

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

D.B. INCOME TAX APPEAL NO.61/2014
COMMISSIONER OF INCOME TAX, JAIPUR-II, JAIPUR
Vs.
MANDIR SHREE GANESH JI, MOTI DOONGRI, JAIPUR

DATE:02.12.2014

HON'BLE THE ACTING CHIEF JUSTICE MR. SUNIL AMBWANI
HON'BLE MR.JUSTICE J.K. RANKA

Mr. Nikhil Simlote on behalf of
Mr. R.B. Mathur, for the appellant.
Mr. Kamlakar Sharma, Senior Counsel assisted by
Mr. Ashish Sharma, for the respondent.

REPORTABLE

1. This D.B. Income Tax Appeal under Section 260A of the Income Tax Act, has been preferred by the Commissioner of Income Tax, Jaipur-II, Jaipur, against the order passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, dated 24.01.2014, on the following substantial question of law:-

"i) Whether in the facts and circumstances of the case the Tribunal has erred in holding the assessee trust as public and charitable trust in allowing the benefits of exemption u/s. 11/12 of the IT Act, 1961 despite the fact that the assessee trust is controlled by two families and entire income and benefits are passed over to the said families.

ii) Whether, in the facts and circumstances of the case the Tribunal was justified in law in allowing the benefit just because some charitable trust despite all the activities done and controlled by trustees who are family members and all the benefits are accrued

to the said family trust.

iii) Whether, in the facts and circumstances of the case the Tribunal was justified in law in holding that the assessee trust is entitled for benefit of exemption u/s. 11/12 contrary to the provisions of section 13(1) (a) of the IT Act, 1961.

iv) Whether, in the facts and circumstances of the case the Tribunal was justified in law in confirming the deletion of addition of Rs.7206002/- on account of donation given for charitable activities despite of the fact that the assessee is not entitled for any exemption/ deduction.

v) Whether, in the facts and circumstances of the case the Tribunal was justified in law in treating the construction expenses of Rs.566627/- as revenue expenditure."

2. We have gone through the orders passed by the Assessing Officer, the Appellate Authority, and the Income Tax Appellate Tribunal. All the authorities have recorded concurrent findings of fact that the respondent-Trust stands registered under Section 12A of the Act, vide order dated 25.03.1976, which is still valid. The objects of the trust are charitable in nature. The respondent-Trust is also registered under the *Devasthan Vibhag* (State Government), which is controlled by the State Government. The Rajasthan Public Charitable Trust, 1959, gives the controlling power to the *Devasthan Commissioner*. Even the expenditure and funds received, and its disbursement, are controlled by the State Government through Commissioner, *Devasthan Vibhag*.

3. The Tribunal found that the trust is subjected to periodical inspections. The last inspection was made on 21.04.2011 by the Assistant Commissioner, *Devasthan Vibhag*. An amount of Rs.72,06,002/-

has been spent on charitable activities in the assessment year in question, for which receipts in respect of the expenses incurred, account books copies, newspaper clipping, carrying news of the activities conducted by the trust, are available on record. The trustees are filing their individual tax returns and paying substantial tax on their income. Two trustees, namely Shri Kailash Narayan and Shri Puran Chand Sharma, have also filed their income tax returns. The Income Tax Tribunal further held that the expenditure on the construction and repairs of the generator, CCTV, note counting machine and wheel chairs, was clearly established on record.

4. It is submitted by learned counsel appearing for the Department that charitable trust is defined under Section 2(15) of the Income Tax Act. As per Section 13(1), 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, whereas Section 13(1)(a), provides that any part of the income from the property held under a trust for private religious purposes, which does not inure for the benefit of the public. It is submitted that the amount of Rs.72,06,002/-, was not spent for the benefit of the public, and thus, it would not fall within the meaning of charitable trust.

5. It is not denied that the certificate under Section 12A, is still valid. The details of the expenses incurred on charitable activities, were filed along with the returns. We have gone through these details, which include expenditure of major part of donation on religious and other

charitable purposes on 27 items. The amount spent on free food distributed in *Rain Baseras* in evening at Rs.17,75,289.53, *Prasad* distribution on various functions, donation provided to the SMS Hospital for maintenance of Polytroma ward at Rs.4,13,819/-, and other activities, clearly fall within the meaning of charitable purposes under Section 2(15) of the Act.

6. In our view, the findings recorded by the Income Tax Authorities that so long the registration under Section 12A of the Act is valid and the income is found to have been spent for charitable purposes, such income has to be excluded from the total income of the previous year, does not raise any substantial question of law for consideration in this appeal.

7. The Income Tax Appeal is dismissed.

(J.K. RANKA),J.

(SUNIL AMBWANI),ACTING C.J.

/KKC/

Certificate:

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

KAMLESH KUMAR
P.A.

सत्यमेव जयते