

## **PRIVY COUNCIL**

(Maulana) Mohammad Ibrahim Riza Malak

Vs.

Commissioner of Income-tax, Nagpur

Privy Council Appeal No. 50 of 1929

(Lord Tomlin, Sir Lancelot J. Sanderson, Sir George Lowndes and Sir Binod Mitter.  
JJ.)

19.05.1930

### **JUDGMENT**

#### **LORD TOMLIN J.**

1. In this case the appellant seeks to displace an assessment to income-tax made upon him in respect of property vested in him as the head of a community which is a sect of the Dawood Borah tribe, located at Nagpur. The community have, apparently, a common stock all the property being vested in the head of the sect. The property is utilized in part in carrying on a series of shops, the profits of the trade being treated as part of the income of the community.

2. In the Courts below the appellant rested upon certain trust deeds executed, one on 25th August 1917, and the other on 25th November 1922. By the first deed the then head of the community declared the trusts of the property vested in him, and by the second deed the trusts of the same property were explained and expanded.

3. Their Lordships think that the short point which this appeal raises is, whether, having regard to the terms of those deeds, the income of the property vested in the head of the community is exempt from income-tax, having regard to the provisions of Section 4 Sub-Section 3(i), Act 11 of 1922. That sub-section of Section 4 is in these terms:

"This Act shall not apply to the following classes of income : (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the Income applied or finally set apart for application

thereto."

4. A glance at the documents on which the appellant has founded himself in the Courts below makes it plain that the income of the trust property is applicable to purposes, many of which are neither religious nor charitable. It is only necessary to refer to one or two of the clauses of the first deed to establish that proposition. Clause 3 which indicated some of the purposes for which the property is held, is :

"For carrying on the agricultural, industrial, commercial and other pursuits of the said community."

5. Clause 5 is:

"For entertaining guests, giving at homes or parties,"

6. Clause 6 is:

"For such donations for charitable or religious purposes, contributions to memorials, funds raised for holding social, educational, religious, industrial or political conferences or congresses, and for public entertainments,"

as the then spiritual head, and, after him, the spiritual head for the time being, may deem fit. Their Lordships think that these extracts establish that the income is not

"income derived from property held under trust or other legal obligation wholly for religious or charitable purposes."

7. Nor is it suggested that any part of the property is set aside for any charitable or religious purposes, so that it can be identified as appropriated exclusively to such purposes.

8. In these circumstances the conclusion which has been arrived at by the Court below seems to their Lordships to be correct.

9. It perhaps is right to add that it was suggested that some comfort could be found by the appellant from a deed of 9th June 1894, in which certain property was vested in the then head of the community upon religious or charitable trusts ; but no attempt has been made, either here or below, to identify the property, the subject of that trust, with any of the property now said to be subject to tax. Their Lordships think that in the absence of any evidence of identity and having regard to the fact that throughout, in the Courts below, the later deeds only have been founded upon, it is not open to the appellant to assert before their Lordships' Board that the deed of 9th June 1894 has any relation to the matter.

10. In their Lordships' opinion the appeal must be dismissed with costs, and they will humbly advise His Majesty accordingly.

Appeal dismissed.