

A DELHI STOCK EXCHANGE ASSOCIATION LTD.
v.
COMMISSIONER OF INCOME TAX, NEW DELHI

MARCH, 20, 1997

B [S.C. AGRAWAL AND G.B. PATTANAİK, JJ.]

Income Tax Act, 1961 :

C *S.11 read with s.2(15)—Income from properties held under trust or charitable purpose—Exemption from payment of income tax—Stock Exchange claiming exemption—Held, prior to amendment in Articles of Association in December, 1973, in absence of any obligation prohibiting assessee from distributing the income derived by it by way of dividends amongst its shareholders, it was not entitled to the exemption—There is no provision in Securities (Contract Regulation) Act, 1958, imposing such an obligation—Securities Contract (Regulation) Act, 1958—S.2(j).*

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F **The assessee-Delhi Stock Exchange Association Ltd., a company limited by shares, claimed exemption from payment of income tax under s. 11 of the Income Tax Act, 1961 on the ground that the income was derived from property held under trust for charitable purposes. It was claimed that the company was established with the object of conducting a Stock Exchange and to promote and regulate the business in stocks, shares, debentures and other securities. The exemption was claimed with regard to assessment years covering the period prior to December, 1973, as in December, 1973 Articles of Association of the assessee-company were amended to prohibit the distribution of profits as interest or dividends.**

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H **The claim of the assessee was rejected by the Income Tax Officer as also by the Appellate Assistant Commissioner. The Income Tax Appellate Tribunal though held that running of the Stock Exchange was with an object of general public utility and the objects did not cease to be charitable because some surplus was realised by the assessee by reason of receipts from its members or because it derived income from property, it rejected the claim holding that the income of the assessee could not be said to have been derived from property held under trust wholly for religious or charitable purpose; and that there was no trust or legal obligation compelling the assessee to utilise its income only for such purpose. The**

High Court upheld the view of the Tribunal. Aggrieved, the assessee filed the present appeals. A

It was contended for the assessee that nature of the activities of the assessee had to be considered as a whole and since the objects of the assessee had been found to be of general public utility and as no dividend had been declared by the assessee, the income derived by it should be held to be that from properties held for charitable purposes. B

Dismissing the appeals, this Court

HELD : 1.1. The High Court was right in holding that the assessee could not claim exemption under s.11 read with s. 2(15) of the Income Tax Act, 1961. [135-G] C

1.2. There must be an obligation created to spend the money exclusively and essentially on charity. In the present case, at the relevant time the assessee was under no obligation prohibiting it from distributing the income derived by it by way of dividends amongst its share-holders. Such a prohibition was imposed only in December, 1973 by amendment of Article 103(xiv) of the Articles of Association of the assessee. [135-E-F] D

Additional Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufacturers Association, (1980) 121 ITR 1; Sole Trustee, Loka Shikshana Trust v. Commissioner of Income Tax, Mysore, (1975) 101 ITR 234, relied on. E

Commissioner of Income Tax, Andhra Pradesh, Hyderabad v. Andhra Pradesh State Road Transport Corporation, Hyderabad, [1986] 2 SCC 391, held inapplicable. F

Delhi Stock Exchange Association Ltd. v. Commissioner of Income Tax, 41 ITR 495, referred to.

1.3. The Securities Contracts (Regulation) Act, 1958, though makes provision for recognition of a "Stock Exchange" as defined in s.2(j) thereof, there is no provision in the said Act which imposes an obligation on a recognised stock exchange not to distribute any part of its profits by way of dividend to its shareholders. [137-A-C] G

1.4. As regards the letters dated August 28, 1963 and March 1, 1973 H

A issued by the Central Government taking object to the presents being given by the assessee to its members on the ground that such presents amounted to distribution of dividends, the High Court has rightly held that the said latters cannot be construed as imposing any legal obligation on the assessee not to distribute any part of its profits by way of dividends to the shareholder. [134-D-E; 137-C-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 3432-38 (NT) and 5648-50 of 1983.

From the Judgment and Order dated 29.2.80 of the Delhi High Court in I.T.R. No. 111-113/72 and 174 of 1976.

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Harish N. Salve, Ms. Vijay Lakshmi Menon and Vibhu Bakhru for the Appellant.

Dr. V. Gauri Shankar, S. Rajappa, C. Radha Krishna and B. Krishna Prasad for the Respondent.

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The Judgment of the Court was delivered by

E The common question that falls for consideration in these appeals filed by the Delhi Stock Exchange Association Ltd. (hereinafter referred to as 'the assessee') is whether the assessee is entitled to claim exemption from payment of income tax under Section 11 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the reason that the income of the assessee was derived from property held under trust for charitable purposes. The appeals relate to assessment years covering the period prior to December 1973.

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G The assessee is a company limited by shares. It was incorporated in the year 1947 with a view to acquire and take over, as a going concern the activities, functions and business of the Delhi Stock & Share Exchange Limited and the Delhi Stock and Share Brokers Association Ltd. The object for which the assessee was established was generally that of conducting a Stock Exchange and thus to promote and regulate the business in stocks, shares, debentures and other securities, to frame rules and bye-laws for regulating the conditions subject to which business on the Stock Exchange could be transacted and the like. The assessee derived income by way of membership fees, rent from property and interest on securities. The claim of the assessee for exemption under Section 11 of the

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Act was rejected by the Income Tax Officer and the Appellate Assistant Commissioner on appeal. A

The Income Tax Appellate Tribunal (hereinafter referred as 'the Tribunal') also rejected the said claim. It held that the running of a Stock Exchange was an object of general public utility and that its objects did not cease to be charitable because some surplus was realised by the Stock Exchange by reason of its receipts from its members or because it derived income from property. The Tribunal was, however, of the view that the income of the assessee could not be said to have been derived from property held under trust wholly for religious or charitable purposes. The Tribunal has referred to the judgment of this Court in *Delhi Stock Exchange Association Ltd. v. Commissioner of Income Tax*, 41 ITR 495, wherein after considering the Memorandum and Articles of Association of the assessee, this Court had observed that the surplus of the assessee could be distributed between the shareholders or employees or even their relations. The Tribunal was of the view that the aim and object of the trust has to be determined by reference to the manner in which the surplus derived from the activity could be disposed of and the absence of any prohibition for dividend to the shareholders and specific provision for creating funds for the benefit of shareholders, employees or their relations clearly showed that the surplus of the activity carried on by the assessee was definitely for the benefit of the shareholders, employees or their relations and could not by any manner or means to be treated as held for charitable purpose. According to the Tribunal, the mere fact that no dividends were declared or that the assessee did not carry on the object of general public utility did not in any manner establish the trust for using the income for charitable purpose inasmuch as the income could be used for distribution as dividends or for creating funds for the benefit of shareholders, employees and their dependents. B
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The High Court has agreed with the said view of the Tribunal. Proceeding on the assumption that all the objects of the assessee were charitable, as held by the Tribunal, the High Court has observed that the claim of the assessee for exemption has to fail for the reason pointed out by the Tribunal that there is no trust or legal obligation compelling the assessee to utilise its income only for such purposes. The High Court has stated that the assessee is a company limited by the shares and, like any other such company, is at liberty to distribute its entire profits or income G
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A by way of dividends. While taking note of the fact that in December 1973 the articles of association of the assessee company were amended and clause (xiv) of Article 103 was amended to prohibit the distribution of profits as interest or dividends in cash or to members so long as the Central Government prohibited such distributions, the High Court has observed that till December 1973 when Article 103(xiv) was amended, the assessee was at complete liberty to distribute its profits by way of dividends or to deal with its profits in any manner it liked and that it was not under any compulsion in law to hold that profits or to utilise them wholly or even in part only for religious or charitable purposes and it would have been perfectly legitimate for the company to have distributed its entire profits among its members and to have set apart or utilised no part of it for charitable purposes. That the company did not, in fact, distribute any dividends would not, in the view of the High Court, be of any help to the assessee as the requirement for the purpose of exemption is, not the factual position, but whether in law the company is under any obligation to devote its profits only to religious or charitable purposes. Referring to the letters of the Central Government dated August 28, 1963 and March 1, 1973 wherein objection had been taken to presents being given by the assessee to its members on the ground that such presents amounted to distribution of dividends in special, the High Court has observed that the said letters were merely advisory in nature and that they contained nothing more than a mere suggestion for implementation and that had no compulsive or legal overtones.

Shri Harish N. Salve, the learned senior counsel appearing for the assessee, has urged that the nature of the activities of the assessee have to be considered as a whole. The submission is that since the objects of the assessee have been found to be of general public utility and that no dividend has been declared by the assessee, it should be held that the income derived by the assessee is from the properties held for charitable purposes. The learned counsel has placed reliance on the letters of the Central Government objecting to the giving of presents by the assessee to its members and also on the decision of this Court in *Commissioner of Income Tax, Andhra Pradesh, Hyderabad v. Andhra Pradesh State Road Transport Corporation, Hyderabad*, [1986] 2 SCC 391. Shri Salve has also submitted that the earlier decision of this Court in *Delhi Stock Exchange Association Limited* (supra) related to the period to 1956 and that thereafter The Securities Contracts (Regulation) Act, 1956 has been enacted

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and the assessee has been recognised as a Stock Exchange under the said Act and is being treated as a public authority amenable to the jurisdiction of this Court and the High Court under Articles 32 and 226 of the Constitution.

In *Additional Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufactures Association*, (1980) 121 ITR 1, decided by a Constitution Bench of this Court, while construing the definition of the expression "charitable purposes" in Section 2(15) of the Act, the following test laid by Beg J. (as the learned Chief Justice then was) in *Sole Trustee, Loka Shikshana Trust v. Commissioner of Income Tax, Mysore*, (1975) 101 ITR 234, has been approved :

"Does the purpose of a trust restrict spending the income of a profitable activity exclusively or primarily upon what is "Charity" in law? If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity."

What is, therefore, required is that there must be an obligation created to spend the money exclusively and essentially on charity. In the present case, as found by the High Court, at the relevant period there was no obligation that the income from the properties by the assessee was to be exclusively used for charitable purposes. It was permissible for the assessee to distribute the whole or part of such income by way of dividends amongst its shareholders. Such a prohibition was imposed only in December 1973 by the amendment of Article 103(xiv) of the Articles of Association of the assessee. In other words, prior to the said amendment introduced in December 1973, the assessee was under no legal obligation prohibiting it from distributing the income derived by it by way of dividends amongst its shareholders. On that view of the matter it must be held that the High Court was right in holding that the assessee could not claim exemption under Section 11 read with Section 2(15) of the Act.

In *Andhra Pradesh State Road Transport Corporation* (supra) the claim of the Road Transport Corporation for exemption was contested by the Revenue on the basis of the provisions of Section 30 of the Road Transport Corporations Act, 1950, which contains the following provision

A regarding disposal of net profits :

B 'Section 30. *Disposal of Net Profits*. After making provision for
 C payment of interest and dividend under section 28 and for
 D depreciation, reserve and other funds under section 29, a Corpora-
 tion may utilise such percentage of its net annual profits as may
 be specified in this behalf by the State Government for the
 provision of the amenities to the passengers using the road
 transport services, welfare of labour employed by the Corporation
 and for such other purposes as may be prescribed with the previous
 approval of the Central Government, (and out of the balance such
 amount as may, with the previous approval of the State Govern-
 ment and the Central Government, be specified in this behalf by
 the Corporation, may be utilised for financing the expansion
 programmes of the Corporation and the remainder, if any, shall
 be made over to the State Government for the purpose of road
 development.)"

E It was contended that Road Transport Corporation could issue
 shares even to the members of the public and that dividend would be paid
 to the shareholders and, therefore, profit would be made from the activity
 of the transport corporation by its owners, namely, the shareholders.
 F Rejecting the said contention this Court pointed out that under sub-section
 (1) of Section 23 the capital of a Road Transport Corporation was to be
 provided by the Central Government and the State Government in such
 proportion as may be agreed to by both the governments and under
 sub-section (2) of Section 23, where the capital of a Road Transport
 G Corporation was not provided by the Central Government or the State
 Government, such Corporation may raise such capital by the issue of shares
 as may be authorised in that behalf by the State Government. In that case
 no share capital had been raised under Section 23(2) and the entire capital
 of the Road Transport Corporation had been provided by the Government
 under Section 23(1) and the Government was paid interest thereon. Since
 H no shares were issued under Section 23(2), there was no question of
 payment of any dividend. In these circumstances, it was held that Section
 30 did not stand in the way of the Corporation claiming exemption. The
 said case has no application because in the present case admittedly shares
 had been issued by the assessee and dividend could be paid to the
 shareholders since prior to December 1973 there was no obligation on the

part of the assessee not to distribute the profits by way of dividend among the shareholders. A

As regards the provisions of The Securities Contracts (Regulation) Act, 1956, it is no doubt true that the said Act makes provision for recognition of a stock exchange. The expression "Stock Exchange" has been defined in Section 2(j) to mean any body of individuals, whether incorporation or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities. We, however, do not find any provision in the said Act which imposes an obligation on a recognised stock exchange not to distribute any part of its profits by way of dividend to its shareholders. B C

In so far as the letters of the Central Government are concerned, we are in agreement with the High Court that the said letters cannot be construed as imposing any legal obligation on the assessee not to distribute any part of its profits by way of dividends to the shareholders.

In the circumstances, we do not find any merit in these appeals and the same are accordingly dismissed. But in the circumstances, there will be no order as to costs. D

R.P.

Appeals dismissed.