

ANDHRA PRADESH HIGH COURT

Hyderabad Stock Exchange Ltd

Vs.

Commissioner of Income-tax

Case Referred No. 84 of 1963

(P. Jaganmohan Reddy, C.J. and Venkatesam, J.)

09.11.1966

JUDGMENT

P. Jaganmohan Reddy, C.J.

1. The question that has been referred to us by the Income-tax Appellate Tribunal is as follows :-

"Whether on the facts and in the circumstances of the case, the assessee company was entitled to exemption of the sum of Rs. 8,937 under Section 4 (3) (i) of the Indian Income-tax Act."

The assessee is a stock exchange company, limited by guarantee and registered under Section 26 of the Hyderabad Companies Act (Act 4 of 1320 F.), which corresponds to Section 26 of the Indian Companies Act (Act 3 of 1913).

2. The assessment year with reference to which this question has been postulated is 1961-62 for which the accounting year is the financial year ending 31-3-1961. The company has been assessed to income-tax from 1952-53 onwards. In all the years up to 1960-61, it filed returns of income showing therein the income from interest on securities and it was accordingly assessed. In connection with its assessments for the years 1953-54, 1954-55, 1955-56 and 1956-57, it made a claim that its income was exempt under the provisions of Section 4 (3) (i) of the Act, which claim was not accepted by the Income-tax Officer or the Appellate Assistant Commissioner or the Tribunal in appeals. Thereafter until the assessment year 1960-61, the income continued to be returned and assessed. For the accounting year ended 31-3-1961 relevant for the assessment year 1961-62, the company's income and expenditure account showed a net income of Rs. 6,764. In response to a notice under Section 22 (2), the company filed a return declaring an income of Rs. 8,896 made up of two items, namely, Rs. 6,092.78 being interest on securities and Rs. 2,803.51 being dividends from other sources.

3. During the course of the assessment proceedings, a claim was again put forward by the company that the income shown in the return was exempt under the provisions of Section 4 (3)

(i) of the Act, and was, therefore, not liable to tax. It relied on a decision of the Madras High Court in the case of *Andhra Chamber of Commerce v. Commissioner of Income-tax*¹, But the Income-tax Officer rejected this claim on the ground that a similar claim had been disallowed in the earlier years, and this was approved by the Appellate Assistant Commissioner as well as the Tribunal.

4. On appeal, the Appellate Assistant Commissioner agreed with the assessee that the decision of the Madras High Court referred to above is on all fours with the facts of the case before him and held that in respect of its income, the Exchange must be held to be under a legal obligation to spend it wholly or accumulate for an object of general public utility and since it is held for charitable purposes it is exempt under Section 4 (3) (i) of the Act.

5. In appeal, the Tribunal examined the provisions of Section 4 (3) (i) as also the definition of "charitable purpose" as given in the Explanation at the end of the section, and held that in order to qualify for exemption, the assessee should satisfy the following conditions :-

- "(i) The property should be held under trust or other obligation;
- (ii) It should be held for charitable purposes, i. e., for advancement of any object of general public utility; and
- (iii) The income should be applied or accumulated for application to such charitable purposes."

It was found that condition (i) was satisfied and that condition (iii) would also be satisfied, if it satisfied the condition regarding "charitable purpose", i.e., whether it was established for the advancement of any object of general public utility. After examining the objects of the Andhra Chamber of Commerce as mentioned in the decision of the Madras High Court referred to earlier and the objects of the assessee company as mentioned in Clause III (i) of Memorandum of Association, it came to the conclusion that the main objects of the Chamber of Commerce and of the assessee company were different. This is what the Tribunal has stated :

"Whereas in the case of the Chamber of Commerce the aim was to promote and protect trade, commerce and industries of India in the province of Madras and in particular in the Andhra country, in the case of the assessee, it was to support and protect the character and status of brokers and dealers and to further the interest both of brokers and dealers and the public interested in securities, etc. It seems to us to be too far-fetched to say that the object of the Stock Exchange was to facilitate the participation of the public in joint stock companies. The activities of a Stock Exchange are well known. It provides a meeting place for the brokers and dealers to transact their business in shares and securities. The public comes into the picture only in an indirect manner in so far as the dealers and brokers have in turn to deal with the public."

The Tribunal, therefore, came to the conclusion that the services rendered by the Stock Exchange were primarily for the benefit of the exclusive set of members and that it was only indirectly that the public was benefited; such indirect benefit of the public would not satisfy the requirements of

Section 4 (3) (i), which refers to "property held under trust or
¹1961-42 ITR 503 (Mad)
other legal obligation wholly for religious or charitable purposes".

6. We are unable to accept the view of the Tribunal or that of the Income-tax Officer that Stock Exchanges are only meant for the benefit of the brokers. This view which, in our opinion, is too narrow, does not really appreciate the significance or purpose of such bodies. As Mr. W. T. C. King, the well-known author on Economics, has said, "without the stock exchange, the savings of the community - the sinews of economic progress and productive efficiency - would be used much less completely, and much more wastefully, than they are now". In a modern complex society, particularly in a country like ours which is fast trying to be industrialized, the need for stock exchanges which provide business and industry attracting investors and providing employment to millions in such industries cannot be over-emphasized. As we have seen, the Memorandum of Association itself shows that the object of the Exchange is not only to further the interests both of the brokers and dealers but also of the public interested in securities, to assist, regulate and control the trade or business in securities, to maintain high standards of commercial honor and integrity, to promote and inculcate honorable practices and just and equitable principles of trade and business, to discourage and to suppress malpractices, to settle disputes and to decide all questions of usage, custom or courtesy in the conduct of trade and business. The profits which this Exchange earns are not to be distributed between the members but are to be utilized for the public as provided in Cl. V (b) of the Memorandum of Association. It provides as follows :-

"The property, capital and income of the Exchange whensoever derived shall be applied solely towards the promotion of the objects of the Exchange and no portion thereof shall be paid by way of bonus or otherwise to the members; in case of dissolution or winding up, any property or assets which remain after satisfying all the debts and liabilities of the Exchange, including the deposits of members, and after returning to the members the face value of their card fee, shall be devoted to any activity having the same or similar objects as Exchange or be distributed in charity as may be determined by the Exchange and in the event of their failure to do so by the High Court of Judicature."

There could be little doubt from what we have said above that the object of the Stock Exchange is not only to serve a general public utility but has also a charitable purpose. In a recent decision of the Supreme Court in *Commissioner of Income-tax, Madras v. Andhra Chamber of Commerce, Madras*², Shah, J., delivering the judgment of their Lordships, held that the advancement or promotion of trade, commerce and industry leading to economic prosperity enured for the benefit of the entire community and that prosperity would be shared also by those who are engaged in trade, commerce and industry but on that account the purpose was not rendered anyhow an object of general public utility. It was further held that the Legislature had used language of great amplitude in defining "charitable purpose" and the definition was inclusive and not exhaustive or exclusive. It was also held that the expression "object of general public utility" was not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of the public was an object of general public utility. To serve as a charitable purpose, it was not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country or province. It was sufficient if

²1965-55 ITR 722

the intention was to benefit a section of the public as distinguished from specified individuals. The section of community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature; where there was no common quality uniting the potential beneficiaries into a class, it might not be regarded as valid. Applying this test to the aims and objects of the Stock Exchange, the assessee not only serves a general public utility but also has a charitable purpose. It is unnecessary to further examine all the cases that have been referred to in the above judgment of the Supreme Court in the view we have taken, namely, that the assessee satisfies the conditions for exemption under Section 4 (3) (i) of the Indian Income-tax Act.

7. Our answer to the question is, therefore, in the affirmative and in favour of the assessee with costs. Advocate's fee Rs. 250

Answered accordingly.