otherwise, or by way of profits etc. For this, there were two sources about the funds for its activities, namely, grants made by the Government and subscriptions of its members. Section 4(3)(i) of the Income Tax Act, 1922 was for grant of exemption. Section 4(3)(i) reads as under:-

“Subject to the provisions of clause (C) of subsection (1) of Section 16, any income derived from property held under trust or other legal obligations wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto.”

Thus income derived from property held under trust or other legal obligations came to be considered by the Court. In the instant case, we are not required to consider whether the assessee can be said to be a charitable trust or not as it is admitted position and not in question. But the question is only with regard to income derived from property held under trust is there or not. By way of subscription, if the amount is received, can it be said that that is income derived from property held under trust. The Bombay High Court observed that the question is beyond controversy in view of the



Commissioner of Income Tax, Madras v. Andhra Chamber of Commerce (1965) 55 ITR 722. Under almost identical provisions the Andhra Chamber of Commerce was constituted and when a similar attempt to tax that chamber was made, one of the questions which arose was whether the objects and purposes of the Chamber of Commerce showed that it was for general public utility. Considering various decisions, the Bombay High Court held that Tribunal was right in holding that the property held by the assessee company was for an object of general public utility and was voluntary for charitable purposes. The question posed before the Court was upon the words used in sub-section (3) of Section 4 "any income derived from property held under trust" and its interpretation. On behalf of the Revenue, it was contended that it is not the requirement of sub-section that the income of the assessee should be held under trust but that the income should be derived from "property which held under trust". In that case, all the company receipts in the shape of property was the income which they received from the grants made by the Central Government and a comparatively small amount



“property” as such held in trust. The other contention was that whatever may be said of the income received from Government by way of grant, the subscription which this company receives from its members was not income for a charitable purpose. It was further submitted that the property held under trust in that case from which the income of this company is being derived is the business of the company itself. The word “property” includes the business of the company. All the income which the company derived or received is in the shape of grants and subscriptions from members which cannot possibly have received by the company except from its business. It was, therefore, submitted that the entire income of the company must be held to be the income derived from its business, which is its property. The Court pointed out that the entire business or the organization of the assessee commenced with the object of promoting the export trade of the country. The object was held as charitable purpose, as defined in the Act. The Court held that the income which the company received from the two admitted sources, namely, grants from Government and subscriptions from its members, was income which



organization and it would, therefore, be income derived from such business or organization, which as shown can be held to be the property of the company. The Division Bench further pointed out:-

"We have already held that the property held under trust was the business or organization itself and whether we consider either of the two sources of income of this company, namely, the grant or the subscriptions from its members, both arose directly and substantially from that business or organization. If the organization had not existed, the grants would not have been paid to the company nor would the subscriptions have been received by the company. Therefore, even upon the construction put upon the word "derived" the income would be derived from the business or organization which we held was the property held under trust in this case."

23. It is in view of this, that the question whether on the facts and circumstances of the case the assessee's income is exempted under Section 4(3)(i) of the Income Tax Act or not was answered in the affirmative.


24. In view of the Division Bench judgment of the Bombay High Court, it was submitted by the assessee that the assessee trust is a charitable trust for which there is no doubt. The objects of the trust were placed before the Court. We have perused the same and in fact there is no dispute with regard to the fact that it is a charitable trust and, therefore, we are not required to



25. In view of the judgment of the Division Bench of the Bombay High Court in the case of Cotton Textiles Export Promotion Council's case (supra), we are of the view that the property held under trust was the organization itself and the source of money, that is to say, the subscriptions from its members arose directly and substantially from that of organization. In the absence of organization, there would have been no question of subscriptions and following the Division Bench judgment of the Bombay High Court in the case of Cotton Textiles Export Promotion Council (supra), we are of the opinion that the subscription is to be considered as income derived from property held under trust.

26. Hence it is clear that the subscription is to be treated as income and exempted under Section 11 of the Act. The question, therefore, is required to be answered in favour of the assessee and against the Revenue.

27. The references are disposed of accordingly.


CHIEF JUSTICE


BADAR DURREZ AHMED, J.

April 21, 2004
As