

THE GURU ESTATE THROUGH
DWARKADAS GURU AND OTHERS

1962

October, 19.

v.

THE COMMISSIONER OF INCOME-TAX
BIHAR AND ORISSA

(J. L. KAPUR, M. HIDAYATULLAH and
J. C. SHAH, JJ.)

Income Tax—Income from trust—Exemption from taxation—Applicability of the rule—“Exclusively to purposes religious or charitable”—High Court’s jurisdiction in references—Binding on Tribunal’s findings on facts—Indian Income-tax Act, 1922 (11 of 1922), ss. 4 (3) (i) and (ii), 66 (2).

The assesseees were members of a joint Hindu family who carried on the vocation of *Pandas* or priests who assisted devotees in performing worship and ceremonies connected with the pilgrimage to the temple of Jagannath at Puri. They collected from the pilgrims amounts of money known as *Annadan* under writings called *Annadan Patras* signed by the pilgrims. The assesseees claimed that the offerings of *Annadan* were exempt from Income-tax under ss. 4 (3) (i) and (ii) of the Indian Income-tax Act, 1922, because they were received by them on condition of utilising the same for the *Bhog* (food offering) in the temple of Jagannath and were, therefore, income derived from property held under a trust and, in any event, income of a religious institution derived from voluntary contributions applicable solely to religious purposes. The income-tax authorities rejected the claim and held that the amount was liable to tax. The Appellate Tribunal found that the money paid by the pilgrims as *Annadan* was not used for the exclusive purpose of offering *Bhog*, that the said amounts were earned by the assesseees in the conduct of their business as *Pandas*, that the facts did not indicate that any trust was intended or created by the pilgrims, and that the assesseees were not an institution. The Tribunal accordingly held that the assesseees were not exempt under s. 4 (3) (ii) of the Act from liability to pay income-tax. On a reference under s. 66 (2) of the Act, the High Court took the view that it was not necessary to decide the question whether the contributions made through *Annadan Patras* by the donor would amount to a trust, that even if it be assumed that a religious trust was created it was only a private

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religious trust and that, therefore, the income of the assesseees derived from the source was not exempt from liability to tax under ss. 4 (3) (i) and (ii) of the Act.

Held, that the amounts received by the assesseees under the *Annadan Patras* were not exempt from tax under ss. 4 (3) (i) and (ii) of the Indian Income-tax Act, 1922, since, on the findings of the Tribunal, they were not applicable exclusively to purposes religious or charitable.

Held, further, that the High Court erred in ignoring the finding of the Appellate Tribunal that there was no trust and in coming to a conclusion, on the assumption that a trust was intended to be created by the pilgrims, that the trust was a private trust.

Under the scheme of the Indian Income-tax Act the function of determining facts rests with the Tribunal and on the facts found the High Court has to advise the Tribunal as to the law applicable. In the present case, the High Court attempted to exercise not the advisory jurisdiction in respect of the decision of the Tribunal which alone is conferred by s. 66 (2) of the Act, but jurisdiction which in substance was appellate.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 248 to 253 of 1962.

Appeals from the judgments dated April 1, 1958, of the Orissa High Court in Special Jurisdiction Cases Nos. 6 of 1953 and 42 to 45 of 1954 and 7 of 1956.

A. V. Viswanatha Sastri, R. S. Mahanty and B. P. Maheshwari, for the appellants in all the appeals.

N. D. Karkhanies and R. N. Sachthey, for the respondent in all the appeals.

1962. October 19. The Judgment of the Court was delivered by

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SHAH, J.—These six appeals raise a common question as to the liability of the assesseees to pay income-tax in respect of certain receipts known as

'*Annadan*' during the assessment years 1946-47 to 1951-52. The assesseees are a Hindu Undivided family, and engage themselves as *Pandas* or priests who assist devotees in performing worship and ceremonies connected with pilgrimage to the temple of Jagannath at Puri, and for services rendered by them they receive certain emoluments which are called '*Dakshina*' or '*Pranami*'. It is not disputed that amounts received as *Pranami* are profits or gains of business or vocation carried on by the assesseees and liable to income-tax. Besides *Pranami* the assesseees collect from the pilgrims amounts of money known as *Annadan* under writings executed by the pilgrims. In these appeals the assesseees claim that those amounts are not liable to be included in their taxable income, because they are exempt under ss. 4 (3) (i) & (ii) of the Indian Income-tax Act. The assesseees claim that "their estate originally and virtually represents the Guru Gadi created and established for the main purpose of propagating the cult of Lord Jagannath in different parts and among different peoples embracing Hindu religion" and the offerings known as *Annadan* received by them on condition utilising the same for the *Bhog* (food offering) in the temple of Jagannath are exempt from liability to pay income-tax because, the *Annadan* offerings are income derived from property held under a trust and in any event they are income of a religious institution derived from voluntary contributions and applicable solely to religious purposes. In support of their plea the assesseees rely upon the *Annadan Patras* signed by the pilgrims, in the following form :—

"Written by.....of village.....Thana..... etc. Coming to the sacred place of Sri Jagannathji and having his Darsan, I pay unto (name of Panda), Gaudbad Sahi, Puri Town for the Bhog of Sree Jagannathji, Rs.....The Pandaji will utilise this amount for the Bhog of Jagannathji and the Prasad will be enjoyed by

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himself and the people of the district to which I belong. I, signed this Atika Annadan”.

The amounts received or collected from the pilgrims under *Annadan Patras* (which were also styled as *Atika Patras*) were credited in an account known as *Annadan Account*, and expenses of “food offerings” to the deity were defrayed out of that fund. The assessee claims that out of the unspent balance they purchased property in the name of the deity Jagannath.

The Income-tax Officer held that *Annadan* received by the assessee was not exempt from the liability to tax, for in his view there was no valid trust in writing and ‘there was no authority to enforce the obligation’ that the amounts received by the assessee be spent for religious and charitable purposes, that the assessee was not *shebait* appointed under writing and the income sought to be taxed was in the nature of voluntary contributions and was not derived from property held under a trust or other legal obligation. In appeal the Appellate Assistant Commissioner, Cuttack Range, confirmed the order. He held that the assessee as *Pandas* held a trust fund in their charge every year from which no income was received but a part of the fund was spent by them for the purpose for which the trust was created and the balance was appropriated by them to their own use and that they did not derive income from voluntary contributions applicable solely to religious or charitable purpose. The Income-tax Appellate Tribunal confirmed the order observing: “Except the bare assertion of the assessee before us, there is no evidence to show that the pilgrims understood either the character or the implication of the document they were signing. The assessee has not shown either that he gave receipts to the pilgrims indicating his trustee position and his undertaking to employ the receipts

for the purposes of the supposed trust. Out of these funds collected, a major portion is spent upon loans to pilgrims, charity, expenses for feeding the pilgrims and other items. x x x x This itself as a fact shows that the money paid by the pilgrims was not used for the exclusive purpose of offering *Bhog*. x x x x Having regard to the way in which the pilgrims are attracted, brought to Puri, treated there, taken to the temple, fed and ultimately induced to make a payment, there is only one conclusion possible that the business of pilgrim traffic was carried on by the assessee. The facts do not show that any trust was intended or created by the pilgrims. x x x x". The Tribunal also observed that the assessees were not an institution and they were not exempt under s. 4 (3) (ii) of the Act from liability to pay income-tax, especially because the objects for which *Annadan* fund was to be expended were not public objects, and the payments made by the pilgrims as *Annadan* could not be said to be for the benefit of the public or for charity.

The Tribunal declined to submit a statement of the case on question of law alleged to arise out of their order because in their view in disposing of the appeal it was found that "no trust was intended to be created as alleged by the assessees and that the assessees had not proved that they were under any obligation to devote the income to any particular use". The assessees then moved the High Court for an order under s. 66 (2) of the Indian Income-tax Act calling upon the Tribunal to state the case. The High Court directed the Tribunal to state the following point of law arising out of the case and to refer it for decision :

"Whether, on the facts of this case, the amounts received by the assessee under the *Attika Patra* are liable to tax."

At the hearing of the reference the High Court was of the opinion that "it was not necessary to discuss

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the larger question whether the contributions made through *Annadan Patra*, by the donor would amount to a trust or else whether it is a mere device to give the entire income to the *Panda* for his own benefit" They then observed that "even if it be assumed (without deciding) that a religious trust was created for the main purpose of offering *Bhog* to Lord Jagannath at Puri by the execution of the *Annadan Patra*, the essential question on which the assessability of this income to income-tax depends, is whether such a trust is a private religious trust or a public religious trust". The Court proceeded to consider the appropriate tests for ascertaining whether the trust was public or private, and held that the trust created by the *Annadan Patra* was a private religious trust and the income of the assessee derived from that source was not exempt from liability to pay income-tax under cl. (i) or cl. (ii) of sub-s. (3) of s. 4 of the Indian Income-tax Act.

The material part of sub-s. (3) of s. 4 of the Indian Income-tax Act as it stood at the relevant time was as follows :—

S. 4 (3) "Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:

- (i) Subject to the provisions of clause (c) of sub-section (1) of section 16, any income derived from property held under a trust or other legal obligation solely for religious or charitable purposes, where such purposes relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto.
- (ii) Any income of a religious or charitable institution derived from voluntary

contributions and applicable solely to religious or charitable purposes.”

It is manifest on a bare perusal of the two clauses that income of the assessee would be admissible to exemption under cl. (i) of sub-s. (3) if it be derived from property held under a trust or other legal obligation, solely for religious or charitable purposes, and under cl. (ii) if it be income of a religious or charitable institution derived from voluntary contributions applicable exclusively to purposes religious or charitable. Income sought to be taxed does not answer either of these descriptions; it is not income derived from property held under a trust or other obligation for the purposes specified and the assessee is not an institution religious or charitable. They are members of joint Hindu family who carry on the vocation of *Pandas*: and the income on the findings of the Tribunal is not applicable exclusively to purposes religious or charitable. On this limited ground the claim of the assessee for exclusion of the receipts under the *Annadan Patras* from their total income is liable to be rejected.

This interpretation of the relevant provisions is sufficient to dispose of the appeals, but we deem it necessary, having regard to the manner in which the case was approached by the High Court to indicate the restrictions inherent in the exercise of its jurisdiction by the High Court. The Tribunal held that the receipts called *Annadan* were earned by the assessee in the conduct of their business as *Pandas* and the facts did not indicate that any trust was intended or created by the pilgrims. Under the scheme of the Income-tax Act the function of determining facts rests with the Tribunal, and on the facts found the High Court has to advise the Tribunal as to the law applicable. The Tribunal having found that the receipts were in the nature of income of a business, and no trust was ever intended by the pilgrims who

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gave *Annadan* the High Court had to record its opinion on the basis of those facts. A finding of fact recorded by the Tribunal may not be regarded as final if it is not supported by any evidence, or is founded upon a view of facts which cannot reasonably be entertained, or upon a misconception, vide *Edward v. Bristow*⁽¹⁾. The High Court made an order under s. 66(2) because in their opinion the consideration whether the pilgrims understood the true character or the implication of the *Annadan Patras* signed by them was irrelevant, and that merely because there was a breach of trust committed by the assessee, the trust was not destroyed. But it was not open to the High Court to ignore the finding of the Tribunal that there was no trust, and the receipts under *Annadan Patras* were income from "the business of pilgrim traffic". Under the Income-tax Act, on conclusions on questions of fact recorded by the Tribunal, if a question of law arises, the High Court will deliver its opinion provided it is properly referred. The conclusion of the Tribunal was based on a review of the evidence. The Tribunal on the evidence relating to the manner in which the pilgrims were attracted, brought to Puri, treated there and taken to the temple, fed and ultimately induced to make a payment inferred that the receipts were in the course of business.

At the hearing of the reference the High Court addressed itself to a question which was not referred by the Tribunal. The High Court on the assumption that a trust was intended to be created by the pilgrims by giving *Annadan*, proceeded to hold that the trust was a private trust. In so holding the High Court attempted to exercise not the advisory jurisdiction in respect of the decision of the Tribunal which alone is conferred by s. 66(2) of the Indian Income-tax Act, but jurisdiction which in substance was appellate.

The Tribunal had recorded a finding that there was in fact no trust intended or created by the

(1) (1955) 36 Tax Cas. 207.

pilgrims. On that finding no question as to the applicability of s. 4(3) (i) in any event could arise. It was open to the assesseees to demand that a question that the finding was based on no evidence or that it could not reasonably be arrived by any person acting judicially and properly instructed as to the relevant law. Some vague statement was made in the application to the High Court for an order for calling for a statement of the case that the finding was based on no evidence, but the High Court was not asked to call upon the Tribunal by an order under s. 66(2) to submit a statement on the question that the finding, that there was no trust, was based on no evidence. On the question referred the High Court was bound to accept the findings of the Tribunal and to decide the question of law, if any, arising therefrom. The High Court however ignored the finding that the income received as *Annadan* was part of the income or properties of a business carried on by the assesseees, and on the assumption that a trust was created they regarded the trust as a private religious trust. In so doing the High Court did not in substance answer the question submitted to it.

Normally in circumstances such as this case discloses, we would have called for a finding from the High Court on the question which was referred by the Tribunal, but on the view we have already expressed no useful purpose will be served by adopting that course. On the true meaning of s. 4(3) (i) in the absence of any finding that the *Annadan* income was derived from property held under a religious or charitable trust, the claim of the assesseees for exemption must fail. Their claim to exemption under s. 4(3) (ii) must fail because they are not a religious or charitable institution.

The appeals therefore fail and are dismissed. There will be no order as to the costs of these appeals.

Appeals dismissed.

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