

CASE NO.:  
Appeal (civil) 4305-4306 of 2002

PETITIONER:  
Asstt. Commissioner of Income Tax, Surat

RESPONDENT:  
Surat City Gymkhana

DATE OF JUDGMENT: 04/03/2008

BENCH:  
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:  
JUDGMENT  
O R D E R

CIVIL APPEAL NOS.4305-4306 OF 2002

The respondent-assessee claimed exemption under Section 10(23) of the Income-tax Act, 1961 for the Assessment Years 1991-92 and 1992-93. The said exemption was claimed on the basis that the objects of the respondent-assessee are exclusively charitable. The assessing officer rejected the claim. Appeals filed before the Commissioner of Income-tax (Appeals) were also dismissed. Aggrieved thereby, the assessee filed further appeals before the Income Tax Appellate Tribunal ('the Tribunal'). The Tribunal, by order dated 20th January 2001, allowed the appeals filed by the respondent-assessee. The appellant filed appeals before the High Court of Gujarat. The Revenue claimed that the following two substantial questions of law arise from the order of the Tribunal :

"(A) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the objects of the Trust restricting benefit to the members of the Club would fall within the purview of the act of "General Public Utility" u/s 2(15) of the Income Tax Act constituting as a section of public and not a Body of Individuals?

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(B) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that Registration u/s 12-A was a falt-accompli to hold the A.O. back from further probe into the objects of the Trust?"

By the impugned order, the High Court dismissed the appeals, in limine, relying on a decision of the same Court in the case of Hiralal Bhagwati v. Commissioner of Income-Tax 2000 (246) ITR 188 = 2000 (161) CTR (Gujarat) 401 holding that the questions raised in the appeals are covered by the aforesaid decision.

Being dissatisfied by the order of the High Court, the Revenue has filed these appeals.

This Court, on 22nd July 2002, granted leave in respect of Question No.'B' only. The appeals were not entertained in respect of Question No.'A' and it was noted that the appeals by the High Court were rightly dismissed insofar as Question No.'A' is concerned as the appellant did not challenge the correctness of the judgment in the case of Hiralal Bhagwati (supra).

On a perusal of the judgment of the Gujarat High Court in the case of Hiralal Bhagwa

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(supra), we now find that Question No.'B' is also concluded by the said judgment [refer to 1st para of page 196]. Since the Revenue did not challenge the decision in the said case, the same has attained finality. Question No.'B', therefore, is to meet the same fate as Question No.'A' as this Court had declined to grant leave in respect of

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Question No.'A' on the ground that the Revenue did not challenge the correctness of the decision in the case of Hiralal Bhagwati (supra). It appears that the fact, that Question No.'B' was also covered by the aforementioned judgment, was not brought to the notice of their Lordship and, therefore, leave was granted restricted to question No.'B'.

In this view of the matter, these appeals deserve to be dismissed. Ordered accordingly.

No costs.

