

UPPER GANGES SUGAR MILLS LTD. ETC.  
v.  
COMMISSIONER OF INCOME TAX, CALCUTTA

AUGUST 4, 1997

[S.P. BHARUCHA AND V.N. KHARE, JJ.]

*Income Tax Act, 1961 : Section 80G—Charitable Trust—Donation by assessee—Deduction claimed—Allowed by Income Tax Officer—Assessment reopened—Claim disallowed—Appeal allowed by Tribunal—On reference High Court reversed the order of Tribunal holding that the Trust was of a religious nature—Held, if one of the objects of the institution is wholly or substantially of a religious nature the donation falls outside the scope of s.80G—Assessee not entitled to claim deduction.*

*Words & Phrases—"Charitable purpose"—Meaning of in the context of S.80G of Income Tax Act.*

The appellant-assessee had made a donation to the Vishwa Mangal Trust. His claim for deduction under section 80G was allowed by the Income Tax Officer. The assessment was then reopened under section 147(b) of the Income Tax Act and the claim of the assessee was disallowed. Assessee's appeal before the Appellate Assistant Commissioner was dismissed; appeal before the Income Tax Appellate Tribunal was allowed. On reference, High Court reversed the view of the Tribunal. Hence the present appeal.

Dismissing the appeal, this Court

**HELD :** 1.1. Section 80G of Income Tax Act, 1961 applies to donations to any institution or fund established in India for a charitable purpose. "Charitable purpose" for the purpose of the Section, does not include any purpose the whole or substantially the whole of which is of a religious nature. Explanation 3 takes note of the fact that an institution or fund established for a charitable purpose may have a number of objects. If any of these objects is wholly or substantially of a religious nature, the institution or fund falls outside the scope of section 80G and a donation to it does not secure the advantage of the deduction that it gives. [243-C-D]

1.2. Explanation 3 does not require the ascertainment of whether the

**A** whole or substantially the whole of the institution or fund's charitable purpose is of a religious nature. It requires the ascertainment of whether there is one purpose within the institution or fund's overall charitable purpose which is wholly, or substantially wholly, of a religious nature.

[243-G-H]

**B** 13. Clause 2(h) of the Trust Deed which permits the trustees to support prayer halls and places of worship sets out a purpose the whole or substantially the whole of which is of a religious nature. Therefore, the Trust and the donation by the assessee to it fall outside the scope of Section 80G. [243-H; 244-A-B]

**C** *Additional Commissioner of Income-Tax, Gujarat v. Surat Art Silk Cloth Manufactures Association*, 121 I.T.R. 1, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.3104 of 1985.

**D** From the Judgment and Order dated 13.12.84 of the Calcutta High Court in I.T.R. No. 291 of 1980.

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Civil Appeal No. 10736/95.

**E** H.N. Salve, Shri Narain, K.V. Vishwanadhan, D. Singh and Suman J. Khaitan for the Appellants.

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

**F** The Judgment of the Court was delivered by

**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 :

**G** "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.

**H** 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 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.

A (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.

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(e) to establish Boarding Houses and Hostels for student.

(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.

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

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(g) *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.

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(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)

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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 Fund."

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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

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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; one 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. A B

Section 80G applies to donations to any institution or fund established in India "for 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 fund 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 fund falls outside the scope of Section 80G and a donation to it does not secure the advantage of the deduction that it gives. C D

The judgment of this Court in *Additional Commissioner of Income-Tax, Gujarat v. 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 assistance in construing Explanation 3 of Section 80G. E F

To reiterate, Explanation 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund's charitable purpose is of a religious nature. If it did it would read differently. It requires the ascertainment of whether there is one purpose within the institution or fund's over-all charitable purpose which is wholly, or substantially wholly, of a religious nature. There is little doubt that clause 2(h) of the Trust Deed which permits the trustees to support prayer halls H

A and places of worship sets out a purpose the whole or substantially the whole of which is of a religious nature, and this has not been seriously disputed. Therefore, in our view, the Trust and the donation by the assessee to it fall outside the scope of Section 80G.

B The appeals are dismissed. There shall be no order as to costs.

S.V.K.I.

Appeals dismissed.