His Holiness Sri-la-sri Ambalavana Pandara Sannathi Avergal, Adheenakarthar, Tiruvaduthurai Adheenam and Hereditary Trustee, Atmanatha Swami Devasthanam Vs. the Commissioner, Hindu Religious and Charitable Endowments Board and anr.

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Court : Chennai

Decided On : Aug-21-1979

Reported in : (1980)1MLJ375

Appellant : His Holiness Sri-la-sri Ambalavana Pandara Sannathi Avergal, Adheenakarthar, Tiruvaduthurai Adheenam

Respondent : The Commissioner, Hindu Religious and Charitable Endowments Board and anr.

Judgement :

ORDER

S. Padmanabhan, J.

1. Adheenakarthar, Tiruvaduthurai Adheenam and Hereditary Trustee of Sri Athmanathaswami Devathanam, Avidayar koil, Thanjavur has filed this writ petition for the issue of a writ of certiorari to quash the order of the second respondent, the State passed on 28th March, 1977. The impugned order has confirmed the order of the Commissioner, Hindu Religious and Charitable Endowments Board, Madras, the first respondent passed on 28th February, 1976 levying contribution and audit-fees in respect of a sum of Rs. 1,25,000 received by the petitioner by way of sale proceeds, of the sale of an item of Devasthanam property.

2. The facts leading to the filing of this writ petition are as follows: The Devasthanam is a religious institution coming within the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act (for short, the Act). The Act provides for the payment of contribution by Devasthanam to the Tamil Nadu Hindu Religious and Charitable Endowments Board (for short, the Board) at the rate of 7% of the total income of the institution and of 1 % of the total income as audit-fees. The Devasthnam has been regularly paying the contribution and audit-fees to the Board at this rate on its total income. On 8th August, 1973 the Devasthanam sold an extent of 2.48 acres of land in Pattukottai taluk. The land was sold in order to meet the tirupani expenses of the temple at Avidayar Koil and for the construction of a rest house for the pilgrims near the temple. Prior to the sale, the Devasthanam applied for and obtained the permission of the first respondent. The sale proceeds were duly applied for the renovation of the temple.

3. For fasli 1384 the Devasthanam paid a sum of 23,335.75 as contribution and Rs. 5,000 as audit-fees on the total income. While so, the first respondent treated the sum

of Rs. 1,25,000 which represented the sale proceeds of the property as income in the hands of the Devasthanam for fasli 1384 and levied contribution and audit-fees on the said amount. Accordingly, the petitioner Devasthanam was called upon to pay a sum of Rs. 4,999.12 as contribution and a sum of. Rs. 2,090.21 as audit-fees totalling in all a sum of Rs. 7,089.33. The Devasthanam then filed an application before the first respondent stating that the Devasthanam was not liable to pay contribution and audit-fees on the sale proceeds of Rs. 1,25,000, as the same did not represent the income received by the Devasthanam for fasli 1384. By his order dated 28th February, 1976 the first respondent dismissed this application. The first respondent held that unless the sale proceeds were invested again so as to get recurring income from them, the amount will be deemed to be income and hence chargeable to contribution.

4. Against the said order of the first respondent, the Devasthanam preferred a revision to the second respondent and the second respondent dismissed the revision by its order dated 26th March, 1977. Consequently, the Devasthanam has filed this writ petition to quash the order of the Government confirming the order of the first respondent.

5. A counter-affidavit has been filed on behalf of the respondents.

6. Mr. B. Kumar, on behalf of the petitioner Devasthanam raised the following contentions : (1) The sale proceeds of the Devasthanam property represented a capital asset. It cannot constitute an income of the Devasthanam property for fasli 1384. By the sale of the property only a capital asset has been realised and converted into money. The receipt therefore can only be considered to be a capital asset in the hands of the Devasthanam; (2) The language of Rule 2(2)(g) of the Rules made under Sections 92 and 94 of the Act cannot have the effect of enlarging the natural and ordinary meaning of the word 'income' so long as the Act has not defined the word 'income'. The rule must be struck down as ultra vires; (3) Section 116 of the Act confers power on the Government to make Rules in regard to matters specified therein. Clause 15 refers to the method of calculating the income of the religious institution for the purpose of levying contribution and the rate at which it shall be levied. Clause 15 does not empower the authorities to frame Rules which should have the effect of enlarging the meaning of the word 'income' ; (4) The rule is also liable to be struck down on the ground of unreasonableness in so far as it seeks to levy contribution on the entry of the sale proceeds.

7. On the other hand, Mr. N.R. Chandran, the learned Government Pleader for the respondents submitted that the levy of contribution and audit-fees is valid since it is authorised under Rule 2(2)(g) of the Rules made under Sections 92 and 94 of the Act.

8. Before considering the question raised by Mr. Kumar it will be useful to extract the relevant provisions of the Act and the Rules. Section 92 of the Act reads as follows:

92 : (1) Every religious institution shall, from the income derived by it, pay to the Commissioner annually such contributions not exceeding seven percentum of its income as may be prescribed in respect of the services rendered by the Government and their officers and for defraying the expenses incurred on account of such services.

(2) Every religious institution, the annual income of which for the fasli year immediately preceding as calculated for the purposes of the levy of contribution

under Sub-section (1) is not less than one thousand rupees, shall pay to the Commissioner annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half percentum of its income as the Commissioner may determine.

(3) The annual payments referred to in sub-sections (1) and (2) shall be made, notwithstanding 'anything to the contrary contained in any scheme settled or deemed to have been settled under this Act for the religious institution concerned'

116 : (1) The Government may by notification, make rules to carry out the purposes of this Act.

(2) without prejudice to the generality of the foregoing power,, such rules may provide for-(i) to (xiv) omitted (xv) the method of calculating the income of a religious institution for the purpose of levying contributions and the rate at which it shall be levied.

(xvii) to (xxvii) omitted.

9. As per Section 116 of the Act rules have been framed under Sections 92 and 94 of the Act for the assessment, levy and recovery of contribution.

10. Under Rule 2(1) every religious institution shall, from the income derived by it, pay to the Commissioner, annually a contribution. If the annual income of the religious institution exceeds Rs. 2,00,000 at the rate of 7%. Under Rule 2(2)(g) 'income' means gross income minus the sale proceeds of immovable properties and rights, if such proceeds are reinvested to earn income for the religious institution.

11. The Act does not define the word 'income'; on the other hand, Rule 2(2)(g) says that income under the rule means gross income minus the sale proceeds of immovable properties and rights if such proceeds are reinvested to earn income for the religious institution. On the basis of Rule 2(2)(g), Mr. N.R. Chandran contended that since the sale proceeds of immovable properties, if reinvested to earn income, are to be deducted from finding out the gross income, it would automatically follow that the sale proceeds of immovable properties, not so reinvested to earn income, should be deemed to be income within the meaning of Rule 2(2)(g). In such cases, the receipts from the sale of immovable properties not so reinvested should be considered as income in the hands of the religious institution. The learned Government Pleader contended since in this particular case admittedly the sale proceeds have been spent in tirupani work and not reinvested to earn income for the Devasthanam, the entire sale proceeds of Rs. 1,25,000 would constitute income in the hands of the Devasthanam for fasli 1384 and thereby would attract the levy of contribution and audit-fees.

12. I have already referred to the fact that income has not been defined in the Act. In cases where words have not been defined in the Act, it is the ordinary canon of interpretation that such words have to be taken in heir popular, natural and grammatical meaning. In Cantonment Board, Poona v. W.I. Theatres Ltd. : AIR1954Bom261 , it is held as follows: 'Now, it is an ordinary canon of interpretation that words have got in the first instance to be taken in their popular meaning and in order to ascertain as to what the popular meaning of the word is one has recourse to the dictionary'. In Commissioner of Income-tax' v. Benoy Kumar : [1957]32ITR466(SC)

, the Supreme Court held that the terms 'agricultural' and 'agricultural purpose' not having been defined in the Indian Income-tax Act, we must necessarily fall back upon the general sense in which they have been understood in common parlance. It may be permissible to look to the dictionary meaning of the term in the absence of any definition thereof in the relevant statutes'. In Dasu Reddiar v. Inspector of Panchayats : AIR1966Mad147 , it has been held: 'It is a golden rule of construction of statutes that the words of a statute must prima facie be given their ordinary meaning'. In Commissioner of Income-tax, Andhra Pradesh v. Taj Mahal Hotel : [1971]82ITR44(SC) . Grover, J., has observed: 'Where a word is not defined in a statute, it must be construed in its popular sense, that is, that sense which people conversant with the subject-matter with which the statute is dealing, 'would attribute to it.' In Madras Industrial Lining Ltd. v. Income-tax Officer : [1977]110ITR256(Mad) , the question that arose for consideration before a Bench of this Court was the meaning to be given to the words 'capital employed' in Section 80-J of the Income-tax Act 1961. Govindan Nair, C.J., speaking for the Bench has observed: ''capital employed' is not defined for the purpose of Section 80-J or generally in the Act. Our attention was drawn to Explanation (b) and (c) to Section 35-D of the Act. There is specific reference to 'capital employed' in these sections and an explanation is given as to the meaning to be attributed to those words in that section. It was not urged before us either on behalf of the revenue or on behalf of the assessee, and we think rightly, that the said explanation would be helpful in interpreting the words 'capital employed' occurring in Section 80-J of the Act. That explanation will only be for the purpose of Section 35-D. We have therefore to understand the words 'capital employed' in its natural, legal and common sense.'

13. The next question to be considered is what is the meaning of the words 'income'. According to the Oxford Dictionary and Stroud's Judicial Dictionary it means 'a thing that comes in'. Ramanatha Aiyar in his Law Lexicon has given the following meaning to the word 'income'. 'Income: the return in money from business, labour, capital investment, gain, profit, that which comes in to a person as payment for labour or services rendered in some office, or as gain from lands, the investment of capital etc. Income is defined as that gain which proceeds from labour, business or property of any kind; the profits of commerce or business. Income signifies what comes in. It is as large a word as can be used to denote a person's receipts. Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments etc.' In Navinchandra Mafatlal v. The Commissioner of Income-tax, Bombay City : [1954]26ITR758(SC) , the Supreme Court said that 'capital gains' also constitute an income within the meaning of the word income used in item No. 54 of List I of the Seventh Schedule to the Government of India Act, 1935. In that context Das, J., speaking for the Supreme Court stated: 'The natural meaning of income would embrace any profit or gain which is actually received.' In Sevantilal v. Income-tax Commissioner, Bombay : [1968]68ITR503(SC) , while again holding that income includes 'capital gains' from transferred assets under the Income-tax Act, Ramaswami, J., has observed as follows: 'In our opinion, there is no logical distinction between income arising from the asset transferred to the wife and arising from the sale of the assets so transferred. The profits or gains which arise from the sale of the asset would arise or spring from the asset, although the operation by which the profits or gains is made to arise out of the asset is the operation of the sale. If the asset is employed, say by way of investment and produces income, the income arises or springs from the asset; the operation, which causes the income to spring from the asset, is the operation of the investment, income is produced while the asset, is the operation of the investment. In the operation of the investment, income is produced

while the asset continues to belong to the assessee, while in the operation of a sale, gain is produced, which is still income, but in the process the title to the asset is parted with. Although the processes involved in the two cases are different, the gain which has resulted to the owner of the asset, in each case, is the gain, which has sprung up or arisen from the asset. There is hence no warrant for the argument that the capital gain is not income arising from the assets, but it is 'Income with reference to the Indian Income-different from the asset itself.' From the above two Supreme Court cases it can be seen that 'capital gains' which is a profit realised by the sale of an asset is considered to be an income. In Commissioner of Income-tax v. Shaw Wallace , Sir George Lowndes has explained the meaning of the word 'income' thus: 'Income with reference to the Indian Income-tax Act connotes a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been linked pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something which is often loosely spoken of as capital. But capital though possibly the source in the case of income from securities is in most cases hardly more than an element in the process of production.' It can therefore be said that income is a periodical return coming in with some sort of regularity or expected regularity from definite sources. A capital asset, the return from which can be considered to be income, cannot by, itself be considered as income. Having regard to the nature of the transaction in the particular case, the Devasthanam must be deemed to have only realised the capital asset by converting it into money. The money so realised cannot be considered to be an income in the ordinary parlance.

14. The question then arises whether the sale proceeds of the Devasthanam property can be treated as income by the operation of Rule 2(2)(g). Even the rules do not directly describe what income is. Rule 2(2)(g) merely states that income means gross income minus the sale proceeds of immovable properties and rights if such proceeds are invested to earn income for the religious institution. By a process of deduction from this rule, the learned Government Pleader wants to spell out that income would mean sale proceeds of immovable properties and rights if such properties are not reinvested to earn income for the religious institution. The contention of the learned Government Pleader cannot be sustained. Section 116 of the Act says that the Government may by notification make rules to carry out the purposes of the Act. Therefore, the rules must be confined to the four corners of the Act. It is settled law that rules framed under the rule making power cannot go beyond the scope of the enactment. Rules cannot be framed in conflict with or derogating from the statute under which they are framed and whenever the rules are broad in their import and therefore inconsistent with the statute, they must yield to the statute. When the word 'income' has to be understood in its ordinary parlance, in the absence of a definition of the word 'income' in the Act and in that view, cannot be construed to take in a capital asset or realisation from a capital asset, no rule framed under the Act can enlarge the meaning of the expression 'income'. In Anant v. Ratnagiri District Local Board : AIR1953Bom71 , Chagla, CJ., has held:

Rules framed by the Local District Board cannot go beyond the scope of the Act itself, nor can they be inconsistent with the Act.

In Narasimha Raju v. Brundavanasahu : AIR1943Mad617 , it is observed thus:

If reconciliation is found to be impossible between a section and the rules made thereunder and the latter is found to be in excess of the statutory power authorising them, the subordinate provision, as the rules framed happen to be, must give way and the portion of the rule in excess of the statutory power found to be invalid as being ultra vires of the rule-making power. But before doing so, the Courts will have to struggle against such a construction and will have to make an effort within the bounds of reason to bring them within the ambit of the section if that can be possibly so done. This is because when a competent authority like the Governor-General in Council entrusted with the task of making rules exercises that power, the rules made by him should be as far as possible supported even by a benevolent interpretation particularly when the result of holding otherwise would be to give rise to a conflict of jurisdiction. If in spite of this attempt, however, the rule or any portion thereof is found to be manifestly beyond the power of the Governor-General in Council there would be no other alternative but to declare it to be invalid.

In Newspapers Ltd. v. State Industrial Tribunal : (1957)IILLJ1SC , while considering the question whether the rules would enlarge the scope of the expression 'industrial dispute' as defined in the Act, the Supreme Court has observed thus:

The cardinal rule in regard to promulgation of by-laws or making rules is that they must be legi fidei rationi consona, and therefore all regulations which are contrary or repugnant to statutes under which they are made are ineffective. If the expression 'industrial dispute' as ordinarily understood and construed conveys a dispute between an employer on the one hand and the workmen acting collectively on the other, then the definition of those words cannot be widened by a statutory rule or Regulation promulgated under the Statute or by Executive fiat.

In Central Bank of India v. Their Workmen : [1960]1SCR200 , it is held:

A statutory rule cannot enlarge the meaning of the section: if a rule goes beyond what the section contemplates, the rule must yield to the statute.

In B.B. & D. . v. Income-tax Officer : [1977]110ITR256(Mad) ,, a Bench of this Court was, as already stated, concerned with the meaning to be given to the word 'capital employed' in Section 80-J of the Income-tax Act. Govindan Nair, CJ., held that in the absence of a definition of the words 'capital employed' in this Act, the expression has to be understood in its natural, legal and common sense. But Rule 19-A (3) enables deduction being made from the capital employed of certain amounts which is specified in Rule 19-A (3). The section does not warrant any such rule being made not has it conferred any power on the rule-making authority to make such provision. In such a situation, the learned Chief Justice held that the framing of such a Rule 19-A (3) would not be for carrying out the purposes of the Act; that what is given by the Act has been taken away by the Rules; that no rule-making authority can by Rules alter the provisions of the Act.

15. Having regard to the decisions cited above, it is settled law that unless the context so requires, a word in a statute cannot be construed on the basis of the rules made by the subordinate authority. Such rules cannot control the construction to be placed on the provisions of the Act. The statutory rule cannot enlarge the meaning of the section. If the rule goes beyond what the section contemplates, the rule must yield to the statute.

16. In this case, Section 92 which is the charging section states that audit-fee and contribution can be levied only on the annual income of the religious institution. In the absence of any definition in the Act, income cannot be taken to include the realisation of capital asset which is represented by a sum of Rs. 1,25,000, the sale proceeds of devasthanam property. It is not the case of the Government Pleader that the levy of contribution and audit-fee is made on the gain derived by the devasthanam from the sale of the property. Section 92 in fact does not provide for the same. There is the further fact that Rule 2(2)(g) itself does not expressly state what gross income is. By a process of deduction from Rule 2(2)(g), it cannot be assumed that sale proceeds of immovable properties and rights which are not invested to earn income, must be deemed to be income for the purpose of computation of contribution and audit-fees. However, if Rule 2(2)(g) has to be understood in that way, the rule has to be declared ultra vires of the statute. Further, Section 116(1) confers power on the Government to make rules to carry out purposes of the Act, while Section 116(2)(xv) confers power to make rules for the method of calculating the income of a religious institution for the purpose of levying contributions and the rate at which it shall be levied. A reading of Section 116 will show that the rule-making authority is not authorised to define the scope of the expression 'income' or enlarge its meaning. I am therefore of the view that the sale proceeds of the devasthanam property viz., Rs. 1,25,000 is not liable for contribution and audit-fees. The impugned order is therefore quashed and the writ petition is allowed. There will be no order as to costs.