

PETITIONER:
UPPER GANGES SUGAR MILLS LTD. ETC.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, CALCUTTA

DATE OF JUDGMENT: 04/08/1997

BENCH:
S.P. BHARUCHA, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 4TH DAY OF AUGUST, 1997

Present;

Honible Mr. Justice S.P.Bharucha

Hon'ble Mr. Justice V.N.Khare

H.N.Salve, Sr.Adv., Shri Narain, K V.Viswandhan,
D.Singh and Suman J.Khaitan, Advs. with him for the
appellants.

Ranbir Chandra and B.K.Prasad, Advs. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered :

WITH

(Civil Appeal No. 10736/95)

J U D G M E N T

S.P.BHARUCHA. J.

A Division Bench of the Calcutta High Court answered
the following question in the negative and in favour of the
Revenue :

"Whether on the facts and in the
circumstances of the case the
Appellate Tribunal was justified in
holding that the assessee was
entitled to the relief under
section 80G on the donations paid
to Vishwa Mangal Trust?"

The assessee is in appeal by
certificate.

We are concerned in the first appeal with the
Assessment Year 1973-74, the relevant previous year having
ended on 30th June, 1972. The assessee had made a donation
of RS. 25,000/- to the Vishwa mangal Trust (hereinafter
called 'the Trust'). The assessee claimed a deduction under
Section 80G in respect of that donation. The claim was
allowed by the Income Tax Officer on 27th December, 1976.
The assessment was then re-opened under Section 147(b) of
the Income Tax Act and on 30th December, 1977 the Income Tax
Officer disallowed the claim. The Appellant Assistant
Commissioner dismissed the assessee's appeal. The Income
Tax Appellate Tribunal allowed the appeal preferred by the
assessee against the order of the Appellate Assistant
Commissioner. Thereafter it referred the question set out

above to the High Court. The High Court reversed the view of the Tribunal.

Much the same thing happened in a subsequent year and the High Court followed its said judgment.

Section 80G sets out the deductions to be made, in accordance with and subject to its provisions, in computing the total income of an assessee in respect of donations to certain funds, charitable institutions, etc. It applies by reason of sub-section (5) thereof, to any other fund or any institution to which the section applies (sub-section (2)(a)(iv)) if it is established in India "for a charitable purpose" and fulfils the condition, inter alia, that it "is not expressed to be for the benefit of any particular religious community or caste". Explanation 3 states, "In this Section, 'charitable purpose' does not include any purpose the whole or substantially the whole of which is of a religious nature".

The objects of the Trust are set out in clause (2) of the trust deed. They are :

"2(a) To establish, support and maintain schools, colleges, libraries, reading rooms, Lecture Halls, Public Museums and to grant aids to, support and maintain persons and institutions for the promotion of science or literature or Fine Arts or diffusion of useful knowledge or galleries of paintings and other works of art or collection of natural history, economic and scientific inventions and designs.

(b) To establish and maintain or grant aid to Hospitals, Medical Schools or Colleges, Nursing Institutions and such other institutions.

(c) To grant relief on the occasion of earthquakes and floods and other occasions of calamities of similar nature or to give donations to other institutions or persons doing such relief works.

(d) To establish and maintain studentships, give prizes and to grant aid to poor students.

(e) To establish Boarding Houses and Hostels for students.

(f) To promote physical culture and education and to assist and promote sports and games and generally to do all acts for the improvement of general health and physical development.

(g) To establish and maintain and to grant aid to centres for diffusion of Indian Art and Culture.

(h) To establish, maintain and to grant and/or aid to public places of worship and prayer halls.

(i) To establish, support and maintain and/or to grant aid to alms houses and/or to give relief to the poor and needy persons.

(j) To establish, support and maintain and/or to grant aid to institutions for uplift of backward and depressed classes irrespective of caste, creed or nationality."

(Emphasis supplied.)

Clause (3) of the trust deed reads thus :

"The Trustees shall from time to time collect funds which and/or the income thereof will be utilised for the objects aforesaid. All investments and properties of the Trust for the time being held by the Trustees is hereinafter referred to as the Trust Funds."

The High Court did not accept the assessee's argument that the establishment or maintenance of prayer-halls was not a religious object. The High Court also did not accept the assessee's argument that the object of clause 2(h) of the trust deed should not be considered to be a religious object because the trustees were not empowered to set up places of worship and prayer halls of a particular community or religion; it took the view that even if a trust was set up for the advancement of all the religions in the world, it would be a trust of a religious nature. The High Court rejected the assessee's argument that the Trust was not set up wholly or substantially for a religious purpose; on of the purposes, it said, was "to establish, maintain and grant aid to public places of worship and prayer halls", which was an entirely religious purpose.

Section 80G applies to donations to any institution or fund established in India "or a charitable purpose". "Charitable purpose, for the purposes of the section, does not include any purpose the whole or substantially the whole of which is of a religious nature". (Emphasis supplied.) Explanation 3, which uses this phraseology, takes note of the fact that an institution or funds established for a charitable purpose may have a number of objects. If any one of these objects is wholly, or substantially wholly, of a religious character, the institution or funds falls outside the scope of section 80G a donation to it does not secure the advantage of the deduction that it gives.

The judgment of this Court in Additional Commissioner of Income-Tax, Gujarat vs. Surat Art Silk Cloth Manufacturers Association, 121 I.T.R. 1, cited by learned counsel for the assessee, was delivered with reference to the true meaning of the words "not involving the carrying on of any activity for profit" occurring at the end of the definition of "charitable purposes" in Section 2(15) of the Income Tax Act. This Court said that if the primary or dominant purpose of the Trust was charitable, another object which by itself may not be charitable but which was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or the institution from being a valid charity. The judgment is of no assistance in construing Explanation 3 of Section 80G.

To reiterate, explanation 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund's charitable