

Jaipur Charitable Trust Vs. Commissioner of Income-tax, Central, Delhi

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Court : Delhi

Decided On : Apr-14-1980

Reported in : [1981]127ITR620(Delhi)

Judge : Leila Seth and; S. Ranganathan, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 2(15), 11 and 13(1); [Income Tax Act, 1922](#) - Sections 4(3)

Appeal No. : Income-tax Reference Nos. 55, 56, 73 to 80, 42 and 43 of 1972

Appellant : Jaipur Charitable Trust

Respondent : Commissioner of Income-tax, Central, Delhi

Judgement :

Ranganathan, J.

1. These Income-tax References raise the question of the entitlement of the Jaipur Charitable Trust to exemption from income-tax for the assessment years 1961-62, 1962-63 and 1963-64 (for which the previous years were respectively the preceding financial years). The claim in respect of the first of these years has to be considered under s. 4(3)(i) of the Indian I.T. Act, 1922, whereas the claim for the two succeeding years has to be considered under the provisions of s. 11 of the Income-tax Act, 1961.

2. The claim of this trust for the same exemption under the Indian I.T. Act, 1922, in relation to the assessment years 1954-55 to 1960-61, was considered and negated by the judgment of this court in CIT v. Jaipur Charitable Trust : [1971]81ITR1(Delhi) , which was also confirmed by the Supreme Court in Yogiraj Charity Trust v. CIT : [1976]103ITR777(SC) . Actually these decisions were concerned with five trust deeds executed by Seth Ramkrishna Dalmia on various dates in 1946, 1948 and 1949. These trusts were the Jaipur Charitable Trust, Yogiraj Charity Trust, Dalmia Jain (Jind State) Charity Trust, Bhriguraj Charity Trust and Dalmia Jain Charity Trust, Delhi. This explains the difference the cause title between the decision of the Delhi High Court and the case decided by the Supreme Court. Even now along with the present case of Jaipur Charitable Trust we have also heard the references of Dalmia Jain (Jind State) Charity Trust and the Dalmia Jain Charity Trust for the assessment years 1959-60 to 1966-67 and 1965-66 to 1966-67. These trusts appear to have been subsequently renamed as the Jagdamba Charity Trust and the Durga Trust. However, for purposes of convenience, the other two trusts are dealt with separately as there are some minor differences which require to be noticed.

3. From what has been stated above it would appear to follow that the assessed's

claim for exemption for the assessment year 1961-62 has to fail. This claim is based on the trust deed dated April 18, 1948. All the relevant clauses of the trust deed have been elaborately quoted and discussed in the judgment of this court in CIT v. Jaipur Charitable Trust : [1971]81ITR1(Delhi) . The claim for exemption based on s. 4(3)(i) of the 1922 Act was repelled by this court. This court held that, though a good many of these objects were of religious and charitable nature, the claim for exemption failed because of clause 5(a)(v) which specified the following objects :

'To open, found, establish, equip, finance, assist, maintain, or contribute to religious, commercial, technical, industrial or commercial concerns, institutions, associations or bodies imparting any type of training or providing employment to persons.'

4. Under clause 5(b), the trustees had power to acquire, start or establish, equip or close any business undertaking or industry. Under clause 11 the trustees had authority to acquire, hold, carry on and manage any trade or business or any share thereof. The trustees were also given full discretion in employing the whole or any portion of the trust property or any funds of the trust in such trade or business or running business concern or managing agencies or other investments or shares or securities, etc. Clause 30 provided that if any object of the trust was found to be invalid or contrary to law, it would not affect the other objects of the trust. This court held that the object of establishing an industrial or commercial concern providing employment to persons mentioned in clause 5(a)(v) was not of a religious or charitable nature. In view of clause 30 it was observed that the various objects of the trust could be taken to be independent and there was nothing in the trust deed to prevent the trustees from applying the entire trust income for an object which was not of religious or charitable nature like the one in clause 5(a)(v). The reference in the said clause that the concern or institution in question must provide employment to persons was superfluous because industrial or commercial concerns must, in the very nature of things, provide employment to some persons. The establishment of commercial or industrial concerns normally postulate profit motive and there was nothing in the trust deed which ruled out the element of profit by the trust. A trust founded for the object of setting up an industrial or commercial concern would obviously be not for a religious or charitable purpose. Nor could it be said that the non-religious and non-charitable objects of the trust were not the primary object. The property of the trust could not, therefore, be said to be held 'wholly for religious or charitable purposes' and its income was not exempt from tax under s. 4(3)(i). The words 'wholly for religious or charitable purposes' in s. 4(3)(i) show that the income from trust property would be exempt only if all the objects of the trust are of a religious or charitable nature. In case a trust has ten distinct objects and nine of them are of religious or charitable nature but the tenth is not of a religious or charitable nature, the income derived from the property of the trust would not be exempt from taxation under s. 4(3)(i). The reason is that the trustees in such an even can apply the property of the trust exclusively for that object of the trust which is not of a religious or charitable nature. The court followed the principle laid down in this respect by the decision of the Privy Council in Maulana Mohammed Ibrahim Riza Malak v. CIT AIR 1930 PC 226, and of the Supreme Court in East India Industries (Madras) P. Ltd. v. CIT : [1967]65ITR611(SC) . The court pointed out that the relaxation had been permitted in such cases. This was that if all the primary objects of the trust are of religious or charitable nature, the existence of an ancillary or secondary object which is not of a religious or charitable nature but which is intended to subserve the religious and charitable objects, would not prevent the grant of such an exemption. However, as already pointed out, the court held, on a construction of the trust deed,

that the various objects set out in clause 5 were independent objects and none of them could be described as the primary object or the sole and dominant object, the other being secondary or ancillary to effectuate the main and primary object of the trust. This reasoning of the High Court was fully endorsed by the Supreme Court in the decision referred to earlier. In view of these decisions and having regard to the fact that we are considering the same trust deed in relation to the same provision of law for the assessment year 1961-62, we are unable to see how any different answer could be given to the question referred to us. So far as the assessment year 1961-62 is concerned, Mr. G. C. Sharma sought to contend that the decision of the Supreme Court in the case of the present assessed should be read as modified by the recent decision of the Supreme Court in the case of Addl. CIT v. Surat Art Silk Cloth Manufacturers Association : [1980]121ITR1(SC) . This argument, however, is not tenable because in the said decision the Supreme Court was only concerned with the interpretation of the words 'not involving the carrying on of any activity for profit' which had been added at the end of the definition of 'charitable purpose' as contained in the 1922 Act. We are, therefore, of opinion that so far as the assessment year 1961-62 is concerned, the question referred to us has to be answered in the negative and against the assessed.

5. So far as the assessment years 1962-63 and 1963-64 are concerned, we have to deal with the provisions of the I.T. Act, 1961. There are some differences in the exemption available to charitable trusts under the 1922 Act as compared with that available under the 1961 Act. But for our present purposes the only material difference is, as already stated, in regard to the definition of 'charitable purpose'. This definition, contained in s. 2(15), repeats the language of the definition contained in the 1922 Act but adds ten words at the end. The definition now reads 'charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit'. The additional words introduced in the above definition clause had given rise to a good deal of difference of judicial opinion. But now the matter has been set at rest by the decision of the Supreme Court in Surat Art Silk Cloth Mills Manufacturers Association : [1980]121ITR1(SC) , on a direct reference made to it by the Income-tax Appellate Tribunal. It may be convenient, without referring in detail to the very exhaustive discussion in the judgment, to summarise the various points decided in the case, in so far as they are relevant for our present purposes. These are :

(i) If there are several objects of a trust or institution, some of which are charitable and some non-charitable and the trustees or the managers in their discretion are to apply the income or property to any of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income could be exempt from tax. Mohammed Ibrahim Riza Malak v. CIT AIR 1930 PC 226, and East India Industries (Madras) P. Ltd. v. CIT : [1967]65ITR611(SC) approved.

(ii) If the primary or dominant purpose of a trust or institution is charitable, another object, which by itself may not be charitable but is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or institution from being a valid charity. For instance, if in order to give effect to a charitable purpose, an incidental entry into the political domain is contemplated or if the activities of an institution in the carrying out of its main charitable purpose incidentally benefit the members of the society or the institution, this would not by itself prevent the association or institution from being a charity. CIT v. Andhra Chamber of Commerce :

[1965]55ITR722(SC) approved.

(iii) The words 'not involving the carrying on of any activity for profit' qualify or govern only the last head of charitable purpose and not the earlier three heads of 'relief of the poor, education or medical relief'. *Dharmadeepti v. CIT* : [1978]114ITR454(SC) approved. In respect of these three head, the definition of charitable purpose would be fully satisfied even if any activity for profit is carried on though now, in view of s. 13(1)(bb), such exemption will not be available unless the business is carried on in the course of the actual carrying out of the primary purpose of the institution.

(vi) The ten words underlined above qualify the expression 'object of general public utility' and not the phrase 'advancement'. In other words, what is inhibited by these ten words is the linking of an activity for profit with the object of general public utility and not its linking with the accomplishment or carrying out of the object. The words require only that the object should not involve the carrying on of any activity for profit : it is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. *CIT v. Cochin Chamber of Commerce and Industry* : [1973]87ITR83(Ker) and *Andhra Pradesh State road Transport Corporation v. CIT* : [1975]100ITR392(AP) approved. *Indian Chamber of Commerce v. CIT* : [1975]101ITR796(SC) overruled and *CIT v. Dharmodayam Co.* : [1977]109ITR527(SC) approved. *Sole Trustee, Loka Shikshana Trust v. CIT* : [1975]101ITR234(SC) also accepted on this point.

(v) The words 'object of general public utility not involving the carrying on of any activity for profit' cannot be interpreted as covering a case merely on the ground that the purpose can be achieved without the trust or institution engaging itself in an activity for profit. In other words it would not be correct to interpret the expression as meaning that the object or purpose must be of such a nature that it involves the carrying on of an activity for profit, for, if such an interpretation were correct it would be the easiest thing for a trust or institution not to mention in its constitution as to how the purpose for which it is established shall be carried out and then engage itself in an activity for profit for carrying out such a purpose and thereby avoid the liability to tax. On the other hand, the correct interpretation is to see whether the purpose of the trust or institution in fact involves the carrying on of an activity for profit or in other words whether an activity for profit is actually carried on as an integral part of the purpose. Of course if the constitution of a trust or institution itself expressly provides that the purpose shall be carried out by engaging in an activity which has a predominant profit motive then the purpose would on the face of it involve the carrying on of an activity for profit and it would be non-charitable even though no activity for profit is actually carried on.

(vi) The expression 'activity for profit' means not merely that as a matter of fact an activity has resulted in profits but that it must be carried on with the object of earning profit. Profit-making must be the end to which the activity is directed. In other words, the predominant object of the activity must be the making of profit. Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where, on the other hand, the activity is carried on with the predominant object of earning profit it would be an activity for profit though it may be carried on in the advancement of the charitable purpose of the trust or the institution. The charitable purpose should not be submerged by profit making motive : the latter

should not masquerade under the guise of the former. The purpose of the trust must be 'essentially charitable in nature' and must not be a cover for carrying on an activity which has profit making as its predominant object. The observations in Sole Trustee, Loka Shikshana Trust : [1975]101ITR234(SC) and Indian Chamber of Commerce : [1975]101ITR796(SC) to the contrary not approved.

6. The above is a brief summary of the conclusion of the majority of the learned judges who spoke through Bhagwati J. A. P. Sen J., delivered a dissenting judgment. R. S. Pathak J., while agreeing with the majority, was of the opinion that what the last ten words implied was that the advancement of the object of general public utility should not involve the carrying on of an activity for profit. The learned judge, however, agreed that the requirement of the definition is satisfied where there is either a total absence of the purpose for profit making or it is so insignificant compared to the purpose of advancement of the object of general public utility that the dominating role of the latter renders the former unworthy of account. If the profit-making purpose holds a dominating role or even constitutes an equal component with the purpose of advancement of the object of general public utility, then clearly the definition in s. 2(15) is not satisfied. If the purpose is charitable in reality the carrying on of a business for carrying out the charitable purpose of the trust or institution does not detract from the purpose which permeates it. The real question whether a trust is created or institution is established for a charitable purpose falls to be determined by reference to the real purpose of that trust and not by the circumstance that the income derived can be measured by standards usually applicable to a commercial activity or by the quantum of the income.

7. It is in the light of this judgment of the Supreme Court that we will have to scrutinise the purpose of the charitable trust and in doing so we have also to bear in mind the interpretation placed upon the trust deed by the earlier decision of the Supreme Court in Yogiraj Charity Trust : [1976]103ITR777(SC) . The previous decision of the Supreme Court and this court have proceeded on the footing that the various objects of the trust as set out in clause 5 are independent objects and that since one of these objects, namely, to run commercial concerns, cannot be described as a charitable purpose, the claim of the entire trust for exemption must fail on the principle of the decision of the Privy Council in Mohd. Ibrahim AIR 1930 PC 226, which has been approved in the East India Industries (Madras) P. Ltd. : [1967]65ITR611(SC) and Yogiraj Trust cases : [1976]103ITR777(SC) and even in the Surat Art silk Cloth Manufactures Association case : [1980]121ITR1(SC) . Mr. G. C. Sharma, learned counsel for the assessed, contends that the earlier decision proceeded on the assumption that the carrying on of a business is necessarily a non-charitable purpose since it involves the carrying on of an activity for profit, although these words which have been added in the 1961 Act were not there in the 1922 Act. Learned counsel contends that this assumption under the old Act is not justified and that this would be clear from that even under the 1961 Act it is now clear that the mere fact that an activity for profit is contemplated by the trust does not render it a non-charitable trust or institution. He points out that there are as many as 14 object set out in clause 5 of the trust deed. Every one of them, with the exception of clause (v), is clearly a charitable purpose. Each one of the objects provides for relief of the poor, education, medical relief, religious purpose or other objects of general public utility. In fact this has also been recognised by the earlier decision of the Supreme Court. This being so, the reference in clause 5(a)(v), even though wide enough to include the running of a business, should have been interpreted as involving the running of a business not with a view to varying on any activity for the making of

profit but merely for the purpose of carrying out the several admittedly charitable or religious purposes set out in the trust deed.

8. We are placed in some difficulty in accepting the construction suggested by the learned counsel. On a careful perusal of the trust deed in its entirety we are inclined to think that the learned counsel may be right in saying that the sole and dominant purpose of entire document is charitable and religious and that clause 5(a)(v) only contemplates one of the various methods by which the predominantly charitable objects could be achieved. However, it is not open to us to consider this interpretation of the trust deed because, as already stated, this contention has been specifically considered and rejected by this court and the Supreme Court. In view of the findings in the earlier divisions in the case of the present assessed the trust cannot be considered as having a primary purpose of the charity with powers to the members to carry on a business in order to subserve that purpose. On the other hand, each one of the objects set out in the trust deed should be treated as equal components of the trust deed. We have, therefore, to read sub-clause (v) of clause 5(a) of the trust deed as setting out an independent object and when read in the context of cls. 5(b), 9, 11, 13 and 16 there is no escape from the conclusion that one of the objects of the trust is to carry on a commercial activity and run a business. Once the argument that the primary purpose of the trust deed is charitable is out of the picture, it is also not possible to say that the activity contemplated by sub-clause (v) of clause 5(a) is intended to subserve the charitable character of the trust. To put in other words, having regard to the interpretation placed on the trust deed by the earlier decisions of this court and the Supreme Court it is not possible to accept the contention that any commercial activity contemplated by sub-clause (v) is insignificant or immaterial and that the purpose of even a commercial activity carried on in pursuance of this clause would be only to subserve the main charitable purpose. If sub-clause (v) has to read independently, as has already been held, then it clearly envisages the carrying on of a commercial activity for profit as one of the principal objects of the trust.

9. Mr. G. C. Sharma tried to get out of the above situation by contending that in the present case the trust had derived its income only from certain securities and investments and that in fact no activity for profit had at all been carried on. This contention cannot be accepted for two reasons. In the first place, there has been no examination of the fact and circumstances and there is no finding that the trust did not carry out any activity for profit since its inception. It is no doubt true that in the reference with which we are concerned the assessment orders indicate that the income earned by the trust was only by way of interest on deposit made by it with certain companies and that no business profit were assessed. However, this is primarily a question of fact on which it would be necessary to have a positive finding given after the examination of the relevant material. But that apart, this question as to whether the object actually involves the carrying on of an activity for profit could only be relevant in cases where the object clause as set out in the trust deed is silent in this regard. Where on the other hand as in the other hand as in the present case the constitution itself provides that the purpose shall be carried out by engaging in an activity which has a predominant profit motive, the exemption would not be available even though no activity for profit is actually carried on. This was explicitly stated at p. 24 of Surat Art Silk Cloth Mfrs. Associations case : [1980]121ITR1(SC) . Mr. G. C. Sharma, however, contended that even if it is taken that clause 5(a)(v) contemplated the carrying on of a commercial activity that would not disqualify the assessed for exemption because the Supreme Court itself had stated that there is no presumption that an undertaking of a business organisation is for profit. He invites attention in this

connection to the observations at pp. 27 and 28 of the report of the Supreme Court decision where the court has dissented from the observation of Khanna J. and Krishna Iyer J., in sole Trustee, Loka Shikshana Trust : [1975]101ITR234(SC) and India Chamber of Commerce : [1975]101ITR796(SC) cases. This argument appears to be attractive but the observations have to be taken in the context in which they occur. The Supreme Court was considering in the relevant passages the question of a trust or institution which has a predominant object of general public utility. The question was whether the exemption would be lost by such a charitable institution merely because it involves itself in the carrying on of an activity which results in profit. In dealing with this question the court observed that a profit-making activity or a business is carried on is not conclusive and that what is to be seen is whether the activity was propelled by a dominant profit motive or whether the dominant object of the activity was to carry out a charitable purpose. For instance, to take the facts of Surat Art Silk Cloth Mfrs. Association's case : [1980]121ITR1(SC) itself the court had before it an association whose predominant object was to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth which was clearly held to be of general public utility. For carrying out this object the association indulged in the activity of obtaining licenses for import of foreign yarns and quotas for purchase of indigenous yarn which yielded some profits. But the court came to the conclusion that the profit yielding activity did not alter the charitable character of the assessed as these activities were only incidental for carrying out the charitable purpose. In the present case also had it been possible to say that clause 5(a)(v) is only a subsidiary or incidental object or activity contemplated to carry out the other pre-eminently charitable purpose of the trust, the position would have been different. But it must be emphasized, at the cost of repetition, that in view of the findings and interpretation placed on this trust deed in the earlier decisions, clause 5(a)(v) has to be considered as an independent object clause. Doing so, the object of this clause is to carry on a commercial activity for the sake of itself and not for any other purpose. For carrying out this object the trustees were equipped with full powers under the trust deed. In short, in addition to the various objects of general public utility enumerated by it, the trust deed also contemplates the trustees to carry on a business and to run commercial institutions. As pointed out by this High Court in the earlier decision, the mere reference to 'imparting any type of training or providing employment to persons' does not add to or detract from the main purpose of this clause which is to enable the trustees, inter alia, to carry on a business or trade. That being so, the position in the years governed by the 1961 Act cannot be really said to be different from the position in respect of the trust in the years which were governed by the provisions of the 1922 Act. We may also point out that, to accept the contention of the learned counsel, would result in the anomaly of the assessed being entitled to exemption under the strict language of the new Act though held not entitled to the exemption under the wider and broader language of the old Act.

10. Mr. G. C. Sharma also pointed out that the income, profit and gains of the trust in the present case could not be diverted for the benefit of the founder or any private individual but can only be utilised for the objects of the trust. This is so, but as the law stands at present, this alone is not conclusive. The question is whether the property is held in trust for religious or charitable purposes and this has to be answered in the negative for the above reasons.

11. We have, therefore, come to the conclusion, though with some hesitation, that even the assessed's claims for exemption for the assessment years 1962-63 and 1963-

64 are governed by the earlier decision of the Supreme Court in Yogiraj Charity Trust v. CIT : [1976]103ITR777(SC) . We, therefore, answer the question referred to us in the negative and in favor of the revenue. In the circumstances of the case, however, we make no order as to costs.

12. I.T. Rs. Nos. 73 to 80/72 :

13. These references raise the question of the eligibility for exemption of the Dalmia Jain (Jind State) Charity Trust, renamed as M/s. Jagdamba Charity Trust. The references relate to the assessment years 1959-60 to 1966-67. The trust deed in this case is dated June 14, 1948. The provision of the trust deed are similar to those in the case of the Jaipur Charity Trust. Clause 5(a)(iv) mentions as one of the objects of the trust :

'To open, found, establish, equip, finance, assist, maintain, or contributed to religious, commercial, technical, industrial, or commercial concerns, institutions, associations, or bodies imparting any type of training or providing employment to persons.'

14. Clause 5(b) is similar to the same clause in the case of the Jaipur Charitable Trust. Clause 11 empowers the trustees to acquire, hold, carry on and manage any trade or business or any portion thereof, to employ the whole or any portion of the trust property or the funds of the trust in such trade or business or in running business concerns or managing agencies, etc. These clauses are similar to those considered in the case of Jaipur Charitable Trust.

15. In the circumstances, we hold, following our decision in the case of the Jaipur Charitable Trust above, that this assessed is also not entitled to any exemption under s. 4(3)(i) of the 1922 Act or s. 11 of the 1961 Act. The question referred to us is answered in the negative and against the assessed. In the circumstances, we make no order as to costs.

16. I.T. Rs. Nos. 42 & 43/72 :

17. These two references pertain to the case of Dalmia Jain Charity Trust (renamed as Durga Trust). The references relate to the assessment years 1965-66 and 1966-67. The relevant trust deed was executed on June 1, 1946, by Seth Ramkrishna Dalmia.

18. Mr. G. C. Sharma, learned counsel for the petitioner, brings to our notice that the terms of this trust deed are entirely different from those considered by us in the cases of Jaipur Charitable Trust and Jagdamba Charity Trust. The objects of the trust are set out in clause 5. There are as many as 18 objects and we find on a perusal that practically all these are charitable objects within the meaning of s. 2(15) of the 1961 Act. The only two clauses which can be said to correspond to those in the case of the Jaipur Charitable Trust are cls. (x) and (xi), which run as follows :

'(x) To open, found, maintain or contribute to the opening and maintaining of such institutions where work at living wages can be provided to poor and middle class people and as may be conducive to the development of such industries, in any part of the world for the benefit of the poor.

(xi) In general, to open, found, establish, finance, assist, and contribute to institutions commercial, technical or religious or pertaining to fine arts or industries, such as

workshops, factories and other institution for imparting education in workmanship and for providing employment and means of earning adequate wages for the unemployed and the needy.'

19. Mr. G. C. Sharma, learned counsel for the petitioner, contends that the wording of these clauses is totally different and that unlike the case of the other two trusts this trust deed does not at all envisage the carrying on of any business. He points out that this distinction between the actual terms of the two sets of the trust deeds was not brought to the notice of the court here or before the Supreme Court when references relating to the earlier ye ars were taken-up. He, therefore, requests that the terms of this trust deed should be independently considered and that it should be held that the objects are wholly charitable.

20. We find force in the contention of the learned counsel. Clauses (x) and (xi), though a little similar to the impugned clauses in clause 5 of the trust deed in the case of the Jaipur Charitable Trust are, however, in substance fundamentally different. They do not envisage he carrying on of any business concern by the trustees. In fact, t is also significant that there are no clauses corresponding to cls. 5(b) and 11 of the clauses considered in the case of the Jaipur Charitable Trust empowering the trustees to carry on a business. Clauses (x) and (xi) if read in the setting in which they appear and in the context of the other 18 clauses of the trust deed leave no doubt that the dominant purpose of the entire trust deed was clearly charitable. Even if some of the activities contemplated by cls. (x) and (xi) may actually result in profit in some year, it is not one of the purposes of the trust deed to carry on business, so to day, for the sake of the business or profit making. The object of making profit is not conspicuous and in any event it is clear that these activities are to be carried on only for the purpose of the trust itself which, as we have pointed out, is dominantly a charitable purpose. In our opinion, Durga Trust falls clearly within the ambit of the exemption under s. 2(15) as interpreted by the Supreme Court in Surat Art Silk Cloth Mfrs. Association's case : [1980]121ITR1(SC) .

21. It is in view of this important difference between the various clauses of the trust deeds concerning these references that we have come to the conclusion that so far as the Durga Trust is concerned at least, it is eligible for the exemption contained in s. 11 of the 1961 Act. We, therefore, answer the question referred to us in the affirmative and in favor of the assessed. So far as the Durga Trust is concerned, there will be, however, no order as to costs.