

COMMISSIONER OF INCOME TAX, AMRITSAR

v.

TATTAN TRUST AMRITSAR ETC.

JULY 8, 1977

[S.C. AGRAWAL AND D.P. WADHWA, JJ.]

Income Tax Act, 1961—Section 13(1) (c) (ii), first proviso—Wealth Tax Act, 1957—Section 21-A, first proviso—Interpretation & applicability of—Held, Trust should have been created before commencement of Income Tax Act, 1961—Proviso would apply only in case Trust created before 1-4-1962 mandated at that time that trustees could invest funds of trust in a concern in which they were interested.

Assessee was a trust created by Deed of Trust dated 26-3-1942. Clause 41 of the Trust Deed provided for amendment to the provisions of the Trust Deed with regard to the conduct and the management of the trust and in pursuance of such powers the trustees passed a resolution in 1971 amending clause 39 by incorporating that the funds of the trust not required for immediate need of the trust shall be kept with a concern 'G' in which they were interested and by virtue of this amendment, Trust funds were invested in that concern in shares and deposits. The assessee claimed exemption in respect of the interest income u/s 11 of the Income Tax Act. This claim was rejected by Income Tax Officer and the Appellate Assistant Commissioner of Income Tax and it was held that the assessee had violated clauses (a) and (h) of sub-section (2) of Section 13 of the Act and that the deposit made in 'G' concern carried interest at a much lower rate. However, the Appellate Tribunal allowing the appeal held that the amendment made to clause 39 of the Trust Deed was valid and that as this clause mandated that funds of the Trust which were not required for immediate need of the Trust shall be kept with a concern 'G', there was no violation of the provisions of Section 13 of the Act. On references, the High Court affirmed the view taken by the Appellate Tribunal, deciding the questions in favour of the assessee and against the Revenue. Hence this appeal.

The assessee contended that in case there was doubt as to interpretation of any provision of fiscal statute or if there could be two views possible the one which favours the assessee should be preferred.

A Allowing the appeals and answering the reference in favour of the Revenue, this Court.

B HELD : 1.1. The requirements of the proviso to clause (c) (ii) to sub-section (1) to Section 13 of the Income Tax Act, 1961 are that (1) Trust should have been created before April 1, 1962 and (2) the trustees apply the funds of the Trust in a concern in which they themselves are interested if there was a mandatory provision in the Trust Deed for such purpose. Such a mandate in the Trust Deed should have existed before April 1, 1962 and could not have been stated after that crucial date even if the Trust Deed so authorized the trustees to amend the Trust Deed to bring in mandatory condition or requirement for them to invest funds of the trust in a concern in which they might be interested. [563-B-E]

C 1.2. The purport of the proviso is in no way obscure and the proviso would apply only if the Trust created before April 1, 1962 mandated at that time that trustees could invest the funds of the Trust in a concern in which they were interested being the persons referred to in clause (c) (ii) of sub-section (1) and sub-section (2) by virtue of sub-section (3) of Section 13 of the Act. [563-H; 564-A]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6328-33 of 1983 Etc.

E From the Judgment and Order dated 18.1.80 of the Punjab & Haryana High Court in I.T.R. Nos. 38-40/77, 18/78 and W.T.R. Nos. 13 and 14 of 1978.

F J. Ramamurthi, B.K. Prasad, Dhruv Mehta and C. Radha Krishna for the Appellant.

M.L. Verma and R.K. Maheswari for the Respondent.

The Judgment of the Court was delivered by

G D.P. WADHWA, J. Leave granted in Special Leave Petition.

H These appeals arise out of the two judgments of the Punjab and Haryana High Court dated January 18, 1990 and November 25, 1988 The first judgment arose out of the Income Tax Reference under Section 256 (1) of the Income Tax Act, 1961 (for short 'the I.T. Act') for the assessment

years 1971-72, 1972-73 and 1973-74 and Wealth Tax Reference under Section 27 (1) of the Wealth Tax Act, 1957 (for short 'the W.T. Act') for the assessment years 1973-74 and 1974-75 and second judgment is in reference under Section 256 (1) of the I.T. Act for assessment year 1975-76. A

The questions which arise from the references under the I. T. Act are: B

"1. "Whether, in view of clauses 41 of the Trust Deed, Clause 39 of the Trust Deed can be legally amended. If so, whether such amendment would give rise to a legally enforceable mandate, as contemplated by the first proviso to sub-section (1) of Section 13 of the Income Tax Act, 1961? C

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the interest income of the assessee Trust is exempt from tax under Section 11 read with first proviso to sub-section (1) of Section 13 of the Income Tax Act, 1961 ?" D

The question on which reference was sought under the W.T. Act is as under: E

"Whether on the facts and in the circumstances of the case, the appellate Tribunal is right in law in holding that the assessee Trust is exempt from the Wealth Tax under Section 21-A of the Wealth Tax Act, 1957?"

As to how these questions arose we may refer, in brief, to the facts of case. F

Assessee is a Trust and was created by Deed of Trust dated March 28, 1942. Clause 41 of the Trust Deed provided for amendment to the provisions of the Trust Deed with regard to the conduct and management of the Trust. It is as under: G

"41. Except as to the names and aims and objects of the Trust the trustees shall have the power by the majority of 75% of their total number to change, modify or amend any of the rules, regulations, any provisions hereinbefore contained with regard to the conduct H

- A and management of the Trust and with regard to any matter in respect of which any power is confirmed or duty imposed.”

When the Trust Deed was executed, clause 39 provided as under:

- B “39. All the monies with trustees or sub-committees except imprest sums to be determined by the trustees shall be invested by the trustees in such banks or securities in such manner as may be approved of by the trustees. The trustees may from time to time purchase immovable property with the surplus funds in their hands.”

- C However, in pursuance of the powers conferred on the trustees by virtue of clause 41 aforesaid the trustees passed a resolution on March 14, 1971 amending clause 39 of the Trust Deed. This new clause 39 reads as under:

- D “That the Trustees may from time to time purchase immovable property with the funds of the Trust. The funds of the trust which are not required for immediate needs of the Trust shall be kept with M/s. Gokal Chand Rattan Chand Woollen Mills Private Limited, provided that the Trustees may keep not exceeding Rs. 2,00,000 in government securities, Bank account and/or cash in hand.”

- F By virtue of this amendment to clause 39 Trust funds were invested in M/s. Gokal Chand Rattan Chand Woollen Mills Private Limited in shares and deposits. It is admitted case that the trustees of the assessee’s Trust are interested in this concern. The dispute in the present appeals relates to the interest income received in each assessment year by the assessee from M/s. Gokal Chand Rattan Chand Woollen Mills Private Ltd. The assessee claimed exemption in respect of the interest income under Section 11 of the Act which exempts income from property held for charitable or religious purposes. The Income Tax Officer did not agree with the contention of the assessee that the interest income was exempt under Section 11 of the Act. The Income Tax officer was of the view that the assessee had violated the provisions of Section 13 of the Act inasmuch as the Trust funds had been invested in the concerns of the trustees in which they were having interest. According to him the assessee violated clauses (a) and (h) of sub-section(2) of Section 13 of the Act. He was also of the view that the
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deposit made in M/s. Gokal Chand Rattan Chand Woollen Mills Private Limited carried interest at a much lower rate. Against the order of the Income Tax Officer the assessee filed an appeal before the Appellate Assistant Commissioner of income-tax who agreed with the Income Tax Officer and dismissed the appeal. The matter was taken by the assessee to the Income-tax Appellate Tribunal, who, however, held that amendment made to clause 39 of the Trust Deed was valid and that as this clause mandated that funds of the Trust which were not required for immediate need of the Trust shall be kept with M/s. Gokal Chand Rattan Chand Woollen Mills Private Limited, there was no violation of the provisions of Section 13 of the I.T. Act. The Tribunal, therefore, allowed the appeal of the assessee. On references both under the I.T. Act and the W.T. Act, the High Court affirmed the view taken by the Appellate Tribunal and decided the question in favour of the assessee and against the Revenue. This is how the matter has come before this Court on appeal by the Revenue.

We may refer to the relevant provisions of the I.T. Act and the W.T. Act.

Section 13 provides for exigencies when the provisions of Section 11 would not be applicable, Section 13 was amended by Finance Act, 1970 w.e.f. April 1, 1971. It is stated that the Bill amending Section 13 was introduced on March 14, 1971, the date on which clause 39 of the Trust Deed was amended by the trustees. Section 13 of the I.T. Act was substituted by new section by the Finance Act 1970 with effect from April 1, 1971. It is not necessary for us to quote in extenso the objects and reasons for substituting this new Section 13 and it would suffice if we reproduce the relevant para from the objects and reasons for purposes of our discussion. It is as under:

“Under one of the proposed amendments, all charitable or religious trusts or institutions created or established after the 31st March, 1962 will be denied the benefit of exemption from income-tax if any part of their income or property enures or is, during the previous year, applied, directly or indirectly, for the benefit of the author, founder, substantial contributor or relative aforesaid or for the benefit of any concern in which any such author, founder, substantial contributor or relative has substantial interest. In the case of trusts or institutions created or established before the 1st

A April, 1962, the exemption from tax will be denied only if their income is applied for the benefit of the author, founder, etc., otherwise than in compliance with a mandatory term of the trust or a mandatory rule governing the institutions.”

(Quoted from (1970) 75 ITR (St.71).

B We may, now, re-produce the relevant provisions of Section 13 of the I.T. Act inserted by the Finance Act, 1970. As noted above Section 11 exempts the income from property held for charitable or religious purposes. Section 12 deals with the income of Trusts or institutions from contributions.

C Sections 13, in relevant part, reads as under:

D “13. Section 11 not to apply in certain cases.-(1) (Nothing contained in Section 11 or Section 12) shall operate so as to exclude from the total income of the previous year of the person in receipt thereof

(a) x x x

(b) x x x

E (bb) x x x

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

F (i) x x x

(ii) if any Part of such income or any property of the trust or institution whenever created or established is during the pervious year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3):

G Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of com-

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pliance with a mandatory term of the trust or a mandatory rule governing the institution." A

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"(2) Without prejudice to the generality of the provisions of clause (c) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3), B

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both: C

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(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year not being a period before the 1st day of January, (1971) in any concern in which any person referred in sub-section (3) has a substantial interest." D

It may not be necessary to quote sub-section (3) of Section 13 of the I.T. Act as it is admitted that M/s Gokal Chand Rattan Chand Woollen Mills Private Limited is a person referred to in the sub-section in which the trustees were having substantial interest and would fall under Section 13 (1) and (2). E

Section 21-A of the W.T. Act. in relevant part, is as under: F

"21-A Assessment in cases of diversion of property, or of income from property, held under trust for public charitable or religious purposes.- Notwithstanding anything contained in clause (1) of sub-section (1) of Section 5, where any property is held under trust for any public purpose of a charitable or religious nature in India and- G

(i) any part of such property or any income of such Trust (whether derived from such property or from voluntary contributions referred to in sub-clause (ia). of clause (24) of H

A section 2 of the Income-Tax Act) is used or applied, directly, or indirectly, for the benefit of any person referred to in sub-section (3) of Section 13 of the Income-tax Act, or

B (ii) any part of the income of the Trust whether derived from such property or from voluntary contributions referred to in sub-clause (iia) of clause, (24) of Section 2 of the Income-tax Act, being a Trust created on or after the 1st day of April, 1962, enures, directly or indirectly, for the benefit of any person referred to in sub-section (3) of Section 13 of the said Act, or

C (iii) any funds of the trust are invested or deposited, or any shares in a company are held by the Trust, in contravention of the provisions of clause (d) of sub-section (i) of Section 13 of the Income-tax Act.

D Wealth-tax shall be leviable upon, and recoverable from, the trustee or manager (by whatever name called) in the like manner and to the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act, but without excluding the value of any asset under sub-section (1) of Section 5, and at the maximum marginal rate:

E Provided that in the case of a Trust created before the 1st day of April, 1962, the provisions of clause (i) shall not apply to any use or application, whether directly or indirectly, of any part of such property or any income of such trust for the benefit of any person referred to in sub-section (3) of Section 13 of the Income-tax Act, if such use or application is by way of compliance with a mandatory term of the trust:"

G The answer to the questions referred to the High Court would depend on the interpretation, of the first proviso to Section 13(1) (c) (ii) of the I.T. Act and to the first proviso to Section 21-A of the W.T. Act both of which have been quoted above. It is to be seen if the provision of the Trust Deed particularly clause 39 as amended fall within the ambit of the proviso. Trust was created before the commencement of the I.T. Act 1961 which came into force on April 1, 1962 and clause 39 of the Trust Deed as it stood at that time did not make mandatory provision regarding

the investments of the funds of the Trust in a concern in which the trustees had an interest. What this clause 39 as it originally stood required was that all monies shall be invested in such banks or securities in such manner as may be approved by the trustees. The trustees were also authorised to purchase even property from the surplus funds in their hands. By virtue of the power conferred on the trustees by clause 41 of the Trust Deed this clause 39 was amended by resolution of the trustees dated March 14, 1971. Now clause 39 as amended mandated the trustees to keep the funds of the Trust with M/s Gokal Chand Rattan Chand Woollen Mills Private Limited in which company admittedly the trustees were interested.

The requirements of the proviso with which we are concerned are (1) Trust should have been created before April 1, 1962 and (2) the trustees apply the funds of the Trust in a concern in which they themselves are interested if there was a mandatory provision in the Trust Deed for such a purpose. The question which squarely falls for consideration is if the second condition should have been there in the Trust Deed before April 1, 1962 when the I.T. Act came into force or if such a condition could be added subsequently in the Trust Deed after this date if the propounder of the Trust in the Trust-Deed so authorised the trustees to amend the Trust-Deed allowing the trustees to invest the funds of the Trust in a concern in which they might be interested. To us it appears the answer is quite obvious that such a mandate in the Trust Deed should have existed before April 1, 1962 and could not have been brought in by amending the Trust Deed at a later stage after that crucial date even if the Trust Deed so authorised the trustees to amend the Trust Deed to bring in the mandatory condition or requirement for them to invest funds of the Trust in a concern in which they might be interested. Any other interpretation would set at naught the proviso and would defeat the very purpose for which the proviso was added in Section 13. If we accept any other interpretation then the trustees even today could amend the Trust Deed and bring in their case to fall within the proviso.

Mr. Verma, learned counsel for the assessee, referred to a few judgments of this Court to contend that in case there was doubt as to interpretation of any provision of the fiscal statute or that there could be two views possible the one which favours the assessee should be preferred. If it is not necessary for us to refer to the settled principles on the

- A** interpretation of statutes as we are clear in our mind that purport of the proviso is in no way obscure and proviso would apply only if the Trust created before April 1, 1962 mandated at that time that the trustees could invest the funds of the Trust in a concern in which they were interested being the persons referred to in clause (c)(ii) of sub-section (1) and sub-section (2) by virtue of sub-section (3) of Section 13 of the Act.
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Accordingly, we allow the appeals, set aside the judgments of the High court and answer the questions in the negative, in favour of the Revenue and against the assessee. No costs.

R.A.

Appeals allowed.