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**GANGABAI CHARITIES**

v.

**COMMISSIONER OF INCOME-TAX AND ANR.**

**JULY 24, 1992**

B

**[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]**

*Income Tax Act, 1961—Section 11(1)(a)—Construction of trust deed—Kalyana Mandapam and Printing press—Income derived by trust—Whether exemption entitled.*

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A trust, namely, "Ganga Bai Charities" was created on 13.9.1958, to construct and provide a building for the benefit of the public to be used for religious, charitable cultural and social purposes.

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The founder of the trust contributed Rs. 34,000 to the trust fund. With that fund a plot of land was purchased and the construction of a building was begun. The fund was augmented by her son from his own contributions as well as from outside donations.

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The building was completed at the cost of about Rs. six lakhs and it was being let out as a marriage mandapam to be used by the members of the public. The income derived from letting out the Kalyana Mandapam came to Rs.1,06,392.00 in the year ending March 31, 1963. For the subsequent years also the income was substantial. The trust was also running a printing press and sizeable income was being from the press.

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Income-tax proceedings were initiated against the trust.

The appellant-trust contended that the income derived from the property was being held wholly for religious and charitable purposes and as such was exempt under Section 11 of the Income Tax Act.

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The Income-tax Officer holding that the income earned by the trust was taxable, rejected the contention of the trust.

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On appeal the Appellate Assistant Commissioner reversed the Income-tax Officer's order, holding that the trust was a charitable trust and its income was entitled to exemption under Section 11 of the Act.

On further appeal by the department, the Tribunal upheld that decision of the Commissioner but remitted the assessment to the Income-tax Officer to find out as to what extent in each year the trust income or accumulations were expended for charitable purposes.

The Income Tax Appellate Tribunal referred the following question to the High Court under Section 256(1) of the Act:-

"Whether it had been rightly held that the income of the trust would be entitled to exemption under Section 11 of the Income Tax Act, 1961?"

The High Court answered the question in the negative and in favour of the department, against which these appeals were filed by the assessee-trust by special leave before this Court.

On the question, whether the Gangabai Charities, a trust was entitled to exemption under Section 11(1)(a) of the Income Tax Act, 1961, this Court dismissing the appeals of the assessee-trust,

**HELD :** 1.01. The crux of the statutory exemption under Section 11(1)(a) of the Income Tax Act, 1961 is not the income earned from property held under the trust but the actual application of the said income for religious and charitable purposes. It is, therefore, necessary to indicate in the trust-deed the broad objectives for which the income derived from the property is to be utilised. There is no mention in the trust-deed as to how the income derived from the trust property is to be utilised. The public uses the building on payment of rent to the trustees. What is to be done with the money so collected has not been provided in the trust deed. There is no mandate in the trust deed that the income derived from the trust property is to be spent on religious or charitable purposes. [632C-D]

1.02. On a careful reading of the trust-deed it is not possible to cull-out in clear terms a specific charitable/religious object to conclude that the trust was set up wholly for or religious purposes. The "religious, charitable, cultural and social" purposes referred to in the deed are not avowed as the objectives of the trust itself. What the founder of the trust intended to convey was that the building to be constructed out of the funds provided by her and supplemented from other sources, must be heed for the benefit of the public for being used by them for religious, charitable, cultural or social purposes. [631 F-G]

- A 1.03. The intention of the founder was to provide a building for the benefit for the benefit of the public to be used by them for religious, charitable and/or cultural and social purposes. It is nowhere stated in the trust deed that the trust itself has been created for the purpose of carrying out any of such objectives. The holding and conducting of religious discourses and the running of schools for the development of Sanskrit have also been mentioned from the point of view of the users of the trust property. These are some of the purposes for which the public can be permitted to use the property. [631H-632B]
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- C 1.04. On a proper construction of the trust deed it does not meet the requirements of Section 11(1)(a) of the Act. [632E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10803 to 10805 of 1983.

- D From the Judgment and Order dated 17.12.1980 of the Madras High Court in Tax Cases Nos. 261 of 1974 and 9 & 10 of 1977.

K. Parasaran, G. Umapathy, Mrs. Indu Malini Ananthachari for C.S. Vaidyanathan for the Appellant.

- E Ranbir Chandra for Ms. A Subhashini for the Respondent.

The Judgment of the Court was delivered by

- F KULDIP SINGH, J. The question for our consideration in these appeals is whether Gangabai Charities, a trust operating in the city of Madras, is entitled to exemption under Section 11(1)(a) of the Income Tax Act, 1961 (the Act).

- G Gangabai executed a document dated September 13, 1958 which was described as a deed of trust. The trust was named as "Ganga Bai Charities". In the trust-deed Ganga Bai gave effect to her desire to construct and provide a building for the benefit of the public to be used for religious, charitable, cultural and social purposes. She contributed Rs.34,000 to the trust fund. With that fund a plot of land was purchased and the construction begun. The fund was augmented by her son Seetha Rama Rao from his own contributions as well as from outside donations. The building was completed at the cost of about Rs. six lakhs. Ever since the construction
- H of the building it is being let out as a marriage mandapam to be used by

the members of the public as such. The income derived from letting out the Kalyana Mandapam came to Rs.1,06,392.00 in the year ending March 31, 1963. For the subsequent years also the income was substantial. The trust was also running a printing press and sizable income was being earned from the press. A

The Income-tax Officer took the view that the income earned by the trust was taxable. The contention of the trust that the income derived from the property was being held wholly for religious and charitable purposes and as such was exempt under Section 11 of the Act, was rejected. On appeal the Appellate Assistant Commissioner reversed the Income-tax Officer and held that the Ganga Bai Charities was a charitable trust and its income was entitled to exemption under Section 11 of the Act. On further appeal by the department, the tribunal upheld the decision of the Commissioner but remitted the assessment to the Income-tax Officer to find out as to what extent in each year the trust income or accumulations were expended for charitable purposes. The Income Tax Appellate Tribunal referred the following question to the High Court under Section 256(1) of the Act:- B C D

"Whether it has been rightly held that the income of the trust would be entitled to exemption under Section 11 of the Income Tax Act, 1961?" E

The High Court by its judgment dated December 17, 1980 answered the question in the negative and against the assessee. These appeals by way of special leave are against the judgment of the High Court.

Section 11(i)(a) of the Act, to the relevant extent, is reproduced hereunder:- F

11. Income from property held for charitable or religious purposes—(I) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income- G

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India.....

The above quoted provisions make it clear that a trust has to satisfy H

A the following conditions in order to claim benefit of Section 11(1)(a) of the Act:-

(1) The income is derived from property held under the trust.

(2) The trust is wholly for charitable or religious purposes.

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(3) The exemption is permissible to the extent to which such income is applied to such purposes in India.

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The appellant-trust has been created under a deed of trust dated May 30, 1978 and as such we have to look into the contents of the trust deed of find out as to whether the conditions precedent for claiming exemption under section 11(1)(a) of the Act are satisfied. The tribunal and the High Court have also based their conclusions on the interpretation of the trust deed.

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It is not disputed that the appellant-trust derived the income from the property held under it but the existence of other conditions necessary to claim exemption under Section 11(1)(a) of the Act have been seriously disputed by the Revenue before us. We have minutely examined the trust deed and have given our thoughtful consideration to its contents. The relevant paragraphs of the trust deed from where the purposes of the trust can be spelled out are reproduced hereunder:-

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"WHEREAS the Settlor, has long cherished a desire to construct and provide a building in Purasawalkam, Madras for the benefit of the Public to be used by them for religious, charitable and/or cultural and social purposes, to secure religious benefit for hereself and satisfy a long felt need of the Public in this part of this city."

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"NOW THIS INDENTURE WITNESSTH that in pursuance of the premises the settlor above named doth hereby declare that the plot of land above mentioned and more particularly desribed in the schedule below was purchased by her for Rs.24,000 on 9.9.1957 for the express purpose of constructing a building thereon and dedicating the same for use by the public *inter alia* for Religious, Charitable and Cultural purposes and doth hereby create an irrevocable Trust of the said property for the purposes aforesaid."

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"The settlor further declares that immediately after such purchase she, the settlor relinquished all her rights thereto and dedicated the said plot of land for the use of the public for the purposes above-mentioned and put the said plot of land in the possession of her son Shri K. Seetharama Rao, with a direction to construct a building thereon for the use of the public for religious, charitable, social, cultural and other allied purposes."

"That the Trust property, more particularly described in the schedule below shall be used for religious, charitable, social, cultural and other allied purposes".

"That the Trustee shall have, as the construction proceeds, power to make any suitable alterations in the plan already submitted by him and sanctioned the Corporation of Madras, in such manner as to him may seem necessary and that the Trustee may after the completion of the building let or allow the said building or such portion of portions of the said building for the use of the public for social cultural, religious educational etc., purposes, free or at such rents and such terms and conditions as he thinks proper in the interests of the Trust; for holding and conducting religious discourses, for running schools for the development of Sanskrit learning free or at such rents and on such terms and conditions as the Trustee thinks reasonable and proper in the interests of the Trust".

On a careful reading of the above quoted paragraphs of the trust-deed it is not possible to cull-out in clear terms a specific charitable/religious object to conclude that the trust was set up wholly for charitable or religious purposes. The "religious, charitable, cultural and social" purposes referred to in the deed are not avowed as the objectives of the trust itself. What the founder of the trust intended to convey was that the building to be constructed out of the funds provided by her and supplemented from other sources, must be held for the benefit of the public for being used by them for religious, charitable, cultural or social purposes. We cannot read the contents of above quoted paragraphs as the objects of the trust, these are only the objects of those who wish to put the trust property to use. On a careful consideration of the language of the trust deed, we are of the view that the intention of the founder was to provide a building for the benefit

- A of the public to be used by them for religious, charitable and/or cultural and social purposes. It is nowhere stated in the trust deed that the trust itself has been created for the purpose of carrying out any of such objectives. The holding and conducting of religious discourses and the running of schools for the development of Sanskrit have also been mentioned from the point of view of the users of the trust property. These are some of the purposes for which the public can be permitted to use the property.
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- The crux of the statutory exemption under Section 11(1)(a) of the Act is not the income earned from property held under the trust but the actual application of the said income for religious and charitable purposes.
- C It is, therefore, necessary to indicate in the trust-deed the broad objectives for which the income derived from the property is to be utilised. There is no mention in the trust-deed as to how the income derived from the trust property is to be utilised. The public uses the building on payment of rent to the trustees. What is to be done with the money so collected has not been provided in the trust deed. There is no mandate in the trust deed that the income derived from the trust property is to be spent on religious or charitable purposes.
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- We are satisfied that on a proper construction of the trust deed it does not meet the requirements of Section 11(1)(a) of the Act. We find no infirmity in the judgment of the High Court. We entirely agree with the reasoning and the conclusions reached therein.
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- Mr. Prasaran invited our attention to paragraphs 5 and 6 of the special leave petition wherein it is stated that *Mr. Justice V. Balasubrahmanyam* who delivered the judgment in this case on behalf of the two-Judge Bench of the High Court had given opinion in this case as special counsel for the Income-tax Department and in the said opinion the Department was advised to go to the High Court by seeking a reference. It was also opined that the trust was ineligible for the exemption for the reasons which were given therein. It is further mentioned in the special leave petition that the petitioner came to know about this aspect only after the judgment was pronounced on December 17, 1980. None of the parties brought this aspect to the notice of the learned Judge at the hearing or at any time before or after the conclusion of the hearing. Mr. Prasaran contends that it would be in the interests of justice if the matter be remanded back to High Court for rehearing. We are not inclined to agree with the learned counsel. The
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tribunal pronounced its order on February 28, 1974 and the High Court decided the reference seven years thereafter. The opinion must have been given immediately after the tribunal's order and as such due to lapse of time the learned Judge could not have remembered the 'routine opinion' he gave as a busy lawyer several years ago. The judgment was delivered by the High Court after hearing detailed arguments from both sides. All the points raised by the assessee have been dealt with and decided on the basis of judicious reasoning. In any case we have heard Mr. K. Prasaran, learned Senior Advocate for the appellant and have examined the trust deed minutely and carefully. The view taken by the High Court is the only view which can be taken in this case and we affirm the same.

The appeal is, therefore, dismissed with costs. We quantify the costs as Rs. 10,000.

V.P.R.

Appeals dismissed.