

Commissioner of Income Tax, New Delhi

Vs

Federation of Indian Chambers of Commerce and Industries, New Delhi

Tax Reference Case No. 17 of 1975

(E. S. Venkataramiah, R. S. Pathak, A. P. Sen JJ)

15.04.1981

JUDGMENT

PATHAK, J. -

1. In view of the majority opinion of this Court in Additional Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufacturers' Association ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) the reference must be answered against the Revenue and in favour of the assessee.

A.P. SEN, J. -

This direct reference under Section 257 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') made by the Income Tax Appellate Tribunal, Delhi Bench 'B' at the instance of the Commissioner of Income Tax, Delhi II, New Delhi, raises the much vexed question as to whether the words "not involving the carrying on of any activity for profit" in the definition of 'charitable purpose' contained in Section 2(15) of the Act, govern the word 'advancement' and not the words "object of general public utility".

3. The facts giving rise to the reference are as follows : The Federation of Indian Chambers of Commerce and Industry, New Delhi - hereinafter referred to as 'the assessee' - is an existing company under the Companies Act, 1956. It was registered under Section 26 of the Act and permitted to omit the word 'Limited' from its name. It has neither any share capital nor does it distribute any dividends to its members. The entire income is expended for the fulfillment of its objects. The main object of the assessee is the promotion, protection and development of trade, commerce and industry in India.

4. The main objects for which the Federation has come into existence are set out in Clause 3 of the Memorandum of Association which, insofar as material, reads :

3. (a) To promote Indian business in matters of inland and foreign trade, transport, industry and manufactures, finance and all other economic subjects and to encourage Indian banking, shipping and insurance.

While Clause 3(a) defines the primary purpose of the trust, i.e. to promote trade and industry which undoubtedly being an object of general public utility engaged in carrying on activities without any profit motive, the subsidiary objects set out in sub-clauses (b) to (z-2) of Clause 3 are merely incidental or ancillary thereof.

5. During the assessment year 1962-63, the relevant accounting year for which was the year ended December 31, 1961, the assessee submitted a return showing its total income as 'nil' claiming that all its income was exempt under Section 11(1)(a) read with Section 2(15) of the Act. During the assessment year in question, the assessee held the Indian Trade Fair at New Delhi and derived receipts totalling Rs. 75,18,548 from rent for space allotted, temporary stalls and storage. It also received Rs. 20,750 by sale of season tickets and Rs. 3,94,143 by daily gate tickets. It realised deposits and advances from the participants for hotel accommodation. In the relevant accounting year, the Conference of the Afro-Asian Organisation for Economic Cooperation, sponsored by the assessee was held at New Delhi. For organising the Conference, the assessee received Rs. 3,00,000 from the Government of India as grant-in-aid and after meeting the expenses, was left with a balance of Rs. 2,17,346.38. Further, the assessee received Rs. 265.50 as the share of profits on the sale of a book on Company Law, Rs. 5,371.82 as fee for arbitration. It realised advances from its members for arbitration amounting to Rs. 20,000 from out of which a balance of Rs. 299.18 was left. The balance-sheet for the accounting year shows that the assessee had in excess income of Rs. 2,291.71 over the expenditure under the head 'income'.

6. The contention of the assessee before the Income Tax Officer was that the activities carried on by the Federation were not with the motive of earning profits, but they were carried on with the object of promotion, protection and development of trade, commerce and industry in India and abroad. Its contention was that the dominant object for which the Federation was constituted was for promotion, protection and development of the country's trade, commerce and industry and the activities carried on during the assessment year in question, namely, the holding of the Indian Trade Fair and of sponsoring the Conference of the Afro-Asian Organisation for Economic Cooperation were incidental or ancillary to the main object, and, therefore, the income derived therefrom was exempt under Section 11(1)(a) of the Act. Reliance in support of this contention was placed on the decision of this Court in *C.I.T. v. Andhra Chamber of Commerce* ((1965) 55 ITR 722 : (1965) 1 SCR 565 : AIR 1965 SC 1281). In the immediately preceding assessment years 1960-61 and 1961-62, the income of the assessee was treated as exempt from tax under Section 4(3)(i) of the Income Tax Act, 1922.

7. The Income Tax Officer, however, felt that the decision of this Court in the *Andhra Chamber of Commerce* case ((1965) 55 ITR 722 : (1965) 1 SCR 565 : AIR 1965 SC 1281) was no longer good law due to the addition of the words "not involving the carrying on of any activity for profit" in the definition of 'charitable purpose' in Section 2(15) of the Act which qualify the fourth head of charity, viz., "any other object of general public utility", and, therefore, must be read subject to the additional statutory requirement that the object of general public utility should not involve the carrying on of any activity for profit. He accordingly raised a demand of Rs. 49,818 on a total income of Rs. 84,430. On appeal, the Appellate Assistant Commissioner disagreed with the view of the Income Tax Officer and held that the activities carried on by the assessee were not profit-oriented and, therefore, its income was exempt. The Commissioner of Income Tax appealed to the Appellate Tribunal without any success. The Tribunal upheld the view of the Appellate Assistant Commissioner and held that the dominant object with which the Federation was constituted being a charitable purpose, viz., promotion, protection and development of trade, commerce and industry, there being no motive to earn profits, it was not engaged in any activity in the nature of business or trade, and, if any income arose from such activity, it was only incidental or ancillary to the dominant object for the welfare and common good of the country's trade, commerce and industry.

8. Thereupon, the Commissioner of Income Tax applied to the Appellate Tribunal to make a reference to the High Court under sub-section (1) of Section 256 of the Act, but the Tribunal, in

view of the conflict in the decisions of the High Courts on the construction of the expression 'charitable purpose' as defined in Section 2(15) of the Act, has made a reference of the following questions to this Court under Section 257 of the Act, for its opinion, namely :

1. Whether having regard to the definition of charitable purpose as contained in Section 2(15) read with Sections 11(1) and 11(4), charging sections and sections dealing with computation of income, the assessee was liable to be taxed in respect of income relating to assessment year 1962-63 ?
2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income earned by the assessee would not come within the provisions of Section 2(15) read with Section 11 of the Income Tax Act, 1961 and the onus that this profit was not exempt from tax would be on the Revenue ?
3. Whether on the facts and in the circumstances of the case, the purpose of the Federation of Indian Chambers of Commerce and Industry was advancement of objects of general public utility not involving the carrying on of any activity for profit ?

9. There had been a sharp conflict of opinion between the different High Courts as to the construction of the ten crucial words "not involving the carrying on of any activity for profit" qualifying the fourth head of charity "advancement of any other object of general public utility". This Court resolved the conflict in the *Sole Trustee, Loka Shikshana Trust v. C.I.T.* ((1976) 1 SCC 254 : 1976 SCC (Tax) 14 : (1975) 101 ITR 234) and the *Indian Chamber of Commerce v. C.I.T.* ((1976) 1 SCC 324 : 1976 SCC (Tax) 14 : (1975) 101 ITR 796) by holding that the words "not involving the carrying on of any activity for profit" govern the word "advancement" and observed that if the advancement or attainment of the object involves an activity for profit, tax exemption would not be available.

10. Unfortunately for the Revenue, this Court has, in a five-judges Bench, by a majority of 4 to 1, in *Addl. C.I.T. v. Surat Art Silk Cloth Manufacturers' Association* ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) reversed these two decisions in the *Loka Shikshana Trust* case ((1976) 1 SCC 254 : 1976 SCC (Tax) 14 : (1975) 101 ITR 234) and the *Indian Chamber of Commerce* case ((1976) 1 SCC 324 : 1976 SCC (Tax) 41 : (1975) 101 ITR 796) and. The court has approved of the observations of Beg, J. in his separate but concurring judgment in the *Loka Shikshana Trust* case ((1976) 1 SCC 254 : 1976 SCC (Tax) 14 : (1975) 101 ITR 234) that "if the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that activities of the trust yield profit will not alter the charitable character of the trust." In other words, the majority view in the *Surat Art Silk* case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) was that the condition that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit-making is not the real object. The theory of dominant or primary object of the trust has, therefore, been treated to be the determining factor, even in regard to the fourth head of charity, viz., the advancement of any other object of general public utility, so as to make the carrying on of business activity merely ancillary or incidental to the main object.

11. One should have thought that the correct way to approach this question of interpretation was to give the words used by Parliament their ordinary meaning in the English language and if, consistently with the ordinary meaning, there was a choice between two alternative interpretations, then to prefer the construction that maintains a reasonable and consistent scheme of taxation without

distorting the language. When the government did not accept the recommendation of the Direct Taxes Laws Committee in Chapter 2 (Interim Report, December 1977) for the deletion of the words "not involving the carrying on of any activity for profit" occurring in Section 2(15) of the Act, the court has by a process of judicial construction achieved the same result.

12. Whatever reservations one may have regarding the correctness of this interpretation of the exclusionary clause in the definition of 'charitable purpose' in Section 2(15) of the Act, there can be no doubt that the majority decision in the Surat Art Silk case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) is binding on us. With respect, I venture to say that the majority decision has the effect of neutralising the radical changes brought about by Parliament in the system of taxation of income and profits of charities, with particular reference to "objects of general public utility" to prevent tax evasion, by diversion of business profits to charities. It is the vagueness of the fourth head of charity "any other object of general public utility" that impelled Parliament to insert the restrictive words "not involving the carrying on of any activity for profit". In my minority opinion in the Surat Art Silk case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1). I had endeavored to give reasons why the correctness of the majority decision was open to question. There is no point in traversing the same ground over again. It was clearly inconsistent with the settled principles to hold that if the dominant or primary object of a trust was 'charity' under the fourth head "any other object of general public utility", it was permissible for such an object of general public utility, to augment its income by engaging in trading or commercial activities.

13. In retrospect, it seems that it would have been better for Parliament to have deleted the fourth head of charity "any other object of general public utility" from the ambit of the definition of 'charitable purpose' while enacting Section 2(15) of the Act rather than inserted the words "not involving the carrying on of any other (sic) activity for profit", thereby creating all this legal conundrum. In England, the Radcliffe Commission on Taxation of Profits and Income (ROYOL COMMISSION ON THE TAXATION OF PROFITS AND INCOME (Cmd 9474, 1955) Part I, Chap. 7. An earlier commission on income tax, the Colwyn Commission, had similarly sought to narrow down the concept of 'charitable' within the context of taxation (Smd 615, 1920, Part III, Sec. XIV) recommended in 1955 that for purposes of taxation, charity should be restricted to relief of poverty, advancement of education and advancement of religion and that the fourth category mentioned in the dictum of Lord Macnaghten, namely, "trusts for other purposes beneficial to the community" should be cut out entirely.

14. The majority in the Surat Art Silk case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) has evolved the doctrine of dominant or primary object and there is little that we can do about it. Faced with this difficulty, learned counsel for the Revenue advanced no submissions with regard to the questions referred and indeed, in view of the majority decision in the Surat Art Silk case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) the answers to the questions are self-evident. The doctrine of dominant or primary object must, as laid down in the Surat Art Silk case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1), hold the field till there is a change in the law. Undoubtedly, the activities of the assessee in regard to holding of the Indian Trade Fair and sponsoring of the Conference of the Afro-Asian Organisation in the relevant accounting year were for the advancement of the dominant object and purpose of the trust, viz., promotion, protection and development of trade, commerce and industry in India. Learned counsel for the Revenue with his usual fairness, conceded that the income derived by the assessee from such activities was exempt under Section 11(1)(a) read with Section 2(15) of the Act.

15. It was, however, urged that the objects set out in sub-clauses (v), (z-1) and (z-2) of clause 3 of

the Memorandum of Association of the Federation were not incidental or ancillary to the main object of the trust.

The relevant sub-clauses are set out below :

(v) To establish and support or aid the establishment and support of associations, institutions, funds, trusts and convenience, calculated to benefit employees of the Federation or the dependents or connections of such persons, and grant pension and allowances, and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition for any public, general, useful objects.

(z-1) To establish a Trust or Trusts and/or appoint Trustees thereof from time to time and vest the funds or the surplus income any property of the Federation in the Trustees who shall hold and deal with the funds, surplus income or property in such manner as the committee may decide.

(z-2) To undertake and execute any Trusts the undertaking of which may seem to the Federation desirable either gratuitously or otherwise.

The contention advanced cannot be accepted, for the reason that one such point was ever raised at any stage of the proceedings, much less before the Appellate Tribunal. Even otherwise, there appears to be no substance in the contention. There is a distinction between the "purpose" of a trust and the "powers" conferred upon the trustees as incidental to the carrying out of the purpose. For instance, Clause 3(v) enables the establishment and support of associations, institutions, funds, trusts and convenience calculated to benefit the employees and their dependents, for making provisions for grant of pension and allowances etc. The framing of such employee-benefit schemes essential and necessary for the proper functioning of the organisation and is incidental to the carrying out of the purpose for which it is constituted. I refrain from expressing any opinion whether or not the employees constituted "section of the public". For, if the primary or dominant purpose of trust or institution is charitable, any other object which is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or the institution from being a valid charity. Likewise, Clauses 3(z-1) and (z-2) which permit the establishment of a trust or trusts, appointment of trustees thereof from time to time and vesting of funds or surplus income or any property of the assessee in the trustees, are nothing but powers conferred on them for the proper financial management of the affairs of the trust which are incidental or ancillary to the main purpose of the trust. The contention must, therefore, fail.

16. In the result, the reference under Section 257 of the Income Tax Act, 1961 made by the Income Tax Appellate Tribunal, Delhi-B, New Delhi, must be answered against the Revenue and in favour of the assessee. There shall be no order as to costs.

VENKATARAMIAH, J. -

I have had the advantage of reading the judgment prepared by my learned brother A.P. Sen, J. and I respectfully agreed with his reasoning and conclusion. I share with him my doubts about the correctness of the decision in Addl. C.I.T. v. Surat Art Silk Cloth Manufacturers' Association ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1). I would like to say a few words of my own on the subject.

18. There can be no objection to a person spending his money on charity. But can he be charitable at the expense of others ? This is a question which necessarily arises when we read Section 11 of the Income Tax Act, 1961. Section 11 as it stands now grants exemption from payment of tax on any income, which would have otherwise been taxable, provided (1) the property yielding income is held under trust or such other legal obligation which is brought into existence by an act of party and not by an act of law, (2) the purpose of the trust is charitable which may ensure to the benefit of the public or a section of the public and (3) the other conditions prescribed by the Act are satisfied. It means that if there is a diversion of property or income-earning apparatus by an act of party into a charitable trust and the prescribed conditions are satisfied, the income derived from it (including the portion which would have gone to the public exchequer but for the trust) may be spent by a person in charge of the affairs of the trust on objects indicated in the trust which is a creature of its author. In effect what does it mean ? It means that the author of the trust is able to divert by his own will to a purpose of his own choice, though charitable, a large part of the income which would have been, but for the trust, at the disposal of the legislature which alone has the power over the national exchequer. Whatever may have been the position in those days when the State was just a police State performing minimum functions of government, today when the State is a welfare State would it be right either morally or constitutionally to allow amounts which should legitimately form part of the revenue of the State to be dealt with by non-governmental agencies administering trusts is a question which requires examination in an appropriate case. This, however, is a larger question which, if logically pursued, may justify total deletion of the exemption accorded in the case of charitable and religious trusts.

19. But even as the provisions now stand, I feel that while construing them, this Court has enlarged the meaning of "charitable purpose" in Section 2(15) beyond what it legitimately should mean in the Surat Art Silk Cloth Manufacturers' Association case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1).

20. I would like to adopt the words in the dissenting judgment of my learned brother A.P. Sen, J. in the Surat Art Silk Cloth Manufacturers' Association case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) : (SCC p. 78 : SCC (Tax) p. 217, para 84)

The judicial attitudes cannot be formed in isolation from legislative processes, particularly in connection with tax avoidance provisions.

21. It is true that it is open to the legislature to give encouragement to objects which it considers to be laudable by means of fiscal exemptions. At the same time it takes care to enact fresh provisions from time to time to suppress any mischief which may have resulted from the misuse of existing law. Parliament deliberately stepped in by adding the words "not involving the carrying on of any activity for profit" in the definition of charitable purpose in Section 2(15) of the Act, when the tax exemptions available to charitable and religious trusts came to be misused by some for the unworthy purposes of tax avoidance. The law had been so restructured to prevent allergy to taxation masquerading as charity. The law was thus designed by Parliament to prevent this misuse of tax exemption in the name of charity. The majority decision in the Surat Art Silk Cloth Manufacturers' Association case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1), if I may say so without meaning any disrespect, has virtually wiped off the restrictive words "not involving the carrying on of any activity for profit" occurring in Section 2(15), thereby defeating the very object and purpose of the legislation. It is not the function of a court of law to give the words a strained and unnatural meaning.

22. When the government had not accepted the recommendation of the Direct Taxes Laws Committee in Chapter 2 (interim Report, December 1977) for the deletion of the words "not involving the carrying on of any activity for profit", by suitable legislation, it was impermissible for this Court by a process of judicial construction to achieve the same result. If I may adopt the words of Lord Rein in *Greenberg v. I.R.C.* (1972 AC 109 : (1971) 3 All ER 136, 149 (HL)) quoted in the minority decision in *Surat Art Silk Cloth Manufacturers' Association case* ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) displaying the court's concern about the prevailing attitude of tax statutes : (SCC p. 75 : SCC (Tax) p. 214, para 75)

Parliament is very properly determined to prevent this kind of tax evasion and if the courts find it impossible to give very wide meanings to general phrases, the only alternative may be for Parliament to do as some other countries have done, and introduce legislation of a more sweeping character . . . .

23. Modern legislation has changed in pattern towards re-casting provisions of taxation with very wide language, while at the same time dealing in much more detail with some areas with law. Judges, while responding to general trends of law, but also reacting to the form of modern tax legislation, must be prepared to take account of the context and purposes of the change brought about.

24. It is relevant to refer to one other aspect arising out of an observation made in the course of the majority judgment in the *Surat Art Silk Cloth Manufacturers' Association case* ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1) suggesting that the area of exemption under Indian law is much wider than what is available under English law. The relevant part of the majority judgment reads : (SCC p. 45 : SCC (Tax) p. 184, para 9)

The definition of "charitable purpose" in Indian Law thus goes much further than the definition of charity to be derived from the English cases, because it specifically includes medical relief and embraces all objects of general public utility. In English Law it is not enough that a purpose falls within one of the four divisions of charity set out in Lord Macnaghten's classification. It must also be within the spirit and intendment of the Preamble to Statute of Elizabeth if it is to be regarded as charitable. There is no such limitation so far as Indian Law is concerned even if a purpose is not within the spirit and intendment of the Preamble to the Statute of Elizabeth, it would be charitable if it falls within the definition of "charitable purpose" given in the Statute. Every object of general public utility would, therefore, be charitable under the Indian Law, subject only to the condition imposed by the restrictive words "not involving the carrying on of any activity for profit" added in the present Act. It is on account of this basic difference between the Indian and English Law of charity that Lord Wright uttered a word of caution in *All India Spinners' Association of Mirzapur v. C.I.T.* (12 ITR 482 (PC) : ILR 1945 Bom 153 : AIR 1944 PC 88 : 47 Bom LR 233) against blind adherence to English decisions on the subject. The definition of "charitable purpose" in the Indian statute must be construed according to the language used there and against the background of Indian life.

25. If Indian life should be a true guide for the determination of questions arising in court, then we should go back to our ancient treatises to find out the true meaning of charity which may be either *dana* or *utsarga*. In case of *dana* the donor gives up his ownership over a thing, makes another the owner of it and cannot thereafter use it nor has he any control over it. When a man makes an *utsarga*, he no doubt gives up his ownership but gives up the thing for the benefit of all. Opinion is, however, divided whether as a member of the public he can also use a thing thus dedicated for the

public. But in any event, he would no longer have any control over the thing dedicated. How many of the so-called charitable trusts satisfy the rigours of the Indian concept of charity ? Are there any measures by which misuse of funds belonging to charities can be effectively checked ?

26. It is wrong to think that all springs of charity in India will dry up if true effect is given to Section 2(15) of the Act in accordance with the minority judgment in the Surat Art Silk Cloth Manufacturers' Association case ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : (1980) 121 ITR 1). People who are truly charitable do not think of the tax benefits while making charities. One must realise that even the poor who do not pay income tax can be charitable and their charities made at great personal inconvenience are commendable indeed. One need not go in search of charitable persons amongst the tax payers only. Still the majority view has got to be followed now.

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