

**Ragunath Das Parihar Dharmshala Vs. Commissioner of Income-tax**

**LegalCrystal Citation :** [legalcrystal.com/756470](http://legalcrystal.com/756470)

**Court :** Rajasthan

**Decided On :** Jul-16-1985

**Reported in :** [1986]158ITR432(Raj); 1985(2)WLN717

**Judge :** S.K. Mal Lodha and; Sobhag Mal Jain, JJ.

**Acts :** [Income Tax Act, 1961](#) - Sections 2(15) and 11

**Appeal No. :** D.B. Income-tax Reference No. 23 of 1978

**Appellant :** Ragunath Das Parihar Dharmshala

**Respondent :** Commissioner of Income-tax

**Advocate for Def. :** B.R. Arora, Adv.

**Advocate for Pet/Ap. :** K.C. Bhandari, Adv.

**Judgement :**

S.K. Mal Lodha, J.

1. At the instance of the assessee, Raghunath Das Parihar Dharmshala, which is a charitable trust, the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as 'the Tribunal'), has referred the following question for the decision of this court:

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the assessee-trust was not income derived from property held on trust wholly for charitable purpose within the meaning of Section 11 of the Income-tax Act, 1961 '

2. The assessment years involved are 1972-73 and 1973-74. The previous years for the aforesaid assessment years ended on July 8, 1971, and July 26, 1972, respectively. The assessee's income for the assessment year 1972-73 was Rs. 3,495 whereas so far as the assessment year 1973-74 was concerned, it was nil. The Income-tax Officer disallowed the assessee's claim for accumulation in terms of Section 11(2) of the Income-tax Act, 1961 (Act No. XLIII of 1961) (for short 'the Act'), for Rs. 20,000 in the assessment for that year (and computed income) at Rs. 23,495. For the assessment year 1973-74, he worked out the income at Rs. 10,723 by deducting capital expenditure of Rs. 17,639 incurred during the year out of the net profit and loss account which was Rs. 28,362. The assessee went in appeal and the Appellate Assistant Commissioner reached the conclusion that the assessee's income was not exempt under Section 11. He, therefore, directed the Income-tax Officer to issue

demand notice for the tax payable on the income of Rs. 23,753 for assessment year 1972-73 and Rs. 29,361 for the assessment year 1973-74. Aggrieved, the assessee filed a further appeal before the Tribunal. The Tribunal, after considering the contentions that were raised before it by the assessee as well as the Department, came to the conclusion that the running of the dharmshala, which is the sole object of the trust, does involve an activity for profit even if the charges for the ordinary rooms appear to be on 'no profit no loss basis'. In this view of the matter, the Tribunal held that the assessee-trust was not for charitable purposes. It may be stated that in coming to this conclusion, the Tribunal considered the decisions--Indian Chamber of Commerce v. CIT : [1975]101ITR796(SC) and CIT v. Madras Stock Exchange Ltd. : [1976]105ITR546(Mad) . The assessee filed an application under Section 256(1) of the Act for referring the questions of law arising out of the Tribunal's order dated September 29, 1977. The Tribunal referred question No. 5, proposed by the assessee in its application, to this court for decision, which we have already reproduced hereinabove.

3. We have heard Mr. K.C. Bhandari, learned counsel for the assessee, and Mr. B. R. Arora, learned counsel for the Revenue, and have carefully considered the trust deed dated September 20, 1950, and the order of the Tribunal dated September 29, 1977.

4. Section 11 of the Act deals with income from property held for charitable or religious purpose. Section 2(15) defines 'charitable purpose'. It is an inclusive definition and, amongst others, includes advancement of any other object of general public utility and not involving any activity for profit. The material clauses in the trust deed dated September 20, 1950, are Clauses 3, 5, 6, 9 and 10, which read as under :

3- esjsfopkj esa orZeku le;s esa tks/kiqj uxj esa turk ds mi;ksx d fy;s lqO;ofLFkr clq[kn /keZ'kkyk ugha gS] blfy;s bl Hkou dks lqO;ofLFkr <??>+ ij ;kf=;ksa dsBgjus ds fy;s /keZ'kkyk ds :i esa fuekZ.k djuk pkgrk gwa ftLls fd ;kf=;ksa dkslqfo/kk o lUrks'k feys A

5-mijksDr Hkou dks /keZ'kkyk ds :i esa fuekZ.k djkus ds fy;s j[kh gqbZ /kujkf'k omLls izkIr gksusokys lwn dh jde o Hkou ds orZeku fdjk;s dks /keZ'kkyk dks'kessa lfEefyr dh tk;xh] tks Hkfo'; esa /keZ'kkyk ds Hkou fuekZ.k esa vFkok /keZ'kkykdh O;oLFkk esa O;; dh tk;xh A

6-mijksDr vpy lEifk Hkou o /keZ'kkyk ds dks'k ij esjk o esjh lUrfr]okfj] o dqVqEch dk dksbZ O;fDrxr ;k ekfydkuk vf/kdkj ugha jgsxk] o bl py o vpylEifk o mLls mRiUUk vk; dks eSa vFkok esjh lUrfr o izcU/kdrkZ VLVh o vU;dksbZ tu flok; bl /keZ'kkyk ds ykHkkFkZ O;; ds fdlh izdkj vius futh dk;ks esaugha yxk ldsaxs A

9- bl /keZ'kykesa ;ka=h rhu fnu rd fu%'kqYd jg ldsxk vkSj vxj blds mijUr ;k=h jguk pkgrk rksizcU/kdrkZ dh vkKk ls muds fu/kkZfjr fd;s gq, 'kqYd dh vnk;xh ij gh jg ldsxk]tks ,d lIrkg ds le; ls fdlh izdkj vf/kd u gksxk A

10- /keZ'kkykds izcU/kdrkZ dks /keZ'kkyk dh O;oLFkk ds fy;k le;≤ dh mi;ksX;rk dks /;kuesa j[krs gq;s ;kf=;ksa ds fy;s fu;e cukus dk vf/kdkj gksxk] tks fu;e izR;sd;k=h dks ekuus i<+saxs u ekuus dh n'kk esa izcU/kdrkZ dks mls /keZ'kyk lsgVkus dk iw.kZ vf/kdkj gkxk A\*\*

5. As regards the utilisation of the income, there are two clauses, out of which one is clause 5. Before the Tribunal, it was not in dispute that the assessee is a charitable

trust and that the sole purpose of the trust is to run a dharmshala. However, its object of general public utility was in dispute before the Tribunal. In this connection, the Tribunal considered the clauses that have been reproduced hereinabove and, in the light of those clauses, repelled the contention, viz., that the activity carried on by the trust is not an activity to earn profit, and, therefore, the trust does not exist for charitable purpose and so it is not covered by the provision of Section 11 of the Act. It applied the tests laid down in Sole Trustee, Loka Shikshana Trust v. CIT : [1975]101ITR234(SC) and Madras Stock Exchange Ltd.'s case : [1976]105ITR546(Mad) . It will not serve any useful purpose to mention the tests laid down in the aforesaid two authorities as the former decision has been disapproved and the latter has been overruled by the Supreme Court in Addl. CIT v. Swat Art Silk Cloth Mfrs. Association : [1980]121ITR1(SC) at page 25, 26 wherein, as per majority, it was observed while construing the meaning of the expression 'Not involving any activity for profit' used in Section 2(15) as under :

'The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit...'. 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. \* The restrictive condition ' that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit-making is not the real object'.'

6. The two decisions relied on by the Tribunal were considered. In respect of Sole Trustee, Loka Shikshana Trust's case : [1975]101ITR234(SC) , it has been stated by his Lordship, Pathak J., as under [1980] 121 ITR 34:

'I am unable to agree, with respect, with all that has fallen from H. R. Khanna and A. C. Gupta JJ. in Sole Trustee, Loka Shikshana Trust v. CIT : [1975]101ITR234(SC) , that the terms of the trust must impose restrictions on making profits, otherwise the purpose of the trust must be regarded as involving the carrying on of a profit-making activity. On the contrary, I find myself in agreement with Beg J. to the extent that he says, in the same case, that it is the genuineness of the purpose, that it is truly charitable, which determines the issue. It seems necessary to me that a distinction must constantly be maintained between what is merely a definition of ' charitable purpose ' and the powers conferred for working out or fulfilling that purpose. While the purpose and the powers must correlate, they cannot be identified with each other. Reference may, of course, be made to the nature and width of the powers as evidence of the charitable or non-charitable nature of the purpose.'

7. With respect to Indian Chamber of Commerce's case : [1975]101ITR796(SC) , it was observed by his Lordship Pathak J. as follows [1980] 121 ITR 35 :

' .....I am compelled, with respect, to hold that the observations of Krishna Iyer J.,

speaking for the court, in *Indian Chamber of Commerce v. CIT* : [1975]101ITR796(SC) , do not accord with what I believe to be a true construction of Section 2(15). If that decision can be justified, it can be only on the basis that in the opinion of the court, the true purpose of the trust or institution was not essentially charitable. I am unable to accept the proposition that if the purpose is truly charitable, the attainment of the purpose must rigorously exclude any activity for profit. I am also unable to endorse the position that by permitting the trust or institution to carry on an activity which brings in profit, although that activity is carried on in the course of the working out of the purpose of the trust or institution, 'businessmen have a high road to tax avoidance'. It was apparently not brought to the notice of the learned judges that a carefully enacted scheme has been incorporated in the Act which closely controls the utilisation of the trust income, and that the tax exemption is conditional on the observance of the statutory conditions stipulated in that scheme.'

8. It is clear from the majority judgment, as stated above, that *Indian Chamber of Commerce's case* : [1975]101ITR796(SC) , was overruled and *Sole Trustee, Loka Shikshana Trust's case* : [1975]101ITR234(SC) , was disapproved. It is clear from *Surat Art Silk Cloth Manufacturers Association's case* : [1980]121ITR1(SC) , that if the predominant object of the trust is of general public utility, then, while carrying out this activity, if any profit accrues, then still Section 11 of the Act would be attracted. Having considered the trust deed, it is difficult to infer that the purpose of the trust is to carry out the activity by engaging in some activity which has a profit motive. As a matter of fact, on a true construction of the deed, it is clear that the predominant object was that of general public utility as envisaged by Section 2(15) of the Act.

9. *Mahakoshal Shaheed Smarak Trust v. CIT* : [1983]140ITR795(MP) , is an authority nearer home. In that case, after holding that the trust was of general public utility within the meaning of Section 2(15) and it was a charitable trust, it was observed as under (headnote):

'It was true that under the terms of the deed, the trustees had the power to see that sufficient income accrued to the trust from rents by letting out its premises and from fruits and flowers, swimming pool and literary and other publications, but it was clear from the other clauses of the deed that the trustees had to do all acts which were reasonable and proper for the realisation, protection, and benefit of the trust property and for the welfare, enlightenment and benefit of the beneficiary public.'

10. It was further held that the income from the trust property was not to earn profit but to carry out the object of public utility and so the profits earned in the shape of rental from buildings, etc., could not take the trust out from the definition of Section 2(15).

11. *Mahakoshal Shaded Smarak Trust's case* : [1983]140ITR795(MP) , was followed by another Division Bench of the Madhya Pradesh High Court in *CIT v. Ganesh Ram Laxminarayan Goel* [1984] 147 ITR 469. It may be stated that, in that case, a dharmshala was to be constructed out of the funds provided by the author of the trust; it was to be open to the visitors and general public for use; and the accommodation provided was free of charge. It was held to be a charitable trust within the meaning of Section 2(15) of the Act and, therefore, the income derived from the trust property was to be utilised for its upkeep and maintenance, i.e., to feed the object of general public utility. In those facts, it was ruled that the dominant

object of the assessee-trust was not to earn profit but to carry out the object of general public utility and, therefore, the profit earned as rent from the dharmshala and the shops was entitled to exemption under Sections 11 to 13 read with Section 2(15) of the Act.

12. Applying the tests laid down in Addl. CIT v. Surat Art Silk Cloth Manufactures' case : [1980]121ITR1(SC) and adopting the reasons given in the aforesaid three decisions, we are of the considered opinion that on the facts and circumstances of the case, the assessee is a charitable trust and the sole purpose of the trust is to run a dharmshala, which is an object of general public utility and so when this was the sole object, the income derived therefrom in the shape of rents from the income of the dharmshala is exempt under Section 11 read with Section 2(15) of the Act. At the risk of repetition, it may be stated that the object of the trust is not to earn profit, but the object of running the dharmshala is of general public utility.

13. For the aforesaid reasons, we are disposed to think that the Tribunal was not right in holding that the trust is not for charitable purpose and as such does not fall within Section 11 read with Section 2(15) of the Act. This is in conformity with the view taken by the apex court of the country in Addl. CIT v. Surat Art Silk Cloth Manufactures' case : [1980]121ITR1(SC) .

14. We answer the question referred to us in the negative, i.e., in favour of the assessee and against the Revenue.

15. There will be no order as to costs.

16. Let the Tribunal be informed of this order as required by Section 260(1) of the Act.