

A

CARMEL BOOK STALL

v.

DY. COMMISSIONER OF SALES TAX

JULY 26, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

- Kerala General Sales Tax Act, 1963—Section 10—Exigibility to tax—Exemption u/s 10—Profits out of sale of specified goods to be solely utilised for charitable purpose—Onus of proof on assessee—Utilisation of profits need not be proved in respective assessment year—Fact to be proved before assessment order is passed.*

- For the assessment year 1981-82 and 1982-83, the Sales Tax Officer assessed to sales tax the income derived by the appellant from the sales of the books excluding the income actually utilised for charitable purpose.
- D On appeal, the Appellate Assistant Commissioner confirmed that order. In further appeal, the Tribunal reversed the decisions of the Authorities and held that the entire income derived during the assessment years went towards utilisation of charitable purpose and, therefore, remitted the matter to the Sales Tax Officer for reconsideration. On revision, the High Court held that though the burden was on the assessee to establish that the income derived by sale of books during the assessment years was utilised during that year for charitable purpose, the assessee did not discharge that burden and that, therefore, the appellant was not entitled to the exemption. Accordingly, it allowed the revision.
- F In this appeal the assessee contended that the High Court was in error in its conclusion that the appellant has to prove that it had utilised the income derived for charitable purpose, in the respective assessment years. It was urged that when the assessment could not have been completed during the relevant assessment year, utilisation of income may spill over or set apart to the subsequent years. It was also contended that if the income derived had been set apart or utilised for charitable purpose, i.e. stock in trade and proved to have been used for that purpose, the assessee would be entitled to the exemption under Section 10 of the Kerala General Sales Tax Act.
- H On the questions arise for consideration of Supreme Court, whether

the appellant is required to prove that the income derived from the sale of the books was utilised for charitable purpose and, whether the amount should be utilised during that assessment year alone and the assessee would be entitled to set apart the income for Utilisation for charitable purpose before the assessment year is completed : A

Allowing the matter and remitting the matter back to the Sales Tax Officer, this Court B

HELD : 1.1. It is for the assessee to prove, as a fact, that the profits derived by the sale of the goods specified in the Schedule, had been utilised solely for charitable purposes and on proof thereof that much of the amount would get exempted from exigibility to tax. [280-B] C

1.2. Regarding the question whether the assessee should utilised the profits in the relevant assessment year itself, the Government in their subsequent notification dated November 3, 1993 in SRO No. 1727/93 had clarified that utilisation of the profits may be done during the relevant year or be set apart for charitable purpose, if not utilised. But, however, before the assessment order is passed, there should be proof that the profits derived in the relevant assessment year have been solely utilised for charitable purpose. The direction in the notification to set apart the profits for charitable purpose would become meaningful when the above interpretation is adopted and at the same time the object of the notification gets achieved. [279-B-D] D

1.3. On the point that on the basis of the object of the articles of the charitable trust of the assessee, they were entitled to utilise the profits derived by the sale of the books in acquiring the stock in trade also, the necessary material has not been placed. The assessee should be given an opportunity to prove that the profits derived during the relevant assessment years have been solely utilised for charitable purpose. [280-C-D] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5064-65 G of 1989.

From the Judgment and Order dated 20.2.89 of the Kerala High Court in T.R.C. 213 & 214 of 1987.

V. Ramachandran and K.J. John for the Appellant. H

A A.S. Nambiar and M. A. Firoz for the Respondent.

The following Order of the Court was delivered :

These appeals, by special leave, arise from the judgment of the Division Bench of the Kerala High Court dt. February 20, 1989 in T.R.C. 213-14/87 which relate to the assessment years 1981-82 and 1982-83. The Sales Tax Officer by his order dt. August 16, 1983 assessed sales to sales tax the income derived by the appellant from the sales of the books excluding the income actually utilised for charitable purpose. On appeal, the Assistant Appellate Commissioner by his proceedings dt. April 23, 1985 confirmed that order. However, the Tribunal by its order dt. February 20, 1989, in further appeal brought before it, accepted the case of the appellant and reversed the decisions of the lower Authorities and held that the entire income derived during the assessment years went towards utilisation of charitable purpose and therefore, remitted the matter to the Sales Tax Officer for reconsideration in the light of the decision of the Tribunal. But on revision as stated earlier, the High Court held that though the burden was on the assessee to establish that the income derived by sales of the books during the assessment years was utilised during that year for charitable purpose, the assessee did not discharge that burden and that, therefore, the appellant was not entitled to the exemption. Accordingly, it allowed the revision, set aside the order of the Tribunal and confirmed the orders of the lower authorities.

Shri V. Ramachandran, learned senior counsel for the assessee, contended that the High Court was in error in its conclusion that the appellant has to prove that it had utilised the income derived for charitable purpose, in the respective assessment years themselves. As per the procedure prescribed under the Kerala General Sales Tax Act, Act 15 of 1963 (for short 'the Act') the assessee was required to submit his return at the end of every month and it is not possible to prove that the income derived from the sale of the books had gone in that month towards charitable purpose, when the assessment could not have been completed during the relevant assessment year, utilisation of income may spill over or set apart to the subsequent years. It was, therefore, contended that it was not practicable to establish that the income derived by the sale of the books was utilised for the charitable purpose during the year of its earning itself.

It was also contended that if the income derived had been set apart or utilised for charitable purpose, i.e. stock in trade and proved to have been used for that purpose, the assessee would be entitled to the exemption under Section 10 of the Act. Shri Nambiar, learned counsel for the Revenue contended that the appellant admitted before the Assistant Appellate Commissioner that the sale proceeds were utilised for purchase of the books, i.e. stock in trade. The appellate authority, according to him, had found that for the relevant assessment years only a fraction of the income had been utilised for charitable purpose. It was, therefore, contented by him that the Sales Tax Officer and the Assistant Appellate Commissioner were right in concluding that the appellant had not utilised the income from sale proceeds of the books for charitable purpose. The High Court was, therefore, justified in its conclusion that it had not been proved that the appellant had utilised the sale proceeds of the books for the charitable purpose during the relevant assessment years.

From the respective contentions, two questions would arise for our consideration. Firstly, whether the appellant is required to prove that the income derived from the sale of the books was utilised for charitable purpose and secondly, whether the amount should be utilised during that assessment year alone and the assessee would be entitled to set apart the income for utilisation for charitable purpose before the assessment year is completed ? The notification issued under section 10 of the Act reads thus

"SRO No. 342/63 - In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963) the Government of Kerala, having considered it necessary in the public interest so to do hereby make an exemption in respect of the tax payable under the said Act on the sale or purchase of the goods specified in Schedule-I hereto appended and by persons specified in Schedule-II hereto appended in regard to their turn over on the sales of goods specified therein subject to the conditions specified therein :

xxxxxx

xxxxxx

xxxxxx

2. Sales by any charitable trust or charitable institution, the profit of which is solely utilised for charitable purpose."

H

- A A reading of the notification clearly indicates the purpose for which the exemption had been granted by the Government, exercising its power under Section 10 of the Act. It provides that the Government is of the view that in the public interest with a view to encourage the assessee to utilise the income derived out of the turn over on the sale of goods specified in the schedule, for any charitable purpose, to the extent the assessee had proved to have utilised the sale proceeds for charitable purpose, would be entitled to the exemption from tax, being not exigible to tax. Counsel fairly admitted across the bar that the burden is always on the assessee, since it seeks exemption from the exigibility to tax on the ground that the profits so derived by the sale of the specified goods, had been solely utilised for the charitable purpose. No doubt the assessee is a charitable trust. May be, that there would be more than one charitable purpose envisaged in the Articles of the Association of the charitable institution or the trust. But the outgoing from the profits out of the sale of the specified goods must be solely utilised for charitable purposes. The object of the notification does not concern itself as to which particular charitable purpose the assessee would utilise the profits derived from the sale of the notified goods. The purpose must be charitable purpose. What is a charitable purpose is a question of fact to be proved before the Sales Tax Officer or on appeal, etc. Therefore, it is for the assessee to prove, as a fact, that the profits derived by the sale of the goods specified in the Schedule, had been utilised solely for charitable purposes and on proof thereof that much of the amount would get exempted from exigibility to tax. The Tribunal, therefore, is not right in its finding that the burden was on the Revenue to prove that the profits derived by the sale of the specified goods were utilised for charitable purpose. The question, then is, whether the assessee should utilise the profits in the relevant assessment year itself. The Government in their subsequent notification dated November 3, 1993 in SRO No. 1727/93 had explained thus :

- G 1. The profit, if any, shall be solely utilised for charitable purpose during the year or set apart to be utilised for charitable purposes.
- H 2. Where the profit set apart for utilisation for charitable purpose is utilised for any purpose, other than charitable the institution shall disentitle itself for the exemption under this notification during such year."

Thereby the Government clarified that utilisation of the profit may be done during the relevant year or be set apart for charitable purpose, if not utilised. If it is utilised for any other purpose, other than charitable purpose, the Institution should thereby disentitle itself for the exemption under the notification issued under Section 10 of the Act. The practical difficulty could be easily visualised to give effect to the notification. In a given case, it may be possible that the profits derived from the sale proceeds of the goods specified in the Schedule, may not be utilised solely for the charitable purpose in the relevant month or during the relevant assessment year. But assessment being at the end of the assessment year and the income derived is computable to tax on the total turn-over of the assessment year, the assessee may be able to prove at the time when the assessment is taken up for consideration that the profits derived out of the sale of the goods specified in the Schedule have been solely utilised for the charitable purpose, even after the expiry of the relevant year. But, however, before the assessment order is passed, there should be proof that the profits derived in the relevant assessment year have been solely utilised for charitable purpose. The direction in the later notification to set apart the profits for charitable purpose would become meaningful when we adopt the above interpretation and at the same time the object of the notification gets achieved.

It is then contended that the appellant had utilised the profits derived by the sale of the books in the relevant assessment year to purchase stock in trade and it is not charitable purpose. Shri Nambiar has drawn our attention to the contention of the appellant itself before the appellate authority namely, "it is stated on behalf of the assessee that the assessee had invested the profits in the books, i.e. stock in trade". It was also noted by the appellate authority that for the years 1981-82, out of a sum of Rs. 1,93,153.33 derived as profits only a sum of Rs. 22,400 was utilised for charitable purpose and for the assessment years 1982-83 out of profits of Rs. 1,22,124.03 only a sum of Rs. 15,570 was utilised for charitable purpose. In other words, it is contended that rest of the profits have been utilised only to purchase stock in trade that, therefore, the appellant is not entitled to any exemption for the rest of the profits derived by him. May be that the assessee with the object to carry on charitable purpose in terms of the Articles of Association may use the profits derived by sale of the specified goods to augment stock in trade, so that the assessee may generate further income or accumulate stock in trade to derive profits for utilisation of the

A

B

C

D

E

F

G

H

- A profit for any of the charitable purposes. The object of the notification is to exempt only that portion of the profits derived by sale by goods when the same has solely been utilised for charitable purpose. The exemption is relatable only to the utilisation of the profits derived by sale of the specified goods for charitable purpose. In other words, only on proof that so much of the profits derived from the sale of specified goods has been solely utilised for charitable purpose during the relevant year or set apart for that purpose and utilised before the assessment is made by the Sales Tax Officer gets exempted. On the assessee's failure to prove the same, the rest of the profits, in other words the assessable turnover is exigible to sales tax. Shri Ramachandran contended that at the relevant time, the focus was on
- B the basis of the object of the articles of the trust of the assessee that they were entitled to utilise the profits derived by the sale of the books in acquiring the stock in trade sale. The necessary material has not been placed and that, therefore, an opportunity may be given to the appellant to prove that the income derived during the relevant years has been solely utilised for charitable propose. Since the assessee is seeking an opportunity, we find that there can be no inconvenience to the Revenue to give an opportunity to the assessee to prove that the profits derived during the relevant assessment years have been solely utilised for charitable purpose. The judgment of the High Court and that of the Tribunal and the appellate authority have been set aside. The assessment order is also set aside. The
- C cases are remitted to the Sales Tax Officer to assess afresh, in the light of the judgment, subject to appellant's placing the necessary evidence of utilisation of the profits derived during the relevant year of the sale of the goods specified in the schedule of the notification solely for the charitable purpose. The appeals are allowed, but in the circumstances, the parties to bear their own costs.

A.G.

Appeals allowed.