

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).1070/2019

(Arising out of Special Leave Petition(C) No(s).  
30475/2018)

THE SHRI SAIBABA SANSTHAN TRUST (SHIRDI) APPELLANT (s)

VERSUS

THE UNION OF INDIA & ORS. RESPONDENT (s)

O R D E R

Leave granted.

The appeal arises from a judgment of the High Court of Judicature at Bombay dated 24 October 2018. The High Court disposed of a writ petition instituted by the appellant for challenging the notice dated 23 March 2018 issued by the Deputy Commissioner of Income Tax (Exemption) (2) (1) Mumbai under Section 148 of the Income Tax Act 1961 for reopening the assessment for Assessment Year 2013-14.

The issue pertaining to the taxability of anonymous donations received in Hundies maintained by the temple trust under Section 115BBC of Income Tax Act, 1961 is

pending determination before the Commissioner of Income Tax (Appeals) for Assessment Year 2015-16.

When the High Court was moved in the writ proceedings for challenging the reopening of the assessment for Assessment Year 2013-14, the Court observed that the objections to the reopening of the assessment are the same as those before the Commissioner of Income Tax (Appeals) for Assessment Year 2015-16. Observing that any expression of opinion on the reopening of the assessment will affect the pending appeal before the Commissioner of Tax (Appeals), the High Court disposed of the writ petition, keeping open the challenge to be raised in appropriate legal proceedings.

Mr. S. Ganesh, learned senior counsel appearing on behalf of the appellant submits that the issue which is raised falls in a narrow frame. According to the appellant, Sections 19 and 21 of the Shri Saibaba Sansthan Trust (Shirdi) Act, 2004 indicates that the appellant is both a religious as well as a charitable trust and is, therefore, trust of a mixed character. Hence, it has been submitted that having regard to the provisions of Clause (b) of sub-Section (2) of Section

115BBC read with the Circular of the CBDT dated 20 December 2006, anonymous donations which are received in Hundies without any specific directions for use for medical-and educational purposes do not fall within the ambit of the statutory provisions.

On the other hand, Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing on the behalf of the Union of India has supported the judgment of the High Court. Mr. Banerjee urged that any determination on the issue whether there was a reason to believe that the appellant's income for Assessment Year 2013-14 had escaped assessment would inevitably lead to a final determination of the issue which is pending before the Commissioner of Income Tax (Appeals). Hence, it is urged that the appellant should be left to pursue its remedies after the assessment is completed for Assessment Year 2013-14.

The grievance that the High Court ought to have dealt with the challenge to the reopening of the assessment on the ground that there was no reason to believe that income had escaped assessment has to be appreciated in the context of the facts of the present case. The

applicability of Section 115BBC is the central issue which is pending before the Commissioner of Income Tax (Appeals) for Assessment Year 2015-16. In this view of the matter, we are of the view that the High Court has justifiably held that it would not be appropriate to exercise jurisdiction under Article 226 when the same issue is already pending before the Commissioner of Income Tax (Appeals) for Assessment Year 2015-16.

Mr. Ganesh urged that if an order of assessment is passed in the present case, the appellant would inevitably be relegated to pursue the remedies to seek a stay of recovery and hence it would be appropriate if the High Court is directed to decide the issue afresh. We are not inclined to accede to that submission. We find that the High Court was justified in deciding not to enter upon a decision on an issue which is pending before the Commissioner of Income Tax (Appeals). For Assessment Year 2015-16, a Division Bench of the High Court passed an order on 27 March, 2018 in Writ Petition No. 939 of 2018 in the following terms on the issue of stay of recovery:

"In the above view, we set aside the order dated 23rd March, 2018 passed by the CIT(A)

on the Petitioner's stay application. We direct the respondent-Revenue not to initiate any recovery proceedings against the Petitioner till such time as the CIT(A)-Respondent No. 3 disposes of the Petitioner's appeal from the order dated 31st December, 2017 of the Assessing Officer-Respondent No. 2 ad for a period of two weeks after the communication of the order of the CIT(A) to the Petitioner."

The above order was passed in a petition challenging the refusal of the Commissioner of Income Tax (Appeals) to stay recovery during the pendency of the appellate proceedings. The appellant would be sufficiently protected, if the same protection which was granted by the High Court in the order dated 22 March 2018 for Assessment Year 2015-16, is granted in the event that an order of assessment is passed for Assessment Year 2013-14.

Hence, we direct as follows:

- i). The Assessing Officer shall complete the assessment for Assessment Year 2013-14 pursuant to the notice for reassessment which has been issued on 23 March 2018, in accordance with law;
- ii). The issue as to whether the notice under Section 148 for reopening the assessment for Assessment Year

2013-14 is valid is kept open to be urged in appropriate proceedings after the assessment order is passed;

iii). Upon the passing of the order of assessment for Assessment Year 2013-14 and in order to enable the assessee to pursue its remedies before the Commissioner of Income Tax (Appeals) there shall be an interim protection in terms of the order dated 27 March 2018 that was passed by the Division Bench of the Bombay High Court in Writ Petition No. 939 of 2018;

iv). Both the appeals for the Assessment Years 2013-14 and 2015-16 shall be heard together by the Commissioner of Income Tax (Appeals);

v). The appellant shall be at liberty to pursue its remedies in accordance with law.

The appeal is disposed of in the above terms. No costs.

.....J.  
[DR.DHANANJAYA Y. CHANDRACHUD]

.....J.  
[M.R. SHAH]

NEW DELHI;  
JANUARY 18, 2019.

ITEM NO.56

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 30475/2018

(Arising out of impugned final judgment and order dated 24-10-2018 in WPL No. 3278/2018 passed by the High Court Of Judicature At Bombay)

THE SHRI SAIBABA SANSTHAN TRUST (SHIRDI)                      Petitioner(s)

VERSUS

THE UNION OF INDIA & ORS.

Respondent(s)

Date : 18-01-2019 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
          HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s)                      Mr. S. Ganesh, Sr. Adv.  
  Mr. R. P. Gupta, AOR

For Respondent(s)                    Mr. Vikramjit Banerjee, ASG  
  Mr. Shekhar Vyas, Adv.  
  Mr. S.A. Haseeb, Adv.  
  Ms. Swarupama Chaturvedi, Adv.  
  Mrs. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI THAKUR)  
COURT MASTER (SH)

(SAROJ KUMARI GAUR)  
BRANCH OFFICER

(Signed order is placed on the file)