

A COMMISSIONER OF INCOME TAX (CENTRAL), LUDHIANA
ETC. ETC.

v.

AMRITSAR TRANSPORT COMPANY PRIVATE LIMITED AND
ANR.

B MARCH 31, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

Income tax Act, 1961:

C *Section 256(2)—Assessee collecting amounts for charity—Whether to be added as revenue receipts—Question fit to be referred to High Court—Direction to Tribunal.*

D The question involved in these appeals was whether the amounts collected for spending on charity and kept in a separate account for Dharmadha could be included in the business income of the assessee. The explanation that these amounts were distributed among the poor relatives of the labourers and to the girls in their families at the time of marriage, was not accepted by the Income-tax Officer as a charity. He added the entire dharmadha amounts to the business income of the appellant-assessee. On appeal the Appellate Assistant Commissioner deleted the said additions, and the Tribunal confirmed the deletions. Revenue filed applications before the High Court for reference. The High Court having dismissed the applications, Revenue preferred the present appeals contending that the assessees were using the amounts collected in the name of dharmadha for business purposes.

Allowing the appeals, this Court,

G **HELD: 1. So far as the inclusion of amounts collected as Dharmada which are kept in a separate account and are utilised for charitable purposes is concerned, there can be no dispute that they are not liable to be included in the income of the assessee. The Revenue's case is that though collected in the name of Dharmada, these amounts were neither meant for any charitable purpose nor were they spent on charitable purposes. In these circumstances, the High Court ought to have directed the Tribunal to state the question under Sec.256(2) of the Income tax Act,**

1961, as to whether such amounts could be assessed to tax as revenue A receipts. The Tribunal is directed to do so. [877 A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3522(NT) of 1979.

From the Order dated 24.1.1979 of the Punjab and Haryana High B Court in Income Tax Case No.50 of 1978.

WITH

(C.A. NOS. 2456(NT)/78, 5987-88(NT)/90,1368(NT)/82,1549-57(NT)/93 & 1558(NT)/93. C

G. Vishwanatha Iyer, C. Ramesh, T.V. Ratnam and Ayyam Perumal for P. Parmeswaran for the Appellants.

C.S. Aggarwal for B.V. Desai for the Respondents. D

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. *Civil Appeal No.2456(NT) of 1978.*

This appeal is preferred against the judgment and order of the Punjab and Haryana High Court dismissing an application filed by the Revenue under Section 256(2) of the Income Tax Act. The question which the Revenue wanted to raise reads thus: E

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the receipt of Rs.1,38,577 realised @1 per bility per customer through the bills and credited to a separate account called 'DHARMADA' was not assessable to tax as revenue receipt?" F

The case of the Revenue briefly stated is to the following effect: the assessee is a private Ltd. company engaged in the business of transport. During the accounting period ending January 31, 1970 relevant to the assessment year 1970-71, the respondent collected an amount of Rs.1,38,577 on account of DHARMADA. The Income Tax Officer called upon the respondent- assessee to explain why the said amount should not be treated as its trading receipt. The respondent's case was that according to the custom prevailing in the transport business, he two collected Re.1 G H

A per bilty for spending on charitable purposes. He stated that out of this amount collected, a major portion was spent on charity and that the balance of Rs.8,871 was carried over in the separate account kept for DHARMADA. His case was that this amount was never credited to his income account and it always constituted a distinct account. This explanation was not accepted by the Income Tax Officer who included the said amount of Rs.1,38,577 in the business income of the respondent. On appeal, the Appellate Assistant Commissioner accepted the respondent's contention and deleted the said addition. The Tribunal confirmed the same. However, says the counsel, the true state of affairs is disclosed from the assessee's own letter extracted in the assessment order. When called upon to explain the collection of the said amount and its purpose, the assessee submitted a reply in writing stating as under:

D "It is customary in the Transport business to collect/charge DHARMADA, at the rate of Re.1 per Bilty. Not only this but also all the Transport Companies, charge/collect this customary Dharmada.

E 2. This amount is meant for distribution to the poor relatives of labourers working in the business premises and also to give at the time of marriages of girls in their families. This is just to get full cooperation from them.

E 3. The company has nothing to do with this collection as it has to distribute the same."

F It is thus evident, says the counsel for the Revenue, that the amount though collected in the name of Dharmada was neither meant for charity nor was it ever spent on charitable purposes. Distribution of the said money among the "poor relatives of the labourers working in the business premises (of the assessee) and also to give at the time of marriages of girls in their families" cannot be called a charitable purpose. Indeed, according to the respondent, himself these amounts were distributed among them with a view "to get full cooperation from them." According to learned counsel, the assessee is really using the money collected in the name of Dharmada for his own business purposes. In the above circumstances, say the counsel, the High Court ought to have directed the Tribunal to state the aforesaid question under Sec.256(2) of the Act.

So far as inclusion of amounts collected as Dharmada which are kept in a separate account and are utilised for charitable purposes is concerned, there can be no dispute that they are not liable to be included in the income of the assessee *vide C.I.T. v. Bijli Cotton Mills (P) Ltd.*, 116 I.T.R. 60 but the Revenue's case herein is that though collected in the name of Dharmada, these amounts were neither meant for any charitable purpose nor were they spent on charitable purposes. In support of the same they rely upon the aforesaid written reply of the respondent-assessee itself. A

In our opinion this was a proper case where the High Court ought to have directed the Tribunal to state the said question under Section 256(2) of the Act. We do not think it necessary to say more than this on this occasion, lest it may prejudice the case of the parties at the hearing of the reference. B

The appeal is accordingly allowed, the judgment and order of the High Court is set aside and the application filed by Revenue under Section 256(2) is allowed. The Tribunal shall state the aforesaid question for the opinion of the High Court under Section 256(2) of the Act. No order as to costs. C

*CIVIL APPEAL NO.3522(NT)/79, 1368(NT)/82, 5987-88 (NT)/90
AND S.L.P. (C) No.8353/85.* D

These appeals and Special Leave Petition pertain to the very same assessee who is the respondent in Civil Appeal No.2456(NT) of 1978. For the reasons given hereinabove, leave is granted in S.L.P. (C) No.8353 of 1985 and all these appeals are allowed in the same terms as the appeal No.2456(NT) of 1976. E

S.L.P. (C) NOS.3257-3265 OF 1979.

The facts in these Special Leave Petitions are identical to the facts in Civil Appeal No.2456(NT) of 1978, though the assessee is different. The assessee too is engaged in transport business. No separate argument is addressed in these matters. Leave granted in all these Special Leave Petitions. For the reasons stated in the judgment in Civil Appeal No.2456(NT) of 1978, these appeals too are allowed and the Tribunal is directed to state the following question for the opinion of the High Court under Section 256(2) of the Act. F

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A "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding the sums of Rs.5506, Rs.26,039, Rs.33,385, Rs.49,634 and Rs.57,902 charged in 'bilities' in the assessment years 1967-68 to 1971-72 are not assessable to tax as revenue receipts."

B No costs.

G.N.

Appeals allowed.