The Commissioner of Income Tax, (Central) Delhi, New Delhi

Vs

Bijli Cotton Mills (P) Ltd., Hathras, District Aligarh

Civil Appeals Nos. 1328 and 1329 of 1973 and 2059 of 1971

(P. N. Bhagwati, V. D. Tulzapurkar JJ)

07.11.1978

JUDGMENT

TULZAPURKAR, J. -

1. These three appeals are preferred on certificates of fitness granted by; the Allahabad High Court under Section 66-A of the Indian I.T. Act, 1922. They raise a common question whether the amounts realised by the assessee-company from its customers as and for 'Dharmada' during the threes assessment years 1951-52, 1952-53 and 1953-54 are liable to be taxed as its income under the Act, and the question arises in the following circumstances.

2. The assessee is a private limited company having been incorporated in the year 1943. It carries on the business of manufacturing and selling yarn. Right from the inception it used to realise certain amounts on account of 'Dharmada' (charity) from its customers on sales of yarn and bales of cotton. The rate was one anna per bundle of 10 lbs. of yarn and two annas per bale of cotton. In the bills issued to the customers these amounts were shown in a separate column headed 'Dharmada'. The assessee did not credit the amounts of 'Dharmada' so realised by it in its trading account but it maintained a separate account known as the "Dharmada Account" in which realisations on account of 'Dharmada' were credited and payments made out were debited from time to time. It appears that at a meeting of the board of directors of the assessee-company held on January 15, 1945, the board passed a resolution that the moneys standing in the "Dharmada Account" be treated as trust fund of which Lala Nawal Kishore and Lala Ram Babulal, two directors of the company, be the trustees and it was further declared that all the moneys realised in future by the company on sale of yarn from the purchasers at the rate of one anna per bale or at such rate as may be decided in future be handed over to the trustees for being utilised in such altruistic, religious and charitable purposes as may be decided upon by them and that the trustees shall in particular utilise such funds for the advancement of education and the alleviation of misery and sickness of the public in general as they think fit. Subsequently, on October 3, 1950, the said two directors executed a deed of declaration of trust wherein it was stated that a sum of Rs. 85,000 had accumulated in the charity fund maintained by the trustees and it was declared that the amount did not belong to any individual but it was trust money of which the executants were trustees and it will be utilised by them for altruistic, religious or charitable purposes.

3. During the previous year (being the calendar year 1950) relevant to the assessment year 1951-52, the total amount received by the assessee-company in the "Dharmada Account" as aforesaid amounted to Rs. 21,898; similarly, during the previous year 1952-53, the company collected from its customers a sum of Rs. 17,242 on account of 'Dharmada' and a sum of Rs. 904 for the same purpose from the brokers and interest was also credited to this account amounting to Rs. 4,010

while during the previous year (being the calendar year 1952) relevant to the assessment year 1953-54, the assessee received a sum of Rs. 19,490 as 'Dharmada' from its customers and a sum of Rs. 4,578 was also credited on account of interest in the "Dharmada account". In the assessment proceedings for the assessment years 1951-52, 1952-53 and 1953-54, the assessee claimed that the aforesaid amounts lying to the credit of the "Dharmada Account" were held in trust by it and were earmarked for charity and as such they were not its income from business liable to tax and in support of this contention reliance was placed upon the resolution passed by the board of directors on January 15, 1945, and the deed of declaration of trust dated October 3, 1950. The Income-Tax Officer rejected the contention and added the said amounts to the assessable income of the assessee-company in all the years. The appeals before the Appellate Assistant Commissioner at the instance of the assessee-company proved unsuccessful. Further appeals to the Appellate Tribunal also proved futile. Before the Tribunal it was contended on behalf of the assessee that each customer who paid the Dharmada amount was a settlor of the trust, that there were as many settlors as there were customers and that the assessee had received these amount under an obligation to utilise the same for charity; it was pointed out that the resolution of the board of directors dated January 15, 1945, was merely a confirmation of the fact that the amounts were held in trust by the assessee and that the deed dated October 3, 1950, was merely a declaration of the acceptance of the trust by the two trustees mentioned therein; in other words, it was contended that the customers of the assessee created a trust by paying the amounts as 'Dharmada' and the amounts having been earmarked for charitable purposes only they were not the assessee's income liable to tax. The Tribunal negatived the claim of the assessee on two grounds, first, that the amounts in question could not be regarded as having been received or held by the assessee under a trust for charitable purposes, the trust being void for vagueness and uncertainty and, secondly, that the realisations partook of the character of trading receipts. At the instance of the assessee, the matter was carried to the High Court by was of two references, Income-tax Reference 329 of 1964 being in relation to the amounts concerned in the two assessment years 1951-52 and 1952-53 and Income-tax Reference No. 454 of 1965 being in relation to the amount concerned in the assessment year 1953-54. In the former reference, the High Court approached the question not from the angle of deciding whether the assessee could claim exemption from tax under Section 4(3)(i) of the Act in respect of the impugned amounts but whether the impugned amounts could be regarded as the profits or gains of the business carried on by the assessee under Section 10(1) of the Act, in other words, in the opinion of the High Court the dispute related to the initial character of the receipt itself and the question was whether the amounts paid by the customers earmarked for charity were the assessee's income at all and following an earlier decision of a Division Bench of that very court in the case of Agra Bullion Exchange Ltd. v. C. I. T. ((1961) 41 ITR 472 (All HC)), the High Court held that the impugned amounts were never the income of the assessee at all and that the assessee was merely acting as a conduit pipe or clearing house for passing on the amounts to the objects of charity. It took the view that the Tribunal erred in holding that the levy for 'Dharmada' was in the nature of a surcharge on the price charged for sale of yarn and cotton and that in its opinion the fact that it was a compulsory levy ipso facto did not impress the same with the character of a trading receipt. The High Court pointed out that the amounts realised by the assessee on account of 'Dharmada' ware never treated as trading receipts or as a surcharge on the sale price which was evident from the fact that such realisations were never credited to the trading account nor shown in the profit and loss statement for any year. It further observed that it was well known that the 'Dharmada' was a customary levy prevailing in certain parts of the country and where it was paid by the customers to a trading concern the amount was not paid as a price for the commodity sold to the customer. In this view of the matter the High Court answered the questions in favour of the assessee and against the revenue. Following this decision, the High Court answered the question raised in the latter reference also in favour of the assessee.

The C. I.T., Delhi (Central), New Delhi, has challenged the aforesaid view of the High Court before us in these appeals.

4. Counsel for the revenue raised a two-fold contention in support of these appeals. In the first place, he contended that since the realisation or recovery of 'Dharmada' amounts by the assessee from each of its customers' point of view must be regarded as a part of the consideration or price for the goods purchased by them from the assessee. He urged that such compulsory levy would be in the nature of a premium or surcharged on the price and as such will have to be regarded as a trading receipt. In that behalf reliance was placed upon two decisions, one of the Andhra Pradesh High Court in Poosarla Sambamurthi v. State of Andhra (7 STC 652 (Andh HC)), and the other of Madras High Court in N. S. Pandaria Pillai v. State of Madras (31 STC 108 (Mad HC)), where similar amounts charged by the assessee as and by way of 'Dharmam' in the former case and 'Mahimai' in the latter case were held to be part of the price includible in the taxable turnover of the assessee. Secondly, he contended that it is well settled that a gift for 'Dharma' or 'Dharmada' is void for vagueness and uncertainly and, therefore, when the 'Dharmada' amounts were paid by the customers and received by the assessees these amounts could not be regarded as "property held under trust or other legal obligation for charitable purposes" within the meaning of Section 4(3)(i) of the Act and in this behalf strong reliance was placed upon the meaning given to the expressions 'Dharma' and 'Dharmada' in Prof. Wilson's Glossary of Judicial & Revenue Terms, the decision of the Privy Council in Runchordas v. Parvatibhai (26 IA 71 : ILR 23 Bom 725 : 1 Bom LR 607) and the decision of the Bombay High Court in Devshankar v. Moti Ram (ILR 18 Bom 27 (All HC)). Apart from this legal position he sought to support the Tribunal's finding that no trust could be said to have been created by the customers on the basis of certain factual aspects - (a) the customers paid the amounts not voluntarily but out of compulsion, (b) the customers being illiterate did not appreciate that they were paying the amounts with a view to create trust, (c) there was no control over the assessee as regards the manner in which and the time when it should spend for 'Dharmada', and (d) the assessees did not keep these amounts in a separate bank account - separate from its business assets. He, therefore, urged that no trust of these realisations could be said to have been created and as such these realisations were rightly regarded by the Tribunal as part of the assessee's trading receipt liable to be included in its assessable income.

5. On the other hand, counsel for the assessee contended that it was the initial character of the receipt in the hands of the assessees that was important, that the amounts when paid by the customers, over and above the price for the goods purchased from the assessee, were paid for 'Dharmada' (i.e., for charity) and were received by the assessee as such; in other words, the receipts from the inception were impressed with the obligation to spend the same only on charitable objects. He contended that the two concepts of 'Dharma' and 'Dharmada' were distinct from each other and though a gift to 'Dharma' may be void on grounds of vagueness and uncertainty, a gift to 'Dharmada' would not be void inasmuch as the concept of 'Dharmada' was not vague or uncertain especially when a gift to 'Dharmada' was by commercial or trading custom invariably regarded as a gift to charitable purposes, and in this behalf strong reliance was placed by him upon the Full Bench decision of the Allahabad High Court in Thakur Das Shyam Sunder v. Addl. C. I. T. ((1974) 93 ITR 27 (All HC)) and the decision of the Punjab and Haryana High Court in C. I. T., Amritsar v. Gheru Lal Bal Chand (111 ITR 134 : 1977 Tax LR 970 (P&H HC)), where such customary meaning of 'Dharmada' among the trading community has been judicially recognised. He further urged that the compulsory nature of the payment did not affect or alter the initial character of the receipts which were earmarked for charity and, therefore, such receipts could not be regarded as trading receipts, not being any part of the price nor even a surcharge on the prices. In support of his contentions counsel strongly relied upon the decision of this court in C. I. T. v. Tollygunge Club Ltd.((1977) 107

ITR 776 : (1977) 2 SCC 790 : 1977 SCC (Tax) 360).

6. Having regard to the rival contentions noted above, it seems to us clear that there are two aspects that are required to be considered for determining the question raised in these appeals but in a sense the two aspects are so inter-related that they would represent the two sides of the same coin. The one aspect is what is the true nature or character of these receipts, whether they constitute a part of the price received by the assessee while effecting sales of yarn or cotton and are, therefore, trading receipts of the assessee ? The other aspect is whether these realisations are property held under trust or other legal obligation for charitable purposes or not ? And this depends upon whether the earmarking of these payments for 'Dharmada' creates a valid trust or obligation to spend the same only on charitable objects ? But in the facts and circumstances of the case, it is obvious that these receipts would not be trading receipts only if at the time these are received they are held under a trust or other legal obligation to spend the same for charitable purposes. In other words, if the legal obligation to spend the same for charitable purposes is void and, therefore, non-existent, the receipts or the realisations may have to be regarded as trading receipts in the hands of the assessee. That being the position, in our view, the approach adopted by the High Court to determine the question at issue cannot be regarded as correct. As pointed out earlier, the High Court approached the question from the angle of deciding whether the impugned amounts realised by the assessee could be regarded as the profits and gains of the business carried on by the assessee under Section 10(1) of the Act, impliedly suggesting that a claim for exemption for such amounts under Section 4(3) (i) of the Act was unnecessary or irrelevant and that the dispute merely related to the initial character of the receipt itself and following the decision in Agra Bullion Exchange case (supra) it held that the amounts in question which were paid by the customers earmarked for charity were not trading receipts and were never the income of the assessees at all. It is clear that while making this finding the High Court assumed that the customers while paying theses amounts had validly earmarked them for charity. Since the Revenue had specifically raised a dispute that the receipts of 'Dharmada' would neither create a valid trust nor a valid legal obligation to spend the same for charitable purposes, 'Dharmada' being a vague and uncertain concept, the High Court could not, in our view, come to the finding that these realisations were not trading receipts unless it further found that earmarking for 'Dharmada' was a valid earmarking for charity. In our view, therefore, both the aspects of the question are required to be considered for the purpose of arriving at a correct decision thereon.

7. Therefore, the first question that arises for our consideration is whether a gift to 'Dharmada' is void on grounds of vagueness or uncertainty ? The answer to this question will depend upon what is the true meaning of the expression 'Dharmada' and is the concept of 'Dharmada' as vague or uncertain as the concept of 'Dharma'? The two allied concepts of 'Dharma' and 'Dharmada' will have to be considered together. It is true that as early as in 1899, the Privy Council in Runchordas Vandrawandas v. Parvatibhai (supra) declared a bequest or a gift to 'Dharma' (Dharm) simpliciter to be void, the concept being vague and uncertain and in that behalf the Privy Council relied upon the meaning of that expression as given in Prof. Wilson's Glossary of Judicial and Revenue Terms, where the expression is stated to mean 'law, virtue, legal or moral duty', derived from the Sanskrit verb 'Dhri' meaning 'to hold' that which keeps a man in the right path. Accepting the aforesaid meaning of the expression 'Dharma', the Privy Council observed thus :

> In Wilson's Dictionary "dharam" is defined to be law, virtue, legal or moral duty . . . The objects which can be considered to be meant by that word are too vague and uncertain for the administration of them to be under any control.

By this decision the Privy Council gave its imprimatur to the view which prevailed in the Presidencies of Bombay and Calcutta for the past 50 years that gifts to 'Dharma' simpliciter were invalid. The reason for the decision was the oft-quoted principle that all charities were the special care and under the direct control of the Court of Equity and that the Court must refuse to accept as "charity" any gift which by reason of the vagueness in which it was expressed left the court in doubt as to how it was to be applied. However, in a later Bombay case, namely, the Advocate-General of Bombay v. Jimbabai (ILR 41 Bom 181 : 17 Bom LR 799), Beaman, J. felt that it this country 'Dharma' did mean roughly and almost invariably in the cases which had come up for legal decisions just "charity" and nothing else and observed :

> It is true that an Oriental's idea of charity might be a little wider and looser than that of Lord Eldon, particularly amongst the lower and more illiterate classes of Hindus and Mahomedans; but a liberal use of the convenient doctrine of cy-pres, which is surely elastic enough to reach almost anything which Judges wish to reach, might have validated the technical defects, and cured the infirmity.

8. It may be stated that with a view to give effect to the popular concept of the word 'Dharma' a Bill was introduced (being Bill No. 10 of 1938 published in the Gazette of India, Part V, dated September 17, 1938), but it was presumably dropped as it fell under "Religious and Charitable Endowments" in List II of the Government of India Act, 1935, which was a provincial subject. Thereafter, the State of Bombay enacted Bombay Public Trust Act being Act 29 of 1950, which is now in operation in the States of Maharashtra and Gujarat. By the Explanation to Section 10 it has been enacted that a public trust created for such objects as "dharma, dharmada, punyakarya or punyadan" shall not be void only on the ground that the objects for which it is created are unascertained or unascertainable; in other words, in the areas where a legislation similar to the Bombay Public Trust Act would be in operation, bequests or gifts for religious or charitable purpose, expressed in terms for "dharma, dharmada, punyakarya, punyadan, etc." would not fail on ground of vagueness or uncertainty. However, in areas where such legislation is not in force, bequests or gifts to 'Dharma' simpliciter would continue to be void on grounds of vagueness or uncertainty.

9. In the above context it will be interesting to point out that in Chaturbhuj Vallabhdas v. C. I. T. (14 ITR 144 (Bom HC) the Bombay High Court has taken the view that where instead of 'Dharma' the testator used the English word 'Charity' that word without any qualifications or limitations denoted public charity and as such the bequest was held to be a valid charitable bequest falling within the definition of "charitable purposes" in Section 4(3) (i) of the Act.

10. Turning to the concept of 'Dharmada' (which is the same as 'Dharmadaya') the question is whether that concept could be said to be as vague as the concept of 'Dharma'. In Prof. Wilson's Glossary the expression 'Dharmada' or 'Dharmadaya' is stated to be the vernacular equivalent of the Sanskrit expression 'Dharmadan' or 'Dharmadayam' and the expression 'Dharmada' is explained thus :

> Dharmadao, corruptly, Dharmadow, (from Dan or Daya, donation). An endowment, grant of food, or lands, or funds, for religious or charitable purposes.

Two other allied expressions, namely, 'Dharmakhaten' and 'Dharmarth' are explained thus :

> Dharmakhaten (Marathi). The head of accounts under which pious or charitable gifts

are entered.

Dharmarth (Sanskrit). Any thing given for charitable or pious purposes.

In Molesworth's Dictionary (Marathi-English), Second Edition,; reprinted 1975, the expression 'Dharmadaya' or 'Dharmadav' is stated to mean "an alms or a gift in charity".

11. If the respective meanings of the two expressions 'Dharma' and 'Dharmada' as given in the above dictionaries are compared, it will appear clear that the former is indefinite and equivocal whereas the latter is quite definite; the former means either law, or virtue or legal duty or moral duty but the latter only means an endowment or gift for religious or charitable purpose. Similarly, if the expression 'Dharma' is compared with the expression 'Dharmarth' it will be clear that the former is indefinite and equivocal while the latter has only one meaning, namely, anything given for charitable or pious purpose. The Marathi expression 'Dharmakhaten' means the head of accounts under which pious or charitable gifts are entered. From the above discussion it appears to us clear that though there is some justification for holding that a gift to 'Dharma' simpliciter would be invalid on grounds of vagueness and uncertainty, a gift to 'Dharmada' (Dharmadaya) would be definite, the object being certain, namely, for religious of charitable purposes. In common parlance, therefore, the expression 'Dharmada' or 'Dharmadaya' cannot be said to be vague or uncertain and as such a gift to 'Dharmada' (Dharmadaya) would not be invalid for vagueness or uncertainty.

12. Counsel for the Revenue, however, strongly relied upon the decision of the Bombay High Court in Devshankar v. Motiram (supra) where that Court has taken the view that a bequest in favour of 'Dharmada' is void by reason of uncertainty. After going through the arguments of counsel in that cases and the decision of the Court, it appears to us clear that the court has accorded a literal and derivative meaning to the world Dharmada in that 'Dharmada' means property set apart for 'Dharma' and having regard to such derivative meaning accorded to that expression, the Court has taken the view that there is no real distinction between a bequest to be expended on 'Dharmada' and a bequest for 'Dharma'. As against its literal and derivative meaning, the expression 'Dharmada' (Dharmadaya) in common parlance means, as mentioned in Prof. Wilson's Glossary and Molesworth's Dictionary, an endowment or gift for religious or charitable purposes and we are inclined to accept the latter popular meaning that is invariably accorded by Orientalists to the expression 'Dharmada' (Dharmadaya) and as such in our view a gift to 'Dharmada' or payment for 'Dharmada' must be regarded as a gift or payment for religious or charitable purposes and such a gift or payment would not be invalid for vagueness or uncertainty.

13. Apart from the fact that the concept of 'Dharmada' or 'Dharmadaya' in common parlance means anything given in charity or for religious or charitable purposes, it cannot be disputed that amongst the trading or commercial community in various parts of this country a gift or payment for 'Dharmada' is by custom invariably regarded as a gift to charitable purposes. In Thakur Das Shyam Sundar v. Addl. C. I. T. (supra), a Full Bench decision of the Allahabad High Court, the question was whether when the assessee, who carried on business as a commission agent, charged on every transaction of sale of goods worth Rs. 100 a sum of 15 paise from the person to whom goods were sold and 10 paise from the person whose goods were sold as 'Dharmada' and credited the amounts thus collected in a separate 'Dharmada' account which was held by him to be utilized specifically and exclusively for charitable purposes, the amounts so collected by him were liable to be included in his assessable income or not ? The High Court held that the said amounts were not includible in the assessable income and were not chargeable to income-tax. The High Court took the view that in order to determine whether a particular receipt, by whatever name it was called, was or was not the

income of an assessee, its real nature and quality had to be considered and if it was received under a custom, the answer to the question depended on the nature of the obligation created by the custom. The assessee's specific case was that in the district of Shahjahanpur there was a custom according to which the commission agents realised 'Dharmada' from their constituents and spent the same on charity and this specific case was not controverted by the Revenue, presumably because the Revenue was aware that such a custom did obtain in the trading community. It was contended on behalf of the Revenue that the ownership of the fund realised by way of 'Dharmada' rested entirely in the assessee who was free to spend the amount according to his own discretion, and, therefore, the assessee's position, qua the 'Dharmada' account was not that of a trustee. Rejecting this contention the Allahabad High Court observed thus :

> We are unable to accept the submission that as the ownership of the amounts credited to the 'dharmada' account vests in the petitioner and it enjoys some discretion with regard to its disposal it cannot be said that its position is that of a trustee. The question whether the position of the petitioner, when he received the amount, was that of a trustee or not will depend upon the actual custom which obliged the constituents to pay dharmada. As stated earlier, the petitioner's case that the amount realised as dharmada has got to be spent on charity has not been controverted by the respondents. Under the law relating to trust, legal ownership over the trust fund and the power to control and dispose it of always vests in the trustee. Accordingly, merely because in this case the legal ownership over the amount deposited as dharmada vested in the petitioner, it cannot be said that its position was not that of a trustee. Discretion vested in a trustee to spend the trust amount over charities will not affect the character of the deposit.

The above Full Bench decision of the Allahabad High Court, it can fairly be said, amounts to a judicial recognition of the custom of collecting 'Dharmada' amounts by traders from their customers or constituents which casts an obligation on the traders to spend the same only on some charitable purpose. In other words, a gift or payment for 'Dharmada' is by commercial or trading custom invariably regarded as a gift for charitable purpose and as such there is no question of there being any vagueness or uncertainty about the object for which such gift or payment has to be utilized. Counsel for the Revenue sought to contend that the custom referred to in Thakur Das Shyam Sunder's case (supra) should be regarded as being prevalent only in the district of Shahjahanpur from which the case arose. It is not possible to accept this contention, for, it is common knowledge that such customary levy for 'Dharmada' is frequently collected by traders from their customers in several parts of the country. A similar customer creating the obligation to spend the 'Dharmada' amounts exclusively on charitable purposes was invoked or resorted to by the Punjab and Haryana High Court in the case of C. I. T. v. Gheru Lal Bal Chand (supra) where the assessee who carried on business in districts of Abohar, Hissar and Malaut in Punjab and Haryana realised 'Dharmada' amounts from his constituents and the Court held that the assessee was acting more or less as a trustees of such amounts and as such these were not includible in his assessable income.

14. Having regard to the above discussion, we are clearly of the view that a gift to 'Dharmada' or 'Dharmadaya' both in common parlance as well as by the customary meaning attached thereto among the commercial and trading community cannot be regarded as void or invalid on account of vagueness or uncertainty, and it is, therefore, clear that when the customers or brokers paid the impugned amounts to the assessee earmarking them for 'Dharmada' it must be held that these payments were validly earmarked for charitable purposes. In other words, right from inception these amounts were received and held by the assessee under an obligation to spend the same for charitable

purposes only, with the result that these receipts cannot be regarded as forming any income of the assessee.

15. The next aspect requiring consideration is whether because of the compulsory nature of the levy the impugned amounts charged to the customers and received by the assessee could be regarded as a part of the price or a surcharge on the price as contended by the counsel for the revenue ? In our view, this question is covered by the decision of this court in Tollygunge Club's case (supra). In that case, the respondent club conducted horse races with amateur riders and charged fees for admission into the enclosure of the club at the time of the races; a resolution was passed in 1945, at the general body meeting of the club for levying a surcharge of eight annas over and above the admission fees, the proceeds of which were to go to the Red Cross Fund; this resolution was varied by another resolution dated January 30, 1950, to the effect that the surcharge should be earmarked "for local charities and not solely for the Indian Red Cross", every entrant was issued two tickets, one, an admission ticket for admission to the enclosure of the club, and the other, a separate ticket in respect of the surcharge of eight annas for local charities; the question was whether receipts on account of the surcharge were to be treated as the respondent's income for the assessment year 1960-61; the Appellate Tribunal and the High Court on a reference held that the respondent's receipts from the surcharges levied on admission tickets for purposes of charity could not be included in the respondent's taxable income. On further appeal, this court held, confirming the decision of the High Court, that the surcharge was not a part of the price for admission but was a payment made for the specific purpose of being applied to local charities. At page 780 of the report, this court has observed thus : (SCC pp. 794-95, para 4)

The surcharge is undoubtedly a payment which a race-goer is required to make in addition to the price of admission ticket if he wants to witness the race from the club enclosure, but on that account it does not become part of the price for admission. The admission to the enclosure is the occasion and not the consideration for the surcharge taken from the race-goer. It is true that but for this insistence on payment of the surcharge at the time of admission to the enclosure, the race-goer might not have paid any amount for local charities. But that does not render the payment of the surcharge involuntary, because it is out of his own volition that he seeks admittance to the enclosure and if he wants such admittance, he has to pay not only the price of the admission ticket but also the surcharge for local charities. The surcharge is clearly not a part of the price for admission but it is a payment made for the specific purpose of being applied to local charities.

On parity of reasoning the 'Dharmada' amounts paid by the customers cannot be regarded as part of price or a surcharge on price of goods purchased by the customers. The amount of 'Dharmada' is undoubtedly a payment which a customer is required to pay an addition to the price of the goods which he purchases from the assessee but the purchase of the goods by the customer would be the occasion and not the consideration for the 'Dharmada' amount taken from the customer. It is true that without payment of 'Dharmada' amount the customer may not be able to purchase the goods from the assessee but that would not make the payment of 'Dharmada' amount involuntary inasmuch as it is out of his own volition that he purchases yarn and cotton from the assessee. The 'Dharmada' amount is, therefore, clearly not a part of the price, but a payment for the specific purpose of being spent on charitable purposes. The two decisions on which reliance was placed by counsel for the Revenue, namely, Poosarla Sambamurthi's case (supra) and Pandaria Pillai's case (supra) are clearly distinguishable and inapplicable to the facts of this case inasmuch as both the decisions were rendered under sales-tax legislation where the question that was required to be considered was whether the realisations for 'Dharmam' (charitable purpose) in the former case or 'Mahimai' (religious purpose) in the latter case would fall within the definition of "turnover" as contained in

the concerned legislation and it was held that such realisations were includible in the assessee's turnover. We do not wish to express any opinion on the correctness of these decisions. Suffice it to state that the ratio of these decisions cannot apply to the instant case. Since the realisations in question in the present case are not a part of the price or surcharge on the price but payments for the specific purpose of being spent on charitable purposes, they cannot be regarded as trading receipts of the assessee.

16. Dealing with the factual aspects on the basis of which counsel for the Revenue sought to support the Tribunal's finding that no trust could be said to have been created by the customers, it will be apparent from the above discussion that none of the aspects are such as would lend support to the inference drawn by the Tribunal. We have already dealt with the alleged compulsory nature of the levy and have pointed out that the 'Dharmada' amounts cannot be said to have been paid involuntarily by the customers and in any case the compulsory nature of the payments, if there be any cannot impress the receipts with the character of being trading receipts. Further, it is not possible to accept the submission that the customers being illiterate did not appreciate that they were paying the amounts with a view to create a trust, especially when it has been found that such payments were made pursuant to a custom which obtained in the commercial and trading community; indeed, being a customary levy the constituents or customers, whether literate or illiterate, would be knowing that the additional payments over and above the price were meant for being spent by the assessee for charitable purposes. Further, he fact that the assessee would be having some discretion as regards the manner in which and the time when it should spend the 'Dharmada' amounts for charitable purposes would not detract from the position the assessee held qua such amounts, namely, that it was under an obligation to utilize them exclusively for charitable purposes. It is true that the assessee did not keep these amounts in a separate bank account, but admittedly a separate 'Dharmada' account was maintained in the books in which every receipt was credited and payment made thereout on charity was debited and the High Court has clearly found that these amounts were never credited in the trading account nor were carried to the profit and loss statement. Having regard to this position, it seems to us clear that the Tribunal's finding that no trust could be said to have been created by the customers in respect of the impugned amounts will have to be regarded as erroneous.

17. In the result, after considering both the aspects, we are of the view that the impugned realisations made by the assessee from its customers for 'Dharmada' being validly earmarked for charity or charitable purposes could not be regarded as the assessee's income chargeable to income-tax. The ultimate conclusion of the High Court is, therefore, confirmed and the appeals are dismissed with costs.

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