

SUPREME COURT OF INDIA

Trustees of the Charity fund

Vs.

Commissioner of Income-Tax, Bombay

(Sudhi Ranjan Das. CJ, Natwarlal H.Bhagwati and M. Hidayatullah JJ.)

05.05.1959

JUDGMENT

DAS, C. J.-

This is an appeal brought on a certificate granted on September 19, 1956, by the High Court of Bombay under s. 66(A)(2) of the Indian Income Tax Act (hereinafter referred to as " the said Act ") against its order dated February 21, 1956, in Income-tax Reference No. 32 of 1954 answering in the negative two questions of law referred to it under s. 66(1) of the said Act at the instance of the appellants.

The appellants are the trustees of a charity fund known as " The Charity Fund Founded by Sir Sassoon David, Baronet of Bombay ". The said Sir Sassoon David, Bart. and four other persons, who were holding certain securities of the value of Rs. 24,25,000 for the purpose of charity and had been applying the same for and towards charitable purposes, executed, on June 8, 1922, a Deed of Declaration of Trust declaring that the said trust fund would be held by them on trusts more specifically therein mentioned. Clause 13 of the said deed, on the true construction of which depends the answer to the referred questions, runs as follows:- " 13. The Trust Fund shall be held by the Trustees upon the Trusts to apply the net income thereof 926 after providing for all necessary expenses in relation to the management of the Trust Funds for all or any of the following purposes, that is to say, (a) the relief and benefit of the poor and indigent members of Jewish or any other

community of Bombay or other parts of India or of the world either by making payments to them in cash or providing them with food and clothes and/or lodging or residential quarters or in giving education including scholarships to or setting them up in life or in such other manner as to the said Trustees may seem proper or.....

(b) the institution maintenance and support of hospitals and schools, colleges or other educational institutions or.....

(c) the relief of any distress caused by the elements of nature such as famine, pestilence, fire, tempest, flood, earthquake or any other such calamity or.....

(d) the care and protection of animals useful to mankind or.....

(e) the advancement of religion or.....

(f) other purposes beneficial to the community not falling under any of the foregoing purposes.....

Provided always that in applying the income as aforesaid the Trustees shall give preference to the poor and indigent relations or members of the family of the said Sir Sassoon David, Bart., including therein distant and collateral relations; provided further that in the application of the income of the said Charitable Trust Fund the said Trustees for the time being shall observe the following proportions, viz.: that not less than half the income of the said funds shall at all times be applied for the benefit of the members of the Jewish Community of Bombay only (including the relations of Sir Sassoon David, Bart. as aforesaid) and Jewish objects and particularly in giving donations to the members of the Jewish Community of Bombay on the anniversary of the death of the said Sir Sassoon David, Bart. and his wife Lady Hannah David which falls on the Twenty-second day of June and the remaining income for the benefit of all persons and objects including Jewish persons and objects and in 927 such proportions as the said Trustees may think proper.

Provided further that if the income of the Trust Funds for any year shall not be wholly applied during that year on the Trusts aforesaid such surplus income may be carried forward to the subsequent year or years and be applied as the income arising during that year or years. Provided also that during the life-time of Sir Sassoon David, Bart., in the application of the said income the Trustees shall have regard to the wishes of the said Sir Sassoon David, Bart., who shall also be entitled to direct if he so desires that the income of the time being of the Trust-Funds or any part

thereof may be applied to such charitable object or objects as the said Sir Sassoon David, Bart., shall direct and in such case the Trustees shall so apply the income ".

This Deed of Declaration of Trust was, on June 4, 1953, registered under the Bombay Public Trusts Act, 1950.

The Trust fund had been invested by the trustees in inter alia 3 1/2% Government Securities. In the year 1930 a certificate was issued by the Income-tax Officer, A Ward, Bombay, whereby the Reserve Bank of India was authorised not to deduct at source the tax on the interest on the said securities so held by the trustees. It was mentioned in the said certificate that it was to enure till its cancellation.

In 1946 the 3 1/2% Government Securities were redeemed by the Government of India and were converted into 3% Conversion Loan, 1946. Accordingly in February, 1948, the said certificate of exemption was cancelled, as the securities covered thereby had been redeemed by the Government. The trustees thereupon asked for a fresh certificate of exemption from the Income-tax Officer, Bombay Refund Circle in respect of the 3% Conversion Loan, 1946. But the said Income-tax Officer refused to issue such certificate on the ground that the income from the trust fund in question was not exempt from taxation under s. 4(3)(i) of the said Act which, at the material time, was as follows:- "4(1).....

928 (2)

(3) Any income, profits or gains falling with-in the following classes shall not be included in total income of the person receiving them:- (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:

Upon the fact of the withholding of the certificate by the Income-tax Officer, Refund Circle, being intimated to the Income-tax Officer, A-V Ward, Bombay, the latter Officer started proceedings against the appellants under s. 34 of the said Act in respect of the assessment years 1944-45 to 1947-48. He also started regular proceedings for the assessment year 1948-49 and the succeeding years up to 1952- 53.

In the assessment proceedings for those nine years the Income-tax Officer took the view that the income from the trust fund was not exempt from taxation under s. 4(3)(i) and accordingly he

assessed the appellants for the first four assessment years (1944-45 to 1947-48) on the ground that the income for those years had escaped assessment. He also assessed the appellants to tax for the subsequent five years (1948-49 to 1952-53). On appeal the Appellate Assistant Commissioner confirmed the said assessments. On further appeal by the appellants, the Income-tax Appellate Tribunal set aside the assessments for the first four years (1944-45 to 1947-48) holding that s. 34 had been wrongly invoked, for it was only a case of difference of opinion of one Income-tax Officer from his predecessor on the same set of facts.

The department did not take any further steps in the matter and accepted that view of the Tribunal as regards the assessments of those years and we are not in this appeal concerned with them. As regards the assessments for the five years (1948-49 to 1952-53) the Tribunal upheld the decision of the Appellate Assistant Commissioner who had confirmed the assessments made by the Income-tax Officer.

On application being made by the appellants, under s. 66(1) of the said Act, the Tribunal drew up a statement of case and referred two questions of law arising out of its order to the High Court for its opinion. The said questions are as follows :- (1) Whether the Trust property is held wholly for religious or charitable purposes within the meaning of section 4(3)(i) of the Indian Income-tax Act ? (2) If the answer to question (1) is in the negative, whether the trust property is held in part only for religious or charitable purposes ? The said reference came up for hearing before the said High Court and both the referred questions were answered in the negative. The High Court, however, gave the appellants a certificate of fitness for appeal to this Court and the present appeal has been filed on the strength of such certificate.

A perusal of cl. 13 of the deed shows that the trust fund is declared to be held by the trustees upon trusts to apply the net income thereof for all or any of the six purposes enumerated therein. It was conceded before the High Court- and it has not been disputed before us-that if there was nothing else in this clause, then each of these six purposes would have to be upheld as a charitable purpose involving an element of public utility and consequently within the protection of s. 4(3)(i). The fact that the trustees could expend the net income on any of the six purposes to the exclusion of the other five purposes would not, it is also conceded, have made the slightest difference in the matter of such exemption from income-tax. For instance, if the trustees spent the net income solely and wholly for the purposes- mentioned under sub-cl. (a) to the exclusion of those mentioned in sub-cl. (b) to (f) such income would still be exempt from taxation under s. 4(3)(i). The High Court, however, took the view that cl. 13 should be read as a whole along with the provisos -and that so read the trust is primarily for the benefit of the relations or members of the family 117 930 of Sir Sassoon David, Bart. It is pointed out that in applying the net income for the purposes mentioned in sub-cl. (a), the trustees are bound, under the first proviso, to give preference to the poor and indigent relations or members of the family of the said Sir Sassoon David, Bart.

including therein distant and collateral relations. The second proviso, it is urged, makes it further

clear that in the application of the income for the said purpose, the trustees are enjoined to apply not less than half the income for the benefit of the members of the Jewish community of Bombay only " including the relations of Sir Sassoon David, Bart., as aforesaid " and the Jewish objects. Emphasis is laid on the words not less than half " as indicating that it is permissible for the trustees to spend more than half and indeed the whole of the net income for the benefit of the said relations or members of the family of the said Sassoon David, Bart. It is also pointed out that, although the remaining income, if any, has to be spent for the benefit of all persons and objects including Jewish persons and objects, the trustees could, if they so wished, spend the same also for the relations or members of the family of Sir Sassoon David, Bart. as Jewish persons. The argument, which found favour with the High Court, is that the provisos impose a mandatory obligation on the trustees (i) to give preference to the poor and indigent relations or members of the family of Sir Sassoon David, Bart. and (ii) to spend not less than half the income, which may extend to the entire income, for the benefit of the relations or members of the family of Sir Sassoon David, Bart. The High Court points out that in view of the language of el. 13 of the deed read as a whole, it is open to the trustees, without being guilty of any breach of trust, to spend the entire net income of the trust fund for the purpose of giving relief to the poor and indigent relations or members of the family of the said Sir Sassoon David, Bart., including therein the distant and collateral relations and such being the position, the High Court came to the conclusion that it could not be said that the property was held wholly or partly for religious or 931 charitable purposes involving an element of public utility.

The High Court accordingly held that the income from the trust fund was not exempt from taxation under s. 4(3)(i) and answered both the questions in the negative. The problem before us is whether the High Court was right in so answering the questions.

In coming to the decision that it did, the High Court relied on its own earlier decision in the case of Trustees of Gordhandas Govindram Family Charitable Trust v. Commissioner of Income-tax (Central), Bombay (1). The facts in that case, however, were somewhat different from the facts now before us. In that case the trust was significantly enough described as " Gordhandas Govindram Family Charitable Trust ". Clause 2 of that trust deed provided for the application of the net income in giving help or relief to such poor Vaishyas and other Hindoos as the trustees might consider deserving of help in the manner and to the extent specified in the said trust deed and subject to the conditions and directions stated in the next following clauses. Sub-clause (a) of cl. 3 provided that Vaishya Hindoos who were members of Seksaria family should be preferred to poor Vaishyas not belonging to the said family. Maintenance had to be provided under sub-cl. (b) for the poor male descendants of the settlor and under sub-cl. (c) for the poor female descendants of the settlor. Marriage expenses were provided under sub-cl. (d) for the poor male descendants and under sub-cl. (e) for the poor female descendants of the settlers. There were other subclauses providing for payment of money to the poor male or female descendants of the other members of the Seksaria family. In the present judgment now under appeal, the High Court recognises that the particular trust they were dealing with in the earlier case " was a fairly blatant illustration of a settlor trying to benefit his own family and his own relations " and states that in the earlier case it had pointed out " that the benefit to the public was too remote and too illusory and accordingly held that was (1) [1952] 21 I.T.R. 231.

932 not a trust which had for its object a general public utility ". Such, however, cannot be said of the provisions of the present Deed of Declaration of Trust. Under el. 13 the trustees are at liberty to hold the trust fund and to apply the net income thereof for all or any of the six purposes mentioned therein. The relations or members of the family of the said Sir Sassoon David, Bart., including therein distant and collateral relations do not figure as direct recipients of any benefit under sub-cl. (b) to (f) and, therefore, in so far as those purposes are concerned the trust certainly involves an element of public utility.

We are not unminaful of the fact that it is open to the trustees to spend the net income entirely for the purpose referred to in sub-cl. (a) to the exclusion of the other clauses. But the very fact that the relations or members of the family do not come in directly under any of those latter sub-clauses cannot be ignored, for they certainly have some bearing on the question as to who or what were the primary objects of the trust as a whole. In the next place, the purpose of sub-cl. (a) is the "relief and benefit of the poor and indigent members of Jewish or any other community of Bombay or other parts of India or of the world ". It is conceded by learned counsel that this sub-clause clearly expresses a general charitable intention involving an element of public utility. It follows, therefore, that sub- cl.(a) constitutes a valid public charitable trust having as its beneficiaries the several classes of persons referred to therein. This is the first position. We then pass on to the provisos. The first proviso opens with the words " in applying the income as aforesaid ".

This takes us back to sub-cl. (a). The meaning of the proviso obviously is that in applying the income for the purpose of sub-el. (a), the trustees shall give preference to the poor and indigent relations or members of the family of Sir Sassoon David, Bart. The proviso does not operate independently but comes into play only " in applying the income as aforesaid".. The provision for giving preference involves the idea of selection of some persons out of a bigger class envisaged in subel. (a). The poor and indigent relations or members of 933 the family can claim to participate in the benefits under the trust only if they come within one of the several classes enumerated in sub-el. (a). To take an extreme example: If a poor and indigent relation of Sir Sassoon David, Bart. abjures the faith held by the Jewish community and does not adopt any other faith and thus ceases to be a member of the Jewish community but does not become a member of any other community, he will certainly not be entitled to the benefits of sub-el. (a) although he is a poor and indigent relation or member of the family of Sir Sassoon David, Bart. within the meaning of the first proviso. In other words, sub-cl. (a) prescribes the primary class of beneficiaries out of which the actual beneficiaries are to be selected by the application of the provisions of the provisos, that is to say, by giving preference to the relations or members of the family of the said Sir Sassoon David, Bart. The case of *In re Koettgan's Will Trusts* (1) appears to us, on the facts, to be more in point than the case of *Gordhandas Govindram Family Charity Trust* case (2) relied on by the High Court. In the last mentioned English case the testatrix bequeathed her residuary estate upon trust for the promotion and furtherance of commercial educa- tion. The persons eligible as beneficiaries under the fund were stated to be ,persons of either sex who are British born subjects and who are desirous of educating themselves or obtaining tuition for a higher commercial career but whose means are insufficient or will not allow of their obtaining such education or tuition at their own expense..." The testatrix further directed that in selecting the beneficiaries " it is my wish that the ... trustees shall give preference to any employees of John Batt & Co. (London) Ltd. or any members of the families of such employees;

failing a sufficient number of beneficiaries under such description then the persons eligible shall be any persons of British birth as the trustees may select provided that the total income to be available for benefiting the preferred beneficiaries shall not in anyone year be more than 75% of the total available income for that (1) [1954] Ch. 252, 257.

(2) [1952] 21 I.T.R. 231.

934 year". It was held, on a construction of the will, that the gift to the primary class from which the trustees could select the beneficiaries contained the necessary element of benefit to the public and that it was when that class was ascertained that the validity of the trust had to be determined, so that the subsequent direction to prefer, as to the 75% of the income, a limited class did not affect the validity of the trust which was accordingly a valid and effective charitable trust. Referring to the first part of the will Upjohn, J., at p. 257 said:- " If the will concluded there, the trust would clearly be a valid charitable trust, having regard to the admission that a gift for commercial education is for the advancement of education." Then after stating that the next task was to make a selection from that primary class of eligible persons, the learned Judge continued:- " It is only when one comes to make a selection from that primary class that the employees of John Batt & Co. and the members of their families come into consideration, and the question is, does that direction as to selection invalidate the primary trust ? In my judgment it does not do so." Further down he said:- "In my judgment it is at the stage when the primary class of eligible persons is ascertained that the question of the public nature of the trust arises and falls to be decided, and it seems to me that the will satisfies that requirement and that the trust is of a sufficiently public nature." The learned Judge then concluded:- " If, when selecting from that primary class the trustees are directed to give a preference to the employees of the company and members of their families, that cannot affect the validity of the primary trust, it being quite uncertain whether such persons will exhaust in any year 75%. On the true construction of this will, that is not (as to 75%) primarily a trust for persons connected with John Batt & Co., and the class of persons to benefit is not " confined " to them, and in my judgment the trust contained in clauses 7 935 and 8 of the will of the testatrix is a valid charitable trust." It is true that this is a judgment of a Single Judge but it does not appear to have been departed from or over ruled in any subsequent case and appears to us to be based on sound principle. Applying this test, there can be no question- indeed it has been conceded that the earlier part of el. 13, omitting the provisos, constitutes a valid public charitable trust. The circumstance that in selecting the beneficiaries under subel. (a) preference has to be given, under the provisos, to the relations or members of the family of Sir Sassoon David, Bart., cannot affect that public charitable trust. In our judgment, the facts of this case come nearer to the facts of the English case referred to above than to the facts of the earlier decision of the Bombay High Court in Gordhandas Govindram Family Charity Trust case (1). As we have already stated the relations of members of the family are clearly not the primary object contemplated by sub-cl. (b) to (f). The first part of sub-cl. (a), omitting the provisos, is not said to be too wide or vague and unenforceable. The provision for giving preference to the poor and indigent relations or the members of the family of Sir Sassoon David, Bart., cannot affect the public charitable trust constituted under sub-cl. (a). In our opinion the income from the trust properties comes within the scope of s. 4(3)(i) and is, therefore, entitled to exemption. Therefore the negative answer given by the High Court to question No. 1 cannot be supported and that question should be answered in the affirmative. In this view of the matter, question No. 2 does not arise and needs no answer. The result is that this appeal must be allowed and the question No. 1 must be answered in the affirmative.

The appellants will have the costs of the reference in the High Court and of this appeal in this Court.

Appeal allowed.