

Commissioner of Income Tax, Bombay

Vs

Bar Council of Maharashtra

Bar Council of India, Intervener. Bar Council of Gujarat, Intervener

Civil Appeals Nos. 2115 to 2117 of 1980

(V.B. Tulzapurkar, E.S. Venkataramiah JJ)

22.04.1981

JUDGMENT

TULZAPURKAR, J. –

1. These appeals by special leave raise the question : "whether on the facts and in the circumstances of the case the assessee-Council could be taken to be a body intended to advance any object of general public utility falling within Section 2(15) for purposes of Section 11 of the Income Tax Act, 1961 ?"

2. The facts giving rise to the aforesaid question may briefly be stated. The respondent-assessee - Bar Council of Maharashtra - is a body corporate established under the Advocates Act, 1961 (25 of 1961) which came into force on December 28, 1961. During the accounting periods relevant to the assessment years 1962-63, 1963-64 and 1964-65 the assessee derived income from securities (interest) and other income by way of enrolment fees particulars whereof, are as follows :

#Assessment year	Interest on securities	Other income
1962-63	Rs. 3779	Rs. 28,035
1963-64	Rs. 8629	Rs. 3,04,103
1964-65	Rs. 9356	Rs. 96,322##

3. The Income Tax Officer subjected to tax the income from both the sources for all the three years. In appeals preferred to the Appellate Assistant Commissioner it was contended by the assessee that its other income by enrollment fees was exempt under Section 10(23-A) and interest on securities was exempt from tax under Section 11 of the Income Tax Act, 1961. The Appellate Assistant Commissioner negated the exemption claimed under Section 10(23-A) in the absence of the Central Government's notification according approval to the association and with regard to the claim for exception in respect of the interest on securities he held that it was not established that the securities were held on trust for any charitable purpose. He took the view that the main object of the assessee-Council was to benefit the legal profession (its members) and, therefore, the object was not one of the general public utility. Accordingly he confirmed the assessment orders for the three years.

4. The matter was carried in further appeal to the Income Tax Appellate Tribunal and since by that time the Central Government had accorded approval to the assessee for the purpose of Section 10(23-A) by a notification dated August 5, 1966 with effect from December 28, 1961, the tribunal held that the assessee-Council was entitled to exemption under Section 10(23-A) in respect of its income by way of enrolment fees. In regard to the income by way of interest on the securities was not by itself decisive, that safeguarding the rights, privileges and interest of advocates on its roll

could not be said to be an object of general public utility, that the real question to be considered under Section 11 was whether the securities were held for any charitable purpose or not and the tribunal found that there was no evidence or material on record touching this aspect. It, therefore, remanded the case back to the Appellate Assistant Commissioner and directed him to dispose of the case by examining the question as to the purpose for which the securities were held by the assessee-Council. It observed that if the said securities were held for educational purpose or for any other charitable purpose then the exemption under Section 11 would be admissible to the extent available under the law. At the instance of the assessee-Council the question set out at the commencement of this judgment was referred to the High Court for its decision under Section 256(1) of the Act. The High Court took the view that having regard to the obligatory functions enjoined upon a State Bar Council under Section 6 of the Advocates Act the assessee-Council could be regarded as a body constituted for general public utility and that the entire income of the body would be exempt from tax under Section 11 of the Income Tax Act, 1961. In its view the advancement of any object beneficial to the public or a section of the public as distinct from an individual or a group of individuals would be a charitable purpose as defined in Section 2(15) of the Income Tax Act and in this view of the matter the High Court answered the question in the affirmative and against the Revenue. It is this view of the High Court that is being challenged by the Revenue before us in these appeals.

5. In support of the appeals counsel for the Revenue sought to raise two contentions. First, he urged that the relief claimed under Section 11 was ruled out by reason of relief having been obtained by the assessee-Council in respect of its income from enrolment fees under Section 10(23-A) of the Act. According to him Section 10(23-A), while exempting from tax any income of an association or institution established in India having as its object the control, supervision, regulation and encouragement of the profession of law, medicine, accountancy and any other profession as the Central Government may specify, has expressly excluded from exemption such association's or institution's income chargeable under the head "interest on securities" or "income from house properties" or "any income received in rendering any specific service", etc., and, therefore, what has been expressly excluded from exemption under this provision could not be or was not intended to be exempt under Section 11 of the Act. In other words, the assessee-Council's claim for exemption in respect of interest on securities under Section 11 was ruled out by reason of Section 10(23-A) of the Act. Secondly, counsel contended that on merits of the High Court's view that the assessee-Council was a body constituted for advancement of an object of general public utility was erroneous inasmuch as it was a body established principally for the purpose of safeguarding the rights, privileges and interest of the advocates on its roll and since such objective merely served to benefit the members of the profession it was no charitable purpose as defined by Section 2(15) for purposes of Section 11 of the Act. In support of this contention counsel placed reliance on some English decisions.

6. At the outset it may be stated that we were not inclined to permit counsel for the Revenue to urge his first contention as in our view the Revenue must be deemed to have given up the same. We may point out that precisely this very contention was raised by the Revenue before the tribunal and was negatived by it. The tribunal on a detailed analysis of the concerned provisions took the view that the two provisions were not mutually exclusive but operated under different circumstances, that Section 11 was relatively wider in its scope and ambit, that while Section 10(23-A) granted absolute exemption in respect of particular types of income Section 11 imposed certain conditions for the exemption but such exemption was available for all sources and there was nothing inherently improbable or inconceivable about the two provisions operating simultaneously and as such the claim for exemption under Section 11 was available to the assessee-Council provided it satisfied all

the requirements of that provision. We may point out that there are other allied provisions like for instance sub-section (23-C) in Section 10 which clearly indicate that the legislature did not intend to rule out Section 11 when exemption was claimable under such specific provisions of Section 10. It was after negating the contention in this manner that the tribunal went on to consider the claim for exemption made by the assessee-Council under Section 11 but on merits found that there was no material or evidence on record to show whether or not the securities were held by the assessee-Council for any of the charitable purposes and, therefore, it remanded the case. The remand order was never challenged by the Revenue by seeking a reference on the ground that a remand was unnecessary because Section 11 was ruled out by reason of exemption having been obtained by the assessee-Council under Section 10(23-A) of the Act nor was any such contention raised when reference was sought by the assessee-Council nor when the matter was being argued in the High Court. In these circumstances it is clear to us that the Revenue acquiesced in the view taken by the tribunal that the claim for exemption under Section 11 of the Act could not be said to be ruled out by reason of the provisions of Section 10(23-A). We, therefore, proceed to deal with the second contention which was principally argued before us in these appeals.

7. Under Section 11 of the Income Tax Act, 1961, subject to the conditions therein specified, income derived from property held under trust wholly for charitable or religious purposes to the extent to which such income is applied to such purposes in India is exempt from the tax liability under the Act and Section 2(15) gives an inclusive definition of the expression "charitable purpose" thus :

"Charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.

It may be noticed that whereas any object of general public utility was included in the definition of "charitable purpose" in the 1922 Act, the present definition has inserted the restrictive words "not involving the carrying on of any activity for profit" which qualify or govern the last head of charitable purpose. In *C.I.T. v. Andhra Chamber of Commerce* (55 ITR 722 : (1965) 1 SCR 565 : AIR 1965 SC 1281) - a case decided by this Court under the 1922 Act where the restrictive words were absent - this Court laid down that if the primary or dominant purpose of a trust or institution was charitable, any other object which by itself might not be charitable but which was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. After the addition of the restrictive words in the definition in the 1961 Act, this Court in *Addl. C.I.T. v. Surat Art Silk Cloth Manufacturers' Association* ((1980) 2 SCC 31 : 1980 SCC (Tax) 170 : 121 ITR 1) affirmed that the aforesaid test of primary or dominant purpose of a trust or institution still holds good, that the restrictive words qualify "object" and not the advancement or accomplishment thereof and that the true meaning of the restrictive words was that when the purpose of a trust or institution was the advancement of an object of general public utility it was that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit. And applying these tests trading bodies like *Andhra Chamber of Commerce* and *Surat Art Silk Cloth Manufacturers' Association* have been held to be institutions constituted with a view to advance an object of general public utility because their primary or dominant purpose was to promote and protect industry, trade and commerce either generally or in certain commodities, even though some benefit through some of their activities did accrue to their members which was regarded as incidental and this court held that the income derived from diverse sources by these institution (rental income from property in the case of *Andhra Chamber of Commerce* and income from annual subscriptions collected from its members and

commission of a certain percentage of the value of licences for import of foreign yarn and quotas for purchase of indigenous yarn obtained by the assessee from its members in the case of Surat Art Silk Cloth Manufacturers' Association) was exempt from tax liability under Section 11 of the Act. Reliance on English decisions would not be of much avail because the definition of charitable purposes as given in our Act since it embraces 'any other object of general public utility' goes further than the definition of charity to be derived from the English cases. Under English law of charity a trust is charitable only if it is within the spirit and intendment of the Preamble to the Statute of Elizabeth (43 Eliz. ch. 4) and all objects of general public utility are not necessarily charitable, some may or some may not be, depending upon whether they fall within the spirit and intendment of the Statute of Elizabeth. Under our definition every object of general public utility would be charitable subject only to the condition imposed by the restrictive words inserted in the 1961 Act. It is because of this basic difference between Indian Law and English Law of charity that Lord Wright in *All India Spinners' Assn. v. C.I.T.* ((1944) 12 ITR 482 (PC) : AIR 1944 PC 88 : ILR 1945 Bom 153) uttered a warning against blind adherence to English decisions on the subject thus :

The Indian Act gives a clear and succinct definition which must be construed according to its actual language and meaning. English decisions have no binding authority on its construction and though they may sometimes afford help or guidance, cannot relieve the Indian Courts from their responsibility of applying the language of the Act to the particular circumstances that emerge under conditions of Indian life.

8. Having regard to the aforesaid manner in which the definition of "charitable purpose" given in Section 2(15) has been interpreted by this Court the question that arises for consideration in these appeals is whether the securities, interest from which is sought to be exempted from tax liability, were held by the assessee-Council on trust wholly for a charitable purpose, namely, for the advancement of an object of general public utility ? Admittedly the assessee-Council is not indulging in any activity for profit and hence the aspect of considering the applicability of the restrictive words does not arise and the answer to the question must depend upon the nature or character of the functions and activities which the assessee-Council can undertake under the Advocates Act, 1961, for it is clear that it cannot go beyond what is prescribed by that Act.

9. The Preamble of the Advocates Act, 1961 shows that it was enacted with a view to amend consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All India Bar. Under Section 3 of the Act Bar Councils are constituted for various States and the assessee-Council happens to be a State Bar Council for Maharashtra. Section 5 provides that every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property both moveable and immovable and to contract, and may by the name by which it is known to sue or be sued. Section 66 is the material provision which sets out both obligatory as well as optional functions of every State Bar Council and so far as is material runs thus :

6. (1) The function of a State Bar Council shall be -

- (a) to admit persons as advocates on its roll;
- (b) to prepare and maintain such roll;
- (c) to entertain and determine cases of misconduct against advocates on its roll;

- (d) to safeguard the rights, privileges and interests of advocates on its roll;
 - (e) to promote and support law reform;
 - (ee) to conduct seminars and organise talks on legal topics by eminent jurist and publish journals and papers of legal interest;
 - (eee) to organise legal aid to the poor in the prescribed manner;
 - (f) to manage and invest the funds of the Bar Council;
 - (g) to provide for the election of its members;
 - (h) to perform all other functions conferred on it by or under this Act;
 - (i) to do all other things necessary for discharging the aforesaid functions.
- (2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of -
- (a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;
 - (b) giving legal aid or advice in accordance with the rules made in this behalf.

Section 9, 9-A and 10 of the Act provide for the constitution of various committees for the purpose mentioned therein. Section 15 confers power on the Bar Council to make rules to carry out the purposes of chapter II. The rest of the provision of the Act are not material for the purpose of the issue under consideration.

10. Counsel for the Revenue contended that the primary object or purpose with which the bar Council of a State is constituted is to benefit the members of the legal profession inasmuch as under Section 6(1)(d) it is an obligatory function of the State Bar Council to safeguard the right, privileges and interests of the advocates on its roll and that other functions like promotion of law reform, conducting law seminars etc. are incidental objects and the benefit to the public is remote or indirect or incidental and, therefore, the assessee-Council could not be regarded as a body intended to advance the object of general public utility. It is impossible to accept this contention. It is clear that sub-section (1) lays down the obligatory functions while sub-section (2) indicates what are the optional or discretionary functions that could be undertaken by the State Bar Council and from amongst the obligatory functions it will be wrong to pick out one and say it is the primary or dominant object or purpose. All the clauses of sub-section (1) will have to be considered in light of the main objective sought to be achieved as indicated in the Preamble. The functions mentioned in clauses (a) and (b) of sub-section (1), namely, to admit persons as advocates on its roll and to prepare and maintain such roll, are clearly regulatory in character intended to ensure that persons with requisite qualifications who are fit and otherwise proper to be advocates are available for being engaged by the litigating public; the function prescribed in clause (c) has been enjoined upon avowedly with the objective of protecting the litigating public from unscrupulous professionals by taking them to task for any misconduct on their part; it is also one of the obligatory functions of a State Bar Council to promote and support measures for law reform as also to conduct law seminars and organise talks on legal topics by eminent jurists, obviously with a view to educate the general

public; the function prescribed by clause (eee) is obviously charitable in nature, the same being to organise legal aid to the poor. Amongst these various obligatory functions one under clause (d) is to safeguard the rights, privileges and interest of the advocates on its roll and it is difficult to regard it as a primary or dominant function or purpose for which the body is constituted. Even this function apart from securing speedy discharge of obligations by the litigants to the lawyers ensures maintenance of high professional standards and independence of the Bar which are necessary in the performance of their duties to the Society. In other words, the dominant purpose of a State Bar Council as reflected by the various obligatory functions is to ensure quality service of competent lawyers to the litigating public, to spread legal literacy, promote law reforms and provide legal assistance to the poor while the benefit accruing to the lawyer-members is incidental. It is true that sub-section (2) provides that a State Bar Council may constitute one or more funds for the purpose of giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates; but it is an optional or discretionary function to be undertaken by the Council. Apart from that, admittedly the assessee Council has not so far constituted any such fund for the purpose specified in the instant case. As and when such a fund is constituted a question may arise for consideration and the court may have to decide whether the function so undertaken by a State Bar Council has become the dominant purpose for which that Council is operating. Having regard to the Preamble of the Act and the nature of the various obligatory functions including the one under clause (d) enjoined upon every State Bar Council under Section 6(1) of the Act, it is clear that the primary or dominant purpose of an institution like the assessee-Council is the advancement of the object of general public utility within the meaning of Section 2(15) of the Act, and as such the income from securities held by the assessee-Council would be exempt from any tax liability under Section 11 of the Act.

11. Having come to the aforesaid conclusion on applying the language of our Act of the nature of functions undertaken by a State Bar Council under the Advocates Act, 1961 it is truly unnecessary to deal with the English decisions cited during the course of arguments. However, we might indicate that in two cases (Royal College of Surgeons case (Royal College of Surgeons of England v. I.R.C., 4 TC 344 (CA) : 3 TC 173) and the General Medical Council case (General Medical Council v. I.R.C., 13 TC 819 (CA) : 97 LJKB 578)) on an analysis of the functions undertaken by the two concerned institutions under the statutes and charters governing them the court came to the conclusion that the institutions were not constituted for charitable purpose but they were more of professional institutions, the approach being to find out whether the objects satisfied the limited concept of charity within the spirit and intendment of the Statute of Elizabeth. In the other two cases (Yorkshire Agricultural Society case (I.R.C. v. Yorkshire Agricultural Society, 13 TC 58 : (1928) 1 KB 611 : 44 TLR 59 : 47 TLR 466) and Institution of Civil Engineers case (Institution of Civil Engineers v. I.R.C., 16 TC 158 (CA) : (1932) 1 KB 149)) the court took the view that both the institutions were constituted for the charitable purposes entitled the exemption under Section 37(1)(b) of the Income Tax Act, 1918, and the benefits accruing to the members were regarded as incidental.

12. In the result we are of the opinion that the High Court was right in answering the question in the affirmative and in favour of the assessee. The appeals are accordingly dismissed with no order as to costs.

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