

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Bengal Home Industries Association

(G.K.Mitter, J.)

20.03.1962

JUDGEMENT

G.K Mitter, J. .

(1.) IN THIS reference the only question for the opinion of this Court is whether the assessee-association is a public charitable institution entitled to exemption under s. 4(3)(i) of the Indian IT Act.

(2.) THE assessee was incorporated as a company not for profit under s. 26 of the Indian Companies Act, 1913. As the determination of the question depends upon the construction of its constitution it is necessary to set out the relevant clauses in its memorandum of association. Clause 3.--THE objects of the association are to promote and develop home industries, arts and crafts, in the Presidency of Bengal and to do all things necessary for the attainment of the object : (1) to collect and publish or otherwise furnish information with respect to home industries, arts or crafts, in Bengal; (2) to establish or assist home industries-- (a) by the purchase of the raw materials and articles necessary for their manufacture, by advance of money or furnishing of guarantees to encourage such manufacture and the acquisition of craft secrets, rights or methods of work; (b) by promoting the formation of credit societies or other associations having for their object the extension or improvement of the work or the condition of the workers in any home industry or the sale of its products; (3) to promote exhibitions, show-rooms or other public displays of industrial work and the raising of funds from individuals, private or public bodies; (4) to purchase, sell or otherwise acquire or dispose of finished products, to act as agents for the supply of material or appliances or finished products in connection with any home industry; (5) to acquire by purchase, lease or otherwise, and hold land, buildings and property of every description deemed expedient for furthering the objects of the association, and also to build, erect and establish any buildings, factories or other structures deemed suitable for the said purposes, and to sell and dispose of such lands and property as may be deemed expedient. Clause 4.--THE association shall not support with its funds or endeavour to impose on or procure the observance by its members or others of any regulations or restriction which if an object of the association would make it a trading concern. Clause 5.--THE income, profit and property of the association, whensoever derived, shall be applied solely towards the promotion and carrying out of the objects of the association as set forth in its memorandum of association, and no portion thereof

shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise, howsoever by way of profit to the members of the association : Provided that nothing herein contained shall prevent the repayment of loans and deposits and other liabilities incurred in the interest of the association nor the payment in good faith of remuneration to any person in return for, or recognition of, any service to or benefit conferred on the association. Clause 6.--No member of any executive or working committee of the association shall be appointed to any salaried office of the association or any office of the association paid by fees, and no remuneration shall be given by the association to any member of such committee except repayment of out-of-pocket expenses and interest on money lent or rent for premises demised to the association. But this provision shall not apply to payments to any other company or association of which a member of the said two committees may also be a member for work done by such other company or association. Clause 7.--THE fifth and sixth paragraphs of this memorandum are conditions on which the registration of the association has been obtained under the provisions of s. 26 of the Indian Companies Act (VII of 1913). Clause 8.--Any person interested in the objects and aims of the association is eligible for membership. Clause 9.--THE association shall consist of (a) ordinary members, (b) life-members, and (c) patrons. An ordinary member shall subscribe to the funds of the association--Rs. 10 per annum. A contribution of Rs. 150 or more shall entitle the contributor to life-membership and shall exempt him or her from any further annual subscription. A contribution of Rs. 5,000 or more shall make the contributor a patron of the association and shall exempt him or her from any further annual subscription. Clause 12.--If upon the winding up or dissolution of the association there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid or distributed amongst the members of the association, but if and so far as effect can be given to the next provision shall be given or transferred to some other institution or institutions having objects similar to the objects of this association to be determined by the members of the association at or before the time of dissolution, and, in default thereof, by the High Court in Bengal. THE association had a set of articles of association to which no particular reference was made except to articles 7 and 16 noted below : Article 7.--No person shall be admitted a member of the association in any class unless he is first approved by the executive committee, and the executive committee shall have full discretion as to the admission of any person to membership in any class. Article 16.--Members shall be entitled to vote at all general meetings, to free admission to all exhibitions, libraries and meetings of the association, and to acquire publications of the association, at such reduced rates as the executive committee may, from time to time, determine. From 1917, when it was founded, down to 1951, the association had always been exempted from payment of income-tax. Proceedings were then started under s. 34 of the Act and the ITO made an assessment-order on 30th Aug., 1951, for the asst. yr. 1942-43 on an income of Rs. 14,296. Further orders were made for the years of assessment 1943-44 and 1944-45. THE AAC set aside these assessment orders. This was upheld on a further appeal to the Tribunal by the Revenue authorities. THE Tribunal upheld the finding of the AAC. THE present reference is at the instance of the Revenue. Sec. 4(3), as it stood at the relevant time, provided as follows : "Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them : (i) 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; (ia) any income derived from business carried on 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." "Charitable purpose" in the above section has its own meaning and "includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility". The ITO found that the assessee's purposes were clearly not for relief of the poor, education or medical relief and the assessee's purpose could not be said to be one of general public utility since it was primarily intended to benefit a section of the public, i.e., those who were engaged in home industries in Bengal. According to the ITO the persons engaged in home industries in Bengal were a fluctuating body of private individuals and as such any benefit to this class could not be treated as charitable. The AAC however recorded that "from the examination of the object set forth in the memorandum of association as well as from the activities of this body it is clear that the association is meant for promoting the home industries, arts and crafts, in Bengal and helping poor craftsmen and destitute women of Bengal. The association makes advances to the poor craftsmen, weavers, destitute women and others, without interest in order to enable them to purchase raw materials, and takes back decorations and finished hand-made products from them. These are sold to the public and the sale proceeds are utilised for the furtherance of the object of the association . . . The real underlying object is to benefit the poor craftsmen and destitute women by providing them with easily available advances for purchase of raw materials and giving them remuneration for crafts-works. There is thus a good ground for holding that the purposes of the appellant association also included the advancement of general public utility."

(3 .) THIS aspect of the activities of the association is not, however, dealt with in the order of the Tribunal. According to the Tribunal though the objects clause was not happily drafted (worded), it brought out sufficiently the purposes for which the association was formed, viz., to promote or develop home industries, arts and crafts, in the Presidency of Bengal. To achieve that object the association had been empowered to collect or publish or otherwise furnish information with regard to these industries and crafts and to do many other things; but all these activities were only meant to achieve the main object. Purchase and sale of the finished products was not an end in itself but only a means to promote and develop home industries, arts and crafts. The Tribunal found that the object of the assessee was not to benefit individuals but all those who were interested in home industries, arts and crafts, in the Presidency of Bengal. Thus the beneficiary was the general public and the object could be said to be one of general public utility. The Tribunal held that the case was covered by the decision in *All India Spinners' Association vs. CIT*¹ Before us it was strenuously contended on behalf of the Revenue that the association could not be said to have general public utility as one of its purposes. It was urged that the constitution of the assessee showed that it was formed for improving the lot of a trading community, that the promotion of industries, arts and crafts could not be a charitable object and if benefit to a particular community was one of the objects of the association its main purpose could not be held to be charitable. Lastly, it was urged that helping people concerned in ordinary trade was not an object of general public utility. Here, as in many other branches of the income-tax law, there is notable divergence between statutory provisions in England and in India and hence English decisions, however illuminating they may be, have to be applied with caution. Under the English Income Tax Act of 1842, allowances were to be granted on the rents and profits of lands,

tenements, etc., belonging to any hospital, public school or alms house, etc., vested in the trustees for charitable purposes so far as the same were applied to such purposes. There was no definition of "charitable purpose" in the Act and to find out the meaning of the word "charity", "charitable uses", "charitable trust" and "charitable purposes", judges had to refer to decisions of the Court of Chancery. In his celebrated judgment in *The Commissioners for Special Purposes of the Income Tax vs. Pemsel*² Lord Macnaghten came to the conclusion "that the expression 'trust for charitable purposes' in the Act of 1842, and the other expressions in the Act in which the word 'charitable' occurs, must be construed in their technical meaning according to English law". His Lordship discussed the foundation of the jurisdiction of the Court over a class of trusts known as "charitable trusts", the Statute of Elizabeth, the Statute of Mortmain and said "charity in its legal sense comprises four principal divisions; trusts for the relief of poverty, trusts for the advancement of education; trusts for the advancement of religion and trusts for other purposes beneficial to the community, not falling under any of the preceding heads". With regard to the last class his Lordship said that "they were not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly". The difference between "charitable purpose" under the Indian statute and "charity" as known to lawyers in England will at once be noted. The counterpart of the English doctrine "all purposes beneficial to the community" is replaced in the Indian Act by the expression "advancement of any other object of general public utility". It is the difference in the wording of this last portion of the definition coupled with the meaning attached to "charity" in various English statutes which has caused a divergence in the stream which follows the same course up to a certain point. Otherwise, there is a strong resemblance between "charitable purpose" as known to Indian IT law and "charity" as known to English lawyers. Further, under the Indian Act, even if property be not held under a "trust" as known to lawyers but on a legal obligation bearing close resemblance to a trust exemption would be attracted. ;

Cases Referred.

1(1944) 12 ITR 482 (PC) : LR 71 IA 159 TC23R.179

2(1891) AC 531