Application (IP) No. 175 of 2016
&
Application (IP).No. 206 of 2018
in
I.P.No.25 of 2014

Dr. G. JAYACHANDRAN, J.
&
C. V. KARTHIKEYAN, J.

Application No. 175 of 2016 had been filed by the Official Assignee in I.P.No. 25 of 2014 seeking a Judgment and Decree against the second respondent directing the second respondent to pay a sum of Rs.1,55,00,000/- together with interest at 18% p.a., from 21.04.2014 till date of realisaton together with costs of recovery proceedings.

2. In the report of the Official Assignee, it had been stated that I.P.No. 25 of 2014 had been filed by a Petitioning Creditor on 10.03.2014 against the first respondent / Arjunlal Sunderdas seeking to declare him as an insolvent.

3. By an order dated 21.04.2014, the first respondent was adjudicated as insolvent. Subsequently, all the properties of the insolvent vested with the

Official Assignee. It had been further stated that the insolvent did not co-operate and give complete details relating to the schedule of affairs and did not produce books of accounts maintained by him. He had disclosed assets but not liabilities. Thereafter, his Chartered Accountant, Ranga Ramanujam furnished a list of debtors and creditors in a computer generated sheet and also produced bank statements. The Official Assignee engaged M/s. Annamalai Associates, Chartered Accountant to verify the list of debtors and creditors with the computer generator statement and to furnish the correct position on the date of adjudication. Accordingly, a statement was also furnished. It was then revealed that the second respondent/ Ranjini Dwarkanath Reddy had received a sum of Rs.1,55,00,000/- which was shown as outstanding in the statements of accounts and as due and payable by the second respondent to the insolvent.

4. Thereafter, the Official Assignee had taken further legal steps and filed application for recovery of the amounts. It had been further stated that the application had been filed within three years from 21.04.2014, the date of adjudication of the first respondent as insolvent. It was under those circumstances that the application had been filed seeking a Judgment and Decree as stated.

5. A counter affidavit had been filed by the second respondent wherein it had been stated that the second respondent trust was a charitable trust. The allegation that the insolvent had given the amount of Rs.1,55,00,000/-as loan or that the trust had received the amount as income was denied. It was specifically stated that the amount was received as donation. It was also specifically stated that the second respondent had written a letter and issued the cheque for the amount only as donation. It was also stated that the amount was credited to the corpus fund of the trust only as donation in the accounts. It had also been stated that even otherwise the application had been filed beyond the period of limitation from the date of advancing the amount by the first respondent and it had therefore been stated that the application has to be dismissed as barred by limitation.

6. A reply had been filed by the Official Assignee wherein it had been stated that the amount involved in the transaction is should have been reflected in the income tax returns filed by the second respondent. It was also stated that the statement of the auditor Ranga Ramanujam was further verified by M/s. Annamalai Associates, Chartered Accountant and in both the statements, the second respondent was shown as a debtor to the estate of the insolvent. It had therefore been stated that the application must be allowed.

7. It must also be stated that pending the application, the first respondent/insolvent died.

8. The second respondent then filed Application No. 206 of 2018 raising a preliminary issue relating to the maintainability of the application filed by the Official Assignee. It had been stated that the basis for the claim of the Official Assignee was the statements made by the Chartered Accountants and it had been stated that these statements cannot be considered as credible since the insolvent had taken contradictory stands. It was pointed out that the insolvent had stated that during the years 2013 and 2014 some persons had entered his office and had taken away all the books of accounts and therefore he was not able to give information to the Official Assignee about his assets and liabilities. He had also stated that there was loss of memory. It was very specifically pointed out that the liability did not arise from a loan transaction and it was only a donation given to a charitable trust. It was stated that the claim is also barred by limitation.

9. After a long and winding process, the parties finally adduced evidence. On the side of the Official Assignee, one witness R.Mangaiyarkkarasi, Assistant Section Officer, Office of the Official Assignee was examined as PW-1. She filed Exs. A-1 to A-9. Ex. A-1 were the relevant pages in the report of the Auditor, Ranga Ramanujam; Ex.A-2 was the relevant page in the report of the Auditor M/s. Annamalai Associates; Ex.A-3 was the copy of the notice sent by the Official Assignee with acknowledgment card; Ex.A-4 was the copy of remainder notice sent by the Official Assignee with returned cover; Ex.A-5 was the enquiry notice sent by the Official Assignee along with returned cover; Ex.A-6 was the notice sent by the Official Assignee with acknowledgment card; Ex.A-7 were the relevant entries in the schedule of affairs; Ex.A-8 were the relevant entries in the Schedule of Affairs and Ex.A-9 is the bank account of the insolvent.

10. On the side of the respondent, E.Janardhanam, Accountant of the second respondent filed his proof affidavit. He marked Exs. R-1 to R8. Ex. R-1 was the copy of the Trust Deed; Ex.R-2 was a letter from the insolvent to the second respondent enclosing cheque for Rs.5 lakhs; Ex.R-3 was the bank deposit voucher of the second respondent deposint Rs. 5 lakhs; Ex.R-4 was the receipt given by the second respondent to the insolvent for donation of Rs.5 lakhs; Ex.R-5 was the receipt given by the second respondent to the insolvent for donation of R.1,55,00,000/-; Ex.R-6 was the letter of the second respondent to the insolvent acknowledging receipt of donation; Ex.R-7 was the letter sent by the second respondent with copy of Pan Card and Income Tax returns for the financial years 2006-2007 and 2008-2009 to the Official Assignee; and Ex.R-8 was the authorisation letter.

11. Heard arguments.

12. It is the main thrust of arguments of the learned counsel for the second respondent that the insolvent had voluntarily contributed as donation a sum of Rs.1,55,00,000/- by cheque to the second respondent, a charitable trust. The letter issued by the insolvent and the bank voucher issued along with cheque and the receipt given by the second respondent for a sum of R.1,55,00,000/- had been marked exhibits. It is therefore contended on the basis of the aforementioned documents by the learned counsel for the second respondent that the insolvent had voluntarily contributed the said amount of R.1,55,00,000/- to the second respondent, recognising the activities and services rendered by the second respondent in supporting and uplifting the life style of Slum dwellers in the slums around Bangalore. The learned counsel therefore stated that the amount being donation for a charitable purpose cannot be considered as a loan and stated that there was no necessity for the second respondent to return back the said amount. It is therefore contended by the learned counsel that the claim of the Official Assignee has to be rejected. The learned counsel also pointed out that in the balance sheet for the Assessment Year 2007-2008, Financial Year 2006-2007, the amount of R.1,55,00,000/- was reflected. It is thus argued that the claim of the Official Assignee should be rejected.

13. The learned counsel for the Official Assignee however strongly disputed these contentions. It is his case that the amount was shown as a liability unpaid in the statements of accounts as produced by the insolvent and also in the statement produced by the Auditor, Ranga Ramanujam. It had been stated that the said auditor had collected the materials from the original source, namely, Ledger and it is therefore contended that even though documents have been produced, their veracity have to be rejected by this Court and the amount should be taken only as loan given by the insolvent. The learned counsel for the Official Assignee further pointed out that the loan was still alive at the time when the application seeking to declare the Official Assignee as insolvent was filed, and it was therefore contended that the second respondent should be directed to honour the commitment to return the amount together with interest and costs.

14. We have carefully considered the arguments advanced.

15. The entire issue surrounds the claim of the Official Assignee that a sum of Rs.1,55,00,000/- had been paid by the insolvent to the second respondent on 29.01.2007. The Official Assignee claims that it is a loan. The second respondent however claims that it is a donation for charitable purposes.

16. In this connection, the learned counsel for the second respondent pointed out the letters written by the insolvent wherein he had expressed an intention to advance the amount as donation. It was also contended that the amount of Rs.1,55,00,000/- had been reflected in the books of accounts of the second respondent only as the donation and not otherwise.

17. When the income tax returns of the second respondent are carefully analysed it reveals that the second respondent had declared that donation had been received. This donation which had been received by the second respondent had been invested in the bank and the second respondent had the benefit of earning interest on such donation.

18. The learned counsel for the second respondent during the course of arguments also stated that the amount had been invested in fixed deposit and in other deposits till it was finally utilised for the purpose for which it had been contributed by the second respondent.

19. But none of the documents produced by the second respondent reveal any evidence to show that the donation had been actually spent for charitable purposes. They had spelt out what those charitable purposes were. They had only broadly stated that they had intention to uplift the life style of slum dwellers in the slums around Bangalore. The object may be laudable but can be appreciated only when the second respondent actually spends the amount received purportedly as donation for such upliftment and produce credible proof that they had worked for upliftment of the slum dwellers in the slums in and around Bangalore. No such document had been produced. The documents produced only reflect receipt of donation and investment in banks and earning interest. It is thus seen that though the amount had been categorised as a contribution, the amount had actually been put to profitable use by the second respondent. There is no indication at all that the second respondent had utilised that amount for discharge of any of its objects or commitments on the basis of which the trust was found. It is thus clear that the amount received as donation was only a ruse to screen a loan and to project as if the amount was given with a noble object in mind when actually the second respondent had not spent any amount towards the charitable projects stated in its trust deed.

20. Section 24(iia) of Income Tax defines *income* and specifically about voluntarily contributions received by the trust. It is as follows:-

> *"(iia) Voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause 21 or clause 23 or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of Section 10 or by an electoral trust.*

Explanation.- For the purposes of this sub-clause, "trust" includes any other legal obligation."

21. Section 12 of the Income Tax Act relates to *income of trust or institution from contributions*. Section 12(1) is as follows:-

"12.(1). Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes not being contribution made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of Section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly. "

22. Section 12(A)(A) relates to registration of a trust under the Principal Commissioner or Commissioner of Income Tax.

23. It is thus seen that any voluntary contribution received by a trust created for charitable purpose would be categorised as income of the trust. Further Section 12(1) stipulates that any voluntary contribution received by a trust shall be deemed to be income if it is not a contribution with specific direction that they shall form part of the corpus of the trust.

24. It is the case of the second respondent that the insolvent had paid the amounts now sought to be recovered as a donation to the second respondent. Documents have been produced to show that the amounts have been reflected in the balance sheet as donation and further the said donation had been invested in interest earning bank accounts. This would indicate that from the view point of the second respondent, the amount had been received with intention to earn interest, which would further indicate that it is income for the second respondent. If it is income for the second respondent conversely, the second respondent would also be liable to pay it back to the source from such income was derived.

25. It must also be stated that the second respondent have not produced any document to show that this amount had been applied for any charitable purpose. Since it had not been so applied, then there is a continuing liability to repay the amount to the insolvent and the amount had lost its character of being a donation.

26. This is a fact which as evident from the documents produced by the second respondent. They have produced the books of accounts reflecting the amount paid by the insolvent every successive year. This would indicate that so far as the second respondent is concerned, they had viewed this amount as a live borrowal though termed, for book adjustment alone, as donation. There is no proof that the amount so received had been applied for any charitable purpose. There is also no proof to show that the second respondent had issued necessary certificates under the relevant provisions of the Income Tax Act to benefit the insolvent to claim exemption from payment of tax. Very significantly, the insolvent had been categorising this amount only as loan and not under any other category.

27. The learned counsel for the second respondent stated the claim is barred by the law of limitation. We do not agree. It is the case of the second respondent that they have carried forward the amount so received from the insolvent and having invested the same and generating income not only through the amount paid by the insolvent but also from the interest earned by way of deposit in the banks, we hold there is continuing liability carried on from year to year.

28. A Division Bench of this Court in ***Commissioner of Income Tax, Tamil Nadu-IV, Vs. Shri Billeswara Charitable Trust*** reported in ***(1984) 145 ITR 29***, answered in a reference which was as follows:-

> *"Whether the donation made by Swadharma Swarajya Sangha to the assessee-trust constitutes income in the hands of the assessee under Section 12(2) of the Income Tax Act, 1961."*

29. The Division Bench though had answered reference in favour of the assessee, had occasion to examine the term *"derived"* and had held as follows:-

> *"**6.** What is contemplated by s. 12(1) of the Act is that income of a charity which is "derived" from voluntary contributions and applicable to purposes of charity exclusively should not be included in the total income of the trustee of the institution. The phrasing of s. 12(1) of the Act and the result to which an ordinary understanding of that section, as it stood prior to April 1, 1973, leads a court of construction, may now be adverted to. The use of the expression "income… derived from voluntary contributions" is significant. The word "derived" connotes obtaining or drawing or taking or receiving from a source. When something is stated to be derived from something else, the latter is a source, while the former is that which flows from that source. A voluntary contribution understood that way is not by itself*

income. It is that from which income flows. By implication, therefore, voluntary contributions may be regarded as non-income without anything more indicated in s. 12(1) of the Act. The question whether it is plausible to view voluntary contributions received by a charity as its income may also be touched upon. A charity can live by donations alone. What it lives on may be regarded as a revenue receipt because it flows in and that sustains the charity and goes to meet its daily needs as well as current expenses. Merely looking at that aspect of donation, it may be plausible to say that donations bear an income character. Section 12(1) of the Act indicates an implication contra. What is dealt with thereunder is income "derived" from voluntary contributions and the language employed makes it clear that the voluntary contributions cannot bear an income character and it, therefore, does not matter for the non-income character of the voluntary contributions that they are applied or expended or appropriated to defray the current expenses of *the charity. "*

30. The Division Bench had very categorically stated that the voluntary contribution may not itself be income but it is a revenue receipt because it flows in and sustains the charitable institution to meet the daily needs as well as current expenses. Thus the crucial factor is applying the contribution for the requirements of the trust. The second respondent has not produced any document to show such application.

31. In ***(2021) 9 SCC 439 [Commissioner of Income Tax (Exemptions) Kolkata Vs. Batanagar Education and Research Trust,*** the Hon'ble Supreme Court had examined the cancellation of registration under Section 12(A)(A) of a charitable trust if donations were bogus in nature. The assessee in that case was given a questionarie seeking whether the donations received by way of cheques were ploughed back to the contributor.

> *"**8.** The Trust being aggrieved, filed Income Tax Appeal No. 116 of 2018 before the High Court. By its order dated 4-7-2018, the following*

questions were framed as substantial questions of law:

"(i) Whether the Tribunal and the Commissioner of Income Tax (Exemptions) were right in law in directing the cancellation of registration of the appellant granted under Section 12-AA to the appellant Trust on the ground that the Trust had received bogus donation from School of Human Genetics and Population Health?

(ii) Whether statement recorded in the course of survey under Section 133-A of the Act has any probative or evidentiary value?"

32. Even in this case, the second respondent and its group have had continuous dealings and transactions with the insolvent. This is a fact which cannot be denied or disputed even if the trust is an independent entity. It is clear that the concept of donation has been used as a forefront to cover the actual transactions with the insolvent.

33. In the case cited, the Hon'ble Supreme Court had examined the answers given to the questionarie by the Managing Trustee and had held on the reference as follows:-

> *"**12.** The answers given to the questionnaire by the Managing Trustee of the Trust show the extent of misuse of the status enjoyed by the Trust by virtue of registration under Section 12-AA of the Act. These answers also show that donations were received by way of cheques out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly show that those were bogus donations and that the registration conferred upon it under Sections 12-AA and 80-G of the Act was completely being misused by the Trust. An entity which is misusing the status conferred upon it by Section 12-AA of the Act is not entitled to retain and enjoy the said status.*

The authorities were therefore, right and justified in cancelling the registration under Sections 12-AA and 80-G of the Act. ”

34. Thus it is only genuine transactions which can be recognised in law even when contributions are made to a trust. The second respondent does not withstand the scrutiny that its transactions with the insolvent are genuine in nature. We therefore reject the stand taken by the second respondent and hold that it was a bogus donation from the insolvent.

35. In view of these observations, the application will necessarily have to be allowed. Accordingly, Application No. 175 of 2016 is allowed. A decree is passed directing the second respondent to pay a sum of Rs.1,55,00,000/- together with interest at 18% p.a., from 21.04.2014 till date of realisaton together with costs of recovery proceedings. Consequently, connected Application No. 206 is closed.

(Dr.G.J.J.,) (C.V.K.J.,)
22.12.2023

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<u>Dr. G. JAYACHANDRAN, J.</u>
<u>&</u>
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<u>Pre-Delivery Order made in</u>
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