HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 8187 of 2011

ORDER:

Questioning the issuance of demand notice dated 24.07.2011 by the first respondent, the present writ petition is filed seeking issuance of a writ of certiorari and consequently set-aside the same.

The petitioner herein is the Andhra Pradesh State Road Transport Corporation (for short "the corporation"). The first respondent herein who is the Mandal Revenue Inspector-II, Madhira, issued a demand notice under Section 4 of the Andhra Pradesh Non-Agricultural Land Assessment Act, 1963 (for short "the Act"), claiming Rs.76,704/- towards non-agricultural land assessment on the land belonging to the petitioner Corporation situated at Madhira, for the years 2002-2003 to 2005-2006. Challenging the said demand notice, the present writ petition is filed stating that the Corporation is a trust and it is not liable to pay any tax as it is doing public utility services. Since the main objective of the Corporation is for a charitable purpose, the question of invoking the provisions of the Act against the Corporation would not apply. It is stated that since the Corporation is exempted even from payment of income tax, raising a demand with the provisions of the Act is contrary to law.

Respondents filed their counter denying the allegations made in the affidavit filed in support of the writ petition except those that are admitted by him. One of the main grounds urged by the learned counsel for the first respondent is that aggrieved by the notice issued, the Corporation should have preferred an appeal before the Tahsildar instead of approaching this Court directly. The respondents submit that there is no exemption for payment of Non-Agricultural Land Assessment and as such there is no illegality in issuing the impugned notice.

The issue as to whether the Corporation is a charitable trust or not and as to whether it is liable to pay income tax, came up for consideration before the Apex Court in ***Commissioner of Income Tax v. APSRTC***[1] and also before this Court in ***A.P.S.R.T.C. v. Commissioner of Income Tax***[2]***.*** After referring to various provisions and authorities, this Court held as under:

> "That the corporation is an institution, and it derives income from the property held under trust for charitable purposes, stood finally decided with the judgment of the Honble Supreme Court in APSRTCs case (1 supra). Even in the assessment under examination, the Income Tax Officer himself was satisfied that the Corporation answered the description of institution, being run for charitable purposes.
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> Reverting to the facts of the case, the beneficiaries of the Corporation can be said to be the entire public. They use the facilities created by the Corporation for travelling and other allied activities. If the provision is to be understood in such a way that the work in connection with the business must be carried out by the beneficiaries, it must result in a situation, where every passenger must have a say in the administration and business. It is not difficult to imagine chaotic condition that would emerge as a result of that. Obviously realizing this, the Parliament has chosen to employ the word mainly. The ultimate test is to see as to whether the persons, who are in actual management of the institution, are the persons working for and on behalf of the beneficiaries or whether they have an independent and personal interest of their own. Viewed from that angle, the employees of the corporation; in the ultimate analysis are none other than the public employees working for and on behalf of the beneficiaries. The role played by the Government is nothing but a systematic activity, through which the will of the public is transmitted or is translated. It hardly needs any mention that where two views are possible while interpreting a provision of taxation law, the one that helps the assessee or beneficiary must be chosen. In the instant case, the assessee is a corporation serving the needs of the travelling public in the State and was enjoying the benefit for the past several decades. Further, Section 4A

ceased to be in force on its being deleted in the year 1991."

Keeping in view the principles laid down in the above two judgments, I shall now proceed with the case.

Section 12 of the Act reads as under:

"Act not to apply to certain lands: Nothing in this Act shall apply to:

(a) Land in any estate not take over by the Government under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948;

(b) Land owned by the State Government or the Central Government other than;

   (i) The land leased out for any commercial, industrial or other non-agricultural purpose; or

   (ii) The land vested in a local authority and used for any commercial, industrial or other non-agricultural purpose deriving income therefrom;

(c) Land owned by local authority and used for any communal purpose so long as no income is derived in respect thereof;

(d) Land owned by any educational, charitable or religious institution;

(e) Land used exclusively for residential purpose where its extent do not exceed one hundred square meters."

A reading of the said Section would show that nothing in the said Act should apply to the land owned by the State Government or Central Government other than the land leased out for any commercial and non-agricultural purpose or land vested in local authority and used for any communal purpose and deriving income there from or land owned by any educational, charitable or religious institution or land exclusively for residential purpose where its extent does not exceed one hundred square meters.

From the above, it is clear that when the land is owned by the State Government and is used for any charitable purpose, payment of Non-Agricultural Land Assessment would not arise. As held by the Apex Court in ***Commissioner of Income Tax v. APSRTC case (1 supra)*** and also by this Court in ***A.P.S.R.T.C. v. Commissioner of Income Tax case (2 supra),*** the Corporation is not a private organization as it is being used for the benefit of general public. Further it was held that Corporation is a charitable trust. Therefore, the demand notice which has been issued for payment of Non-Agricultural Land Assessment is without jurisdiction and the same is liable to be quashed.

Accordingly, the writ petition is allowed, quashing the notice dated 24.07.2011 issued by the first respondent. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

07.08.2015
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[1] (1986) 159 ITR 0001 (SC)

[2] Laws (APH) 2014-7-141