

# CALCUTTA HIGH COURT

Cricket Association of Bengal

Vs.

Commissioner of Income-tax

Income-tax Ref. No. 61 of 1954

(P. Chakravartti, C.J. and B.K. Guha, J.)

19.09.1958

## JUDGMENT

### **P. Chakravartti, C.J.**

1. This is a Reference under Section 66(2) of the Income-tax Act made by the Income-tax Appellate Tribunal at the direction of this Court of two questions of law arising out of three assessments of the Cricket Association of Bengal. The question referred is practically a single question, but it has split up into two separate questions, because by the time of the assessment for the third year, the law had been slightly changed.

2. The Cricket Association of Bengal is an unregistered and unincorporated body. Its membership is open to clubs, District Associations, Universities, Indian States and, subject to certain conditions, individuals. There is no trust deed or other document vesting any property in the Association for any purpose connected with its activities. Its objects are set out in Rule 4 of its Rules under 13 heads, but they may be roughly summarized as promotion of the game of cricket played in accordance with the highest standard, though there are certain subsidiary objects which will not be covered by such a summary. As between its members, it is a mutual association and receives payments by way of subscriptions and donations. The surplus of its receipts from those sources over the expenses has not been sought to be assessed, because the Department concedes that such surplus is not chargeable to tax. The Association, however, had other receipts as well from a totally different source. One of its objects is to organize, authorize or control cricket tournaments and leagues. It appears that during the accounting year relative to the assessment year 1950-51, it organized matches between a team from the West Indies and Indian teams and also held what are known as the Ranji Trophy Matches. In the accounting year relative to the assessment year 1951-52, it organized matches between Commonwealth teams and, as in the previous year organized the Ranji Trophy Matches. In the accounting year relative to the assessment year 1952-53, it again organized matches between Commonwealth teams and the Ranji Trophy Matches, but it also organized a School Tournament at Dehra Dun. For admission to all these matches it charged the public a fee by way of gate money. The receipts from this source were fairly considerable, but when the Department called for a return of its income, the Association did not show this income, but, on the other hand, showed its income as nil. The point

it took was that its income was exempt from taxation under Sections 4(3)(i) and 4(3)(i)(a) and so far as the third year is concerned, under tion 4(3)(i) of the Income-tax Act because, as was pleaded, the income had arisen from property held under a legal obligation to be applied to the promotion of cricket which was a charitable purpose.

3. The Income-tax Officer did not accept the assessee's plea of exemption. He held that the object of the Association being merely the promotion of a game, it could not be said that the Association was pursuing a charitable object and further that even assuming that promotion of cricket could be regarded as a charitable purpose, the rules showed that the Association's activities could take other directions as well. Accordingly, the Income-tax Officer assessed the receipts from the exhibition matches after allowing certain deductions. On appeal, the Appellate Assistant Commissioner agreed with the Income-tax Officer that the professed object pursued by the Association was not a charitable object and he held further that the income concerned did not arise from any property held under a trust or other legal obligation. The assessee next appealed to the Tribunal which upheld the authorities below on all the points. It was held that the income assessed had not been derived from any property held on trust, because there was no property at all out of which the income could be said to have arisen, nor was there any trust. The Tribunal held further that even assuming that the business of holding exhibition matches was property and assuming further that the Association was under a legal obligation not to spend its income otherwise than for the advancement of the game of cricket, its claim was still bound to fail, because advancement of the game of cricket could not be said to be a charitable purpose. This decision was supported by reference to a number of decided cases, mostly of English Courts.

4. The Association then asked the Tribunal to refer the matter to this Court, but the Tribunal declined to do so. Thereafter, on an application made under Section 66(2) of the Act, this Court directed the Tribunal to state a case and refer the question which had been suggested by the Commissioner of Income-tax in his reply to the rule issued to him under Section 66(2) of the Act. Only, the question was split up into two questions in view of the fact that prime to the year 1952-53, Section 4(3)(i) had been amended.

5. The two questions referred are the following :

(1) For the assessment years 1950-51 and 1951-52 :

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the Applicant-Association was not entitled to the exemption conferred by Section 4(3)(i) and Section 4(3)(i)(a) of the Indian Income-tax Act, 1922, as it stood before its amendment in 1953 ?"

(2) For the assessment year 1952-53 :

Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the Applicant-Association was not entitled to the exemption conferred by Section 4(3)(i) of the Indian Income-tax Act, 1922, as amended in 1953 ?"

6. I shall take up first the question relating to the assessment year 1950-51 and 1951-52. The exemption is claimed under Sections 4(3)(i) and 4(3)(i)(a) of the Act. The first section relied upon exempts from tax

"any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto."

The second provision relied upon exempts from tax

"Any income derived from business carried on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and -

(a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(b) the work in connection with the business is mainly carried on by beneficiaries of the institution."

7. The first requisite of section 4(3)(i) is that the income should be derived from property and that such property must be held under trust or other legal obligation wholly for charitable purposes. I have already stated that there is no trust. There are, however, a set of rules which define the object of the Association, but those rules do not specifically say or say anything at all as to how the income of the Association is to be applied. If any legal obligation is to be spelt out from the rules, it can be done only by assuming that the Association will not be entitled to spend its income for any purpose other than the purposes set out as its objects. Section 4(3)(i), however, does not say anything about the application of the income with respect to cases where properties are held wholly for charitable purposes, but what it requires is that the property itself must be held for such purposes, either under a trust or under other legal obligation. This at once raises a question as to whether any property was held by the Association at all or, to be more precise, whether the income in question was derived from property.

8. Before I proceed further, it will be useful to state a few more facts. It has been found by the Tribunal that the activities which produced the income in question consisted solely in arranging certain cricket matches and charging the public with a fee for admission to them as spectators. The majority of the players who took part in those games were not members of either the Assessee Association or of the bodies affiliated to it, though on occasions one or two players who were members of those bodies played. The receipts which constitute the income in question came entirely from the members of the public who came to witness the games.

9. If the income in question was derived from the fees charged for admission to the games held under the auspices of the Association, it is difficult to see how it was derived from any property. The assessee relied upon the decision of the Privy Council in the case of *All India Spinners' Association, Mirzapur v. Commissioner of Income-tax : Bombay Presidency, Sind and Baluchistan*<sup>1</sup>, and contended that the property contemplated by Section 4(3)(i) was not physical property alone, but an organisation or undertaking could also be property. The Privy Council in the case cited did not lay down any general proposition, but what they held was that the organisation and the undertaking of the Spinners' Association as well as the fluctuating stock of yam and cloth with which it dealt

<sup>1</sup>71 Ind App 159 : (AIR 1944 PC 88)

might well be taken as constituting the property from which the income was derived. This observation was made with reference to a very different state of facts. The Spinners' Association had a Board of Trustees in which its executive control was vested and which held its funds and assets for the purposes of the Association. The activities of the Association lay in acquiring raw cotton, giving it out to people to be spun into yarn and then after the yarn had been spun, to pass it on to other people for hand-weaving into cloth and then to sell the cloth to the public at a price computed on the basis of the cost and a small addition by way of shop and overhead charges. There were thus clearly a body of people, working out a plan through divers agencies and doing so on a permanent basis and in those circumstances an organization might well be found to exist. It is difficult to see, however, how arrangements made for holding a few cricket matches in the course of the year can be said to constitute an organization amounting to property. There was nothing tangible at all like the stock and good-will of the press and newspapers, as in the case of *Trustees of the Tribune Press, Lahore v. Commissioner of Income-tax, Punjab*<sup>2</sup>, nor any stock of yarn and cloth and a system for the regular production of cloth and yarn as in the case of the All India Spinners' Association. If the members of a body merely get together certain teams for playing some games of cricket or some other game in the course of the year or every year, I find it difficult to say that they maintain an organization and if they hold exhibition matches to which the public are admitted on payment and derive an income from the payments so made, I find it equally difficult to hold that it is an organization which yields the income.

10. Assuming, however, in the assessee's favor that there was an organization and that it constituted property, the next question is whether it was held under a legal obligation for a charitable purpose. It was contended that the legal obligation arose out of the rules because, since the rules defined the objects of the Association and those objects were charitable objects, a binding obligation rested on the Association to hold its organization of arranging for exhibition matches only for the objects set out in the rules and therefore for a charitable purpose. There appear to me two difficulties in the way of accepting the assessee's contention in this regard. It is true that in the *Shinners' Association* case, 71 Ind App 159 : (AIR 1944 PC 88), the Privy Council held that any departure from the rules of the Association would be a breach of trust which the Court could restrain and that even if there was no trust in the case, there was a legal obligation. There was, however, a trust in that case and the Judicial Committee held it to be a valid trust, although there was no formal deed and it could, therefore, appropriately be said that an obligation existed to keep to the objects of the trust. In the present case, there is no trust and the legal obligation, if any, can arise only out of the binding character of the rules, if they be binding. I concede that the rules may be binding on the members inter se, but, as I have already pointed out, except that some objects are set out in the rules, they do not compel the Association to apply its assets or income to those objects or to any particular purpose. There is also the further difficulty in the assessee's way that even among the objects, there are some which cannot possibly be called charitable objects and, therefore, even if it be correct to say that there is a legal obligation to hold property for the purposes set out in the rules, the property will not be held wholly for charitable purposes because all the purposes are not charitable. This, however, bears upon the third find the more important point in the case to which I shall have to advert later.

<sup>2</sup>66 Ind App 241 : (AIR 1939 PC 208)

11. Assuming, however, that there is not only property but also property held under a legal obligation, the next question is whether it was held wholly for charitable purposes. To satisfy this part of the requirement of the section, it is necessary that the purposes should be all charitable and that the property should be held for those purposes alone and for none other. I may point out

that it is nobody's case that any property was held by the Association for charitable purposes only in part. The points which arise now, therefore, are whether promotion of the game of cricket is a charitable purpose and secondly, whether the rules contain among the objects of the Association only that purpose or other purposes as well. The objects of the Association have been set out in extenso in the order of the Appellate Assistant Commissioner. We have also been provided with, a copy of the printed rules. The general object is said to be to advance and safeguard the interests of the game of cricket played in accordance with the rules and regulation of the M.C.C. and to do all such acts and things from time to time as shall be deemed expedient for or in connection with the game. Then follow 13 illustrations of acts and things which it will be the duty of the Association to do. Among them are arrangement for and regulation of representative matches by teams representing the Association, encouragement of the formation of clubs and District Associations and promotion and contribution to enterprises conducted by individuals or associations in conformity with the objects set out and maintenance of a panel of approved umpires. I have only taken those clauses which mention some concrete activity relating to the promotion of the game of cricket. It will be noticed that these activities have no reference to anything to be done for the public, nor is there any provision for training in the game of cricket. All that the activities are to consist in is sending out by the Association of its own teams to play games or arranging for matches or the formation of other supervisory bodies and assistance to third parties. Apart from the question as to whether the promotion of a game can in any circumstances be a charitable purpose, it appears to me that the rules of the Association do not provide for any service to the public in connection with the game of cricket except that an incidental benefit to the public may be that occasional opportunities will be provided to them to witness some matches on payment. If in order to constitute a charitable purpose some public benefit is essential, the only benefit to the public that one can see is a chance now and then of some entertainment in the form of witnessing cricket games or it may be some opportunity for having a visual demonstration of finer types of play, although this will interest only those who can play the game or understand it. Strictly speaking, there is no assurance in the rules for even this incidental benefit to the public, because the rules do not require the Association to admit the public to the matches arranged for by it, which it may as well not do.

12. The question we have to consider is whether promotion of cricket as a general purpose or more particularly promotion of cricket in the form in which the Association professes to promote it can at all be a charitable purpose. In England, it has repeatedly been held that no gift or bequest made merely for the promotion of some game or pastime can be called a gift or bequest for a charitable purpose. An exception is to be found with respect to cases where provision is made for training in a game as a part of the education of youth. In those cases, the gift or bequest is regarded as charitable on the ground that it advances the cause of education. As instances of gifts or bequests for such purposes, I may refer to the case of *In re, Mariette : Mariette v. Governing Body of Aldenham School*<sup>3</sup>, where a bequest was made to the Governing Body of a school for the purpose of

<sup>3</sup>(1915) 2 Ch. 284

building some squash racket courts and a further bequest was made to the Head Master for the time being upon trust to use the interest for providing a prize for some event in the school athletic sports every year. This bequest was upheld as charitable, because it was considered essential in a school of learning that there should be organized games as a part of the daily routine in order that the boys might not be left to themselves and that their bodily welfare might be promoted. Another instance is the case of *Dupree's Deed Trusts, In re, Daley v. Lloyds Bank, Ltd.*<sup>4</sup>, where a

deed of gift expressed to be for the encouragement of chess playing by holding an annual chess tournament limited to boys and young-men under the age of 21 years resident in a particular area, was held to be a good gift for a charitable purpose. It appears that Vaisey, J. who decided the case had to struggle a good deal against his own inclinations in order to arrive at the conclusion which he ultimately reached, but he said that in view of the evidence before him that chess was included in the school curriculum and that according to the experience of the members of the teaching profession the game promoted concentration, self-reliance and reasoning, he would not condemn the gift as bad. The learned Judge, however, expressed the difficulty he felt in the following words :

"One feels perhaps that one is on rather a slippery slope. If chess, why not draughts ? if draughts, why not bezique? and so on, through to bridge, whist and by another route, stamp collecting and the acquisition of birds' eggs ?"

I need not, however, deal with this class of cases, because the gifts in them were not merely for the promotion of some game or sports, but they were for training of youth in some game of skill or in athletic sports as a part of their education. Where, however, a gift or bequest has been made solely for the promotion of a game or pastime, it has always been struck down as not charitable. To take the case of *In re : Nottage : Jones v. Palmer*<sup>5</sup>, which is so often cited, the four Judges who decided it, one in the High Court and three in the Court of Appeal, all held that a bequest for the encouragement of yacht racing, although it might be beneficial to the public, could not be upheld as charitable, because it was a bequest for the encouragement of a mere sport. Lindley, L.J. in the Court of Appeal made an observation in the course of his judgment which is peculiarly appropriate to the present case, since it mentions encouragement of the game of cricket :

"Now, I should say", observed the learned Judge, "that every healthy sport is good for the nation - cricket, football, fencing, yachting, or any other healthy exercise and recreation; but if it had been the idea of lawyers that a gift for the encouragement of such exercises is therefore charitable, we should have heard of it before now."

It will be noticed that the learned Lord Justice included cricket among the games in the illustrations he gave. The case was decided in 1895 and it may be said that ideas have since changed and that cricket has grown so much in popularity and the general public have come to be associated so much with the game that the observations made so long ago are no longer valid. Any such contention must be overruled because even the recentmost cases have not expressed any dissent from the view taken in the Nottage case (1895-2 Ch. 649). It has often been cited and very recently it was cited in the case of

<sup>4</sup>(1945) 114 LJ Ch 1

<sup>5</sup>(1895) 2 Ch. 649

*Baddeley v. Inland Revenue Commissioners*<sup>6</sup>, in the Court of Appeal and in the same case, *Baddeley v. Inland Revenue Commrs*<sup>7</sup>., in the House of Lords. "In re Nottage, 1895-2 Ch 649 was cited for the proposition" observed Jenkins L.J. in the Court of Appeal.

"that the encouragement of mere sport is not a charitable purpose. With regard to this authority, I need only say that in my view, neither of the trust here in question is a trust for the encouragement of mere sport".

It is noticeable that the learned Lord Justice did not dissent from the decision cited before him. A more elaborate reference to the case was made in the House of Lords and among the other Lords, Lord Reid made comments on it. Referring to the view taken in the Court of Appeal of the Nottage case, 1895-2 Ch 649, Lord Reid observed as follows :

"In re Nottage, 1895-2 Ch 649 is clearly distinguishable ; money was bequeathed to provide annually a cup for yacht racing, so the only possible beneficiaries were yacht owners who would be somewhat strange objects of charity. But what the appellants found on is the reasoning in the Court of Appeal to the effect that encouragement of a mere sport or game is not charitable though the sport or game may be beneficial to the public. No doubt that is true in the main, but it cannot apply to the provision or support of playing fields: yacht racing is far removed from the kind of recreation which Parliament has declared to be charitable and a charitable purpose such as education may well be achieved in part at least by promoting sport or games. The emphasis is on mere sport or games and I cannot suppose that any of the learned Judges had in mind the Acts of Parliament dealing with recreation or would have denied that the encouragement of games, as a means to achieve a charitable purpose for those who took part in them, was quite a different matter."

It will thus be seen that while promotion of games as a part of the education of those who participate in them may be a charitable purpose, the promotion of the practice of a game in general either for the entertainment of the public or for an advancement of the game itself has never been held to be charitable. So far as cricket is concerned, I shall content myself with citing only one other case, *In re Patten, Westminster Bank, Limited v. Carlyon*<sup>8</sup>, A trust was created for the benefit of the Sussex County Cricket Club and in order to bring the trust within the statute of Elizabeth, it was said that the trust was "for the supportation aid and help of young tradesmen handicraftsmen and persons decayed". Really, however, it was a trust for the promotion of cricket among boys of the working and lower middle classes who might not be well off financially. Romer, J. who decided the case said that it might be that with the aid of the assistance provided from this trust, some boys would be enable to embark upon life as professional cricketers, but he continued to say : "It is, I think, reasonably clear that the object of the fund is the encouragement of the game of cricket and nothing else and it has been held by authorities that are binding upon me that such a bequest is not charitable." He then proceeded to refer to the case of *In re Nottage*<sup>9</sup>, as laying down the proposition to which he was giving effect.

<sup>6</sup>(1953) 1 Ch 504

<sup>8</sup>1929-2 Ch. 276

<sup>7</sup>(1955) AC 572

<sup>9</sup>1895-2 Ch 649

13. I do not think I should multiply citations in order to illustrate the point that a gift or bequest merely for the promotion of a game has never been considered charitable : Clifford, *In re : Mallam v. McFie*<sup>10</sup>, was a case of angling; Trustees; of *Warnher's Charitable Trust v. Commissioners of Inland Revenue*<sup>11</sup>, a case of playing fields. *Scottish Flying Club Ltd, v. Commissioners of Inland Revenue*<sup>12</sup>, a case of an Aviation Club which held aerial pageants and charged fees for admission to the display and *Inland Revenue Commissioners v. City of Glasgow Police Athletic Association*<sup>13</sup>, a case of athletic sports of a police club. It is true that some of the

decisions ultimately turned on the point that the beneficiary was not the public or a section of it, as understood in law, but incidentally observations were made in all of them as regards when promotion of a game can be a charitable purpose and when it cannot be.

14. The facts of the present case are that the assessee Association merely held certain demonstration or exhibition matches. It does not provide any training in the game of cricket to novices or any advanced training for persons who are already practised players. Its activities outside the holding of the exhibition matches is limited entirely to its own members. The only contact it has with the public is by way of having them as spectators, on payment of a fee, of matches arranged by it. I find it impossible to hold that any benefit or entertainment which is thus paid for and which is availed of by only such members of the public as can or wish to pay for it can in any sense be a purpose of a charity. It is true that charity in the income-tax sense need not have any eleemosynary element in it and that an object of general public utility is under the income-tax law a charitable object. Indeed, if the objects professed by the Association are to be treated as charitable objects at all, they can be so treated only if they can be regarded as objects of general public utility. I find it impossible to hold that there is any general public utility, so as to amount to a charity, in arranging for cricket matches which the public can see on payment. How untenable must be a contention that such an object is an object of general public utility and, therefore, must be held to be charitable will appear if one considers certain parallel cases. Suppose a body of men bind themselves together into a club and collect annually some musicians from all parts of the country to give demonstrations for a number of days and suppose the public are admitted to such demonstrations on payment of a fee. If the contention of the Association in the present case is to be accepted, it must equally be held that the body of men in the hypothetical case I have mentioned who derive a large income by selling admission to the musical demonstrations organized by them, are also exercising themselves for a charitable purpose and that their earnings must be equally exempt from tax.

15. It was contended that the game of cricket had a place of its own among games and that it inculcated a spirit of fairness and an honorable conduct to such an extent that the term 'cricket' had come to be a synonym for fairness and honor. That may be so, but I am unable to understand how fairness and honor can be inculcated by the game of cricket in any person other than those who actually take part in it. In the present case, we are not concerned with the players who play at the matches arranged by the Association, for they are members of the visiting teams or it might be local teams, but so far as the Association is concerned they are mostly outsiders. The Association is claiming to be advancing a charitable purpose only by providing an opportunity to the public to witness the games

<sup>10</sup>(1911) 81 LJ Ch 220

<sup>12</sup>(1936) 20 Tax Cas 1

<sup>11</sup>(1937) 21 Tax Cas 137

<sup>13</sup>1953 AC 380

arranged by it. It can by no means be said that any spirit of fairness and honour is inculcated in the spectators of a game of cricket or perhaps any other game, played not by individuals but by teams. Indeed, there is a school of opinion, now growing in volume, which thinks that games played by rival teams drawn from different parts of the country or different countries and witnessed by multitudes do not serve any beneficial purpose, but, on the other hand cause a deterioration of the mind by fostering fanatical partisanship or generating mass hatreds. This, however, is a matter of opinion. Whether this extreme view is right or wrong, I find it impossible to hold that any benefit of a public character is conferred on the society or a section of it merely by the arrangement of exhibition games of cricket or tournaments and the admission of the public

thereto for a fee, on the basis of which the purpose of arranging for such matches can be said to be a charitable purpose.

16. There is another ground too upon which the Association's claim must fail. I have already hinted at it, but will now point it out specifically. Among the objects set out in the Rules is one which authorizes the Association to carry out any other business or activity which may seem to the Association capable of being carried on in connection with the above. Section 4(3)(i)(a) and (b) of the Act which I have already read contemplate either a business carried on in the course of the carrying out of a primary purpose of the Association or a business, the work in connection with which is mainly carried on by the beneficiaries. There is no question of the business of playing cricket here being carried on by the beneficiaries of the Association, because the games are mainly played by outsiders. But the authority which the rules confer on the Association to carry out any other business "in connection with the above," that is to say, in connection with the promotion of the objects set out earlier, does not seem to me to come within the terms of Section 4(3)(i)(a) which requires the business to be carried on in the course of carrying out one of the primary purposes of the Association. If so, it appears to me that even assuming that there is a property and even assuming that the purpose of promoting the game of cricket is a charitable purpose, the property is here held not wholly for that purpose but it is held for other purposes as well.

17. The above disposes of the question relating to the years 1950-51 and 1951-52. The position with regard to the year 1952-53 is far worse for the assessee. By that time, Section 4(3) of the Act had been amended and the new Section 4(3)(i), substituted for old clauses (i) and (ia), reads as follows : I am reading only a part.

"Subject to the provisions of clause (c) of Sub-Section (1) of Section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto."

There is then a proviso which I need not read. It will appear that in addition to requiring that the income must be derived from property held under trust or other legal obligation wholly for a charitable purpose, the new section provides that a claim of exemption from tax can be made only with respect to so much of the income as is applied or accumulated for application to charitable purposes. I am leaving out religious purposes which are not relevant here. There is no evidence here at all as to the application of the income or of the purpose to which it was applied. Whether it was accumulated or not, one does not know, nor even if it was accumulated whether it was accumulated only for the purpose of the promotion of the game or whether it has been diverted to any other purpose. These are questions of fact which remain undetermined and as to which the assessee furnished no evidence. The assessee does not seem to have paid any regard to the new section at all and did not provide the material on which a decision could be come to in its favour, even if the other points were decided favourably to it. Indeed, so far as the facts are concerned the case is singularly bare with respect to all the three years and the assessee seems to have relied solely on the objects professed by it. About what it was actually doing besides

holding the exhibition matches and tournaments there is no statement or evidence at all.

18. For the reasons given above, the answers to the questions referred must, in my opinion be as follows :

Question (1) : Yes.

Question (2): Yes.

19. The Commissioner of Income-tax will have his costs of this Reference.

**B. K. Guha, J.**

20. I agree.

Answers in the affirmative.