

A

COMMISSIONER OF TAXES, ASSAM

v.

**M/S. JALANNAGAR SOUTH ESTATE LTD.
& ORS.**

August 4, 1971

B

[K. S. HEGDE AND A. N. GROVER, JJ.]

Assam Agricultural Income-tax Act (Assam Act 9 of 1939) and Rules made thereunder, s. 8 and r. 2—Contribution to a charity trust—If exemption can be claimed with respect to amount.

C

Exemption granted by Assistant Commissioner—Larger deduction claimed by assessee in appeal to Board—Jurisdiction of Board to express opinion on correctness of finding of Assistant Commissioner as to the right to claim exemption.

D

The assessees made donations to a Charity Trust and claimed that the amount should be considered as “amounts actually spent for charitable purposes” under r. 2 of the rules framed under the Assam Agricultural Income-tax Act, 1939, and therefore exempt from assessment to tax. The Income-tax Officer rejected the claim but on appeal, the Assistant Commissioner granted exemption to the extent of 60% of the amounts donated. The Department had no further right of appeal, but the assessees exercised their right of appeal to the Board of Revenue claiming full exemption. The Board of Revenue held that, (1) the assessees were not entitled to any exemption under the Act, but as the order of the Assistant Commissioner had become final, the assessees were entitled to retain the exemption granted; and (2) even if they were entitled to some exemption, what was granted was more than what they were entitled to.

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The High Court, on reference, held that : (1) the Board was not competent in the assessees’ appeal to question the finding of the Assistant Commissioner that the amounts donated to the Charity Trust were actually spent for charitable purposes and (2) the Board was not justified in holding that only 60% of the amounts donated, were admissible as deduction

Allowing the appeals,

G

HELD : (1) Since there was no right of appeal to the Department an exemption granted by the Assistant Commissioner could not be *interfered with* by the Board, but while considering whether the assessees were entitled to the full exemption claimed, the Board had to examine the true legal position under the Act and the rules for the purpose of deciding the matter in issue. Therefore the Board was competent to determine whether the Assistant Commissioner took the correct view in law. [20B-D]

H

(2) Under r. 2 (1) read with s. 8 (g) of the Act an assessee is entitled to deduct from his income only the sum *actually spent* by him for charitable purposes as defined in the rule. Assuming that an assessee may rely on an expenditure through an agency and not

by himself, and that the objects of the Charity Trust are charitable purposes as defined, it had to be established to the satisfaction of the assessing authority that the amounts were actually spent for such charitable purposes. Mere contribution to a charity fund would not entitle an assessee to the exemption when it was not proved that the Charity Trust had in fact expended the amounts donated for any such charitable purpose. [20G,H;21A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 1873 to 1876 of 1967.

Appeals by special leave from the judgment and order dated August 8, 1966 of the Assam and Nagaland High Court in Ref. Nos. 2 to 4 of 1965.

S. T. Desai, Naunit Lal and Swaranjit Sodhi, for the appellants (in all the appeals).

M. C. Chagla, S. C. Majumdar and R. K. Jain, for the respondents (in all the appeals).

The Judgment of the Court was delivered by

Hegde J.—These appeals by special leave arise from the decision of the High Court of Assam and Nagaland in Tax References Nos. 2 to 4 of 1965 on its file wherein the High Court of Assam and Nagaland answered the two questions of law referred to it by the Assam Board of Revenue under s. 28(2) of the Assam Agricultural Income-tax Act, 1939 (Assam Act IX of 1939) (to be hereinafter referred to as the Act) in the negative. The two questions referred for the advisory opinion of the High Court are :

(1) Whether on the facts and in the circumstances of the case the Board was competent in course of appeals preferred by the assessee to question the finding of Assistant Commissioner of Taxes to the effect that the amount donated to Jalan Charity Trust were amounts actually spent for 'Charitable purposes' within the meaning of Assam Agricultural Income-Tax Act.

(2) Whether on the facts and in the circumstances of the case the Board was justified in holding that only 60 per cent of the amounts actually spent by the assessee for 'Charitable purposes' from the Agricultural income was admissible as deduction under Rule 2(2) of the Rules framed under the Assam Agricultural Income-Tax Act.

A Aggrieved by the decision of the High Court Commissioner of Taxes, Assam has brought this appeal.

We shall now briefly set out the facts necessary for deciding the points in controversy in these appeals. Each of the three assesseees with whom we are concerned in these appeals had given certain donations to the Jalan Charity Trust in the relevant assessment years, which in the case of two the assesseees is 1955-56 and in the case of the third is 1955-56 and 1957-58. The question for consideration is whether those donations can be considered as "amounts actually spent for charitable purposes under rule 2(1) of the rules framed under the Act.

The agricultural income of the assessee was computed at 60 per cent of the total net income ascertained by the Income-tax Officer under the Indian Income-tax Act, 1922. Before the Income-tax Officer the assesseees claimed exemption under s. 15-B of the Indian Income-tax Act in respect of the donations made by them to the Jalan Trust, but that Officer did not grant the exemption asked for but reserved that question for decision to a latter date as he wanted to examine the nature of those donations. He determined the income of the assesseees for the years in question without taking into consideration those donations. Thereafter the Agricultural Income-tax Officer proceeded to assess the agricultural income of the assesseees. Before that Officer the assesseees again claimed exemption under rule 2(1) of the Rules, of the donations given by them to the Jalan Charity Trust. That Officer refused to grant the exemption asked for. Thereafter the assesseees took up the matter in appeal to the Assistant Commissioner. The Assistant Commissioner granted to each of the assesseees exemption to the extent of 60 per cent of the amounts donated. Then the assesseees took up the matter in appeal to the Board of Revenue. The Department had no right to appeal against the order of the Assistant Commissioner. The Board of Revenue came to the conclusion that the assesseees were not entitled to any exemption under the Act but all the same as the order of the Assistant Commissioner had become final in respect of exemption given, the assesseees were entitled to retain the exemption granted by the Assistant Commissioner. Alternatively it also came to the conclusion that even if the assesseees were entitled to any exemption under

the Act and the Rules, the exemption granted to them by the Assistant Commissioner was more than what they were entitled to. Thereafter the assessee moved the Board to refer to the High Court for its opinion the two questions mentioned earlier.

There is no substance in the first question referred to above. It is true that the exemption granted by the Assistant Commissioner could not be interfered with by the Board of Revenue. But all the same while considering whether the assessee was entitled to the further exemption claimed by them the Board of Revenue had to examine the true legal position under the Act and the Rules for the purpose of deciding the matter in issue before it. In our opinion the High Court was wholly in error in opining that the Board of Revenue was not competent to determine the true position under law in view of the decision of the Assistant Commissioner. The High Court overlooked the fact that pronouncing on the claim made by the assessee before the Board of Revenue, the Board had to examine the legality of the claim. It is one thing to say that the Board could not reverse the decision of the Assistant Commissioner, which had become final but it is entirely a different thing to say that the Board was not competent to consider whether the Assistant Commissioner took a correct view of the law or not when the true position in law is necessary to be determined for deciding the issue before it.

Now coming to the second question unlike s. 15-B of the Indian Income-Tax Act, 1922, which exempts any sums paid to an institution or a fund coming within the scope of that section upto the prescribed limit, under Rule 2(1) read with s. 8(g) of the Act, the assessee is entitled to deduct from his income only those sums actually spent by him for charitable purposes. Charitable purpose under that rule is defined as including relief to the poor, education, medical relief and the advancement of any other object of public utility.

Under rule 2(j) read with s. 8(g) before an assessee can claim any exemption, he has to establish that in the relevant year, he had actually spent for one or the other of the charitable purposes mentioned in that rule the amount in respect of which he claims exemption. Mere contribution to a fund would not entitle him to the exemption claimed.

- A It is true that the assesseees in these cases are proved to have contributed certain amounts to the Jalan Trust Fund. It may also be true—about which we express no opinion—that the objects of Jalan Trust are similar to those mentioned in rule 2(i). But there is no proof in these cases that the
- B Jalan Trust had expended the amounts donated by the assesseees to that fund for any charitable purpose during the relevant years. From the materials placed before the Court, it appears that Jalan Trust had spent in the years in question some amounts for charitable purposes. But the amount spent is much less than the donations received. Further
- C the assesseees have not established any cor-relationship between the amounts spent by the Jalan Trust and the amounts donated by them to the Trust. Under these circumstances it is not necessary for us to decide whether the actual spending referred to in rule 2(i) must be by the assesseees themselves or it may also be through some other agency. In our opinion
- D before the assesseees can claim exemption under rule 2(1) in regard to any amount, they have to establish to the satisfaction of the assessing authority that they had actually spent that amount for charitable purposes. No such proof is forthcoming in these cases.
- E For the reasons mentioned above these appeals are allowed and the answers given by the High Court are revoked and in place of those answers we answer both the questions in the affirmative and in favour of the Revenue. The assesseees to pay costs of the Commissioner—one hearing fee.

V.P.S.

Appeals allowed.