CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs.

Jogendra Nath Naskar

Income Tax Ref. No. 50 of 1961

(P.B. Mukharji and C.N. Laik, JJ.)

05.04.1963

JUDGMENT

P.B. Mukhakji, J.

1. Gods in India are criticized as tax-dodgers because they are for the first time claiming immunity from income-tax in this reference. To soften this heresy the real culprits are said to be their human vice-regents, the she baits.

2. Hindu law of religious endowments, debuttar, theology, metaphysics, the 'shastras', the Vedas, the Upanishads have all mixed inextricably with the Income-tax Act to produce this reference at the instance of the Commissioner of Income-tax, Calcutta under Section 66(1) of the Act raising a fundamental question of large and far-reaching public interest, namely :

> "Whether on the facts and in the circumstances of the case, the assessments on the deities through the she baits under the provisions of Section 41 of the Indian Income-tax Act were in accordance with law ?"

3. Numerous decisions, 'shastras' and text books have been cited at the bar for and against this contention. Strangely enough no reported case seems to have directly decided the points raised and asked on this reference, although there are many incidental observations on these and cognate points, all of which are not easily reconcilable. Before noticing the varieties of these decisions and authorities and trying to plumb the depth of the complexity of the problem it will be desirable to have first the facts which give rise to this question.

4. The Tribunal consolidated 5 appeals in tins connection as they all raise the identical issue. They are in respect of the assessment of three years 1952-53, 1953-54 and 1954-55. Testator Ramkristo Naskar left a Will dated the 17th May, 1899 by which inter alia he left properties as debuttar to two deities, Shri Shri Iswar Kuvereswar Mahadev and Shri Shri Anandamoyee Kalimata in the land adjoining his residential house at 74/75, Beliaghata Road. The testator appointed his two adopted sons, Hem Chandrd Naskar and Jogendra Nath Naskar and their

descendants as the shebaits. The relevant actual words used in the Will on this point are :

> ". . . . . the lands of the temples and the adjoining lands of my residence, garden and tenanted properties, tanks, etc. bearing the Municipal No. 74/75, Beliaghata Road ...... shall be treated as the Debottar properties and I do hereby dedicate those properties to those deities. The shebaits shall reside in the residential house and if they think it inconvenient for them to reside in this house then this property shall be used for the Sheba of those deities. The properties dedicated are mentioned in 'Ka' Tapsil and I dedicate those properties of Tapsil to those deities. Of the income of these properties the temple and the Debottar house shall be repaired and rent and taxes of the Debottar property shall be paid. Out of the residue the salary of the priests and dally expenses of the Deb Sheba and expenses on festivals shall be incurred according to the scale as I have been doing, of there lie any excess after meeting all these expenses the same shall be kept in the Debottar reserve hind and shall be spent in any particular festival and the terms of which shall be decided by the shebaits .... Shri Sheba Chandra Naskar and Sri Jogendra Nath Naskar and their sons and grandsons shall be the Shebaits of these deities. So long they shall be minors, the executor shall work as their guardian and shall perform the Sheba Pujas. None other but the male heirs of the said Sri Hem Chandra Naskar and Sri Jogendra Naskar have the right of Shebaits of these deities."

5. The importance of these forms of the Will be apparent later on when we proceed to decide the nature and character of this dedication and its consequent effect, from the point of view of the Income-tax Act.

6. It is necessary to state that for a very long time the income from this property was assessed in the hands of the Shebaits as trustees. The assessments were made on the shebaits separately for the two deities. In two earlier assessment years of 1950-51 and 1951-52 the shebaits had contended that there was no trust executed in the present case and as such the income from the property did not attract tax liability and assessments in the name of Hemchandra and Jogendra as trustees of the estate could not be sustained. The Appellate Assistant Commissioner examined the terms of the Will and came to the conclusion that they did not indicate creation of any trust or appointment of any trustee, although he noticed the fact that the assessees had earlier acquiesced in previous assessments as trustees. The Appellate Assistant Commissioner, therefore, applied a Division Bench decision of this Court in Shri *Shri Iswar Gopal Jew v. C. I. T. West Bengal*[1], and *Saila Behari Singh v. C. I. T. West Bengal*[2], and came to the conclusion that the assessments on the assessees as trustees could not be sustained and therefore allowed their appeal. Then the Income-tax Officer initiated the proceedings for 1952-53 and 1953-54 against Hem and Jogendra and also for the year 1954-55 with the observation :

> "Since the amendment of Section 41 of the I. T. Act the shebaits of endowment and debuttar properties could be held responsible as Manager. Accordingly the assessment is being completed on the beneficiaries in the status of the individual through the shebaits."

He also rejected the claim for exemption under proviso to Section 4(3)(a) of the Income-tax Act. There was an appeal from that decision by the assessee to the Appellate Assistant

[1]1950-18 ITR 743 : AIR 1951 Cal 309
[2]1951-19 ITR 430 : AIR 1951 Cal 191

Commissioner. The Appellate Assistant Commissioner came to the conclusion that the deity was a juridical entity capable of owning property although the deity acts through human agency and the deity was liable to be taxed. He also came to the conclusion that so far as the deity can act only through human agency, the Income-tax Officer had correctly taken recourse to the machinery of Section 41. Before the Tribunal the assessees appealed and contended (1) that the deities were not chargeable to tax under Section 3 of the Income-tax Act, (2) that Section 41 of the Income-tax Act did not apply to the facts of the present case because the shebaits were not managers in this case appointed by or under any order of a court within the meaning of Section 41 of the Income-tax Act. The Tribunal came to the conclusion that the only clause under which the shebait could come was receiver or manager appointed by or under any order of Court and as in this case there was no order of a court, the assessments could not be sustained. The Tribunal made the following observation :

> "Having failed in the attempt to tax either as trustee or as manager under Section 41, it would, in our opinion, not be open to the Income Tax Officer to rely upon Section 3 because the concept of shebait is one under the personal law of the testator under whose will the properties had been left."

The Tribunal, therefore, allowed the appeal of the assessee.

7. The Commissioner of Income-tax, Calcutta, now comes on this reference for an answer to the question set out above.

8. To continue and complete the account of facts it is necessary to state one or two other features. In the order of the Income-tax Officer dated 30th July, 1955 for the assessment year 1952-53 it is said that at the1 time of hearing the assessee pressed for exemption, in the alternative under the proviso of Section 4(3)(1). But it was held by him that it was private religious purpose and there was nothing in the deed to show that any benefit went to the public and no proof had been shown to him that it was actually a public religions purpose. Therefore, he came to the conclusion that the estate did not earn the exemption under Section 4(3). The same conclusion was also reached for the assessment year 1953-54 holding that it was a private religious endowment. The conclusion was repeated for the assessment year 1954-55 although in the order of the Income-tax Officer dated 30th July, 1958, for Anandamoyee Kalimata a reference was made to the effect –

> "Thakur Pranami by daily receipts from the outsiders are invested subsequently for the religious purpose and naturally are not taken into account in the computation of income under the proviso of Section 4(3)(2)."

9. The main questions arising on this reference, therefore, are clear from the foregoing account of facts. Broadly speaking, three large questions are involved. One is if the Hindu deity is at all assessable under the Income-tax Act as a unit of assessment; the second is that in any event when the debutter is an absolute debutter and the dedication to the deity is complete and outright, it follows as a matter of interpretation of law that such a disposition is always to be regarded as one for public religions purpose and, therefore, exempt under Section 4(3)(i) of the Income-tax Act;

the third question is whether Section 41 of the Income-tax Act can at all be applied to shebait of a Hindu deity.

10. As the question asked in this reference specifically raises the applicability of Section 41 of the Income-tax Act, it will be appropriate to deal first with the import and construction of Section 41 of the Income-tax Act and its applicability to the shebaits of a Hindu deity. In other words, we shall take up first the point formulated above as the third point of law.

11. On behalf of the deity, the assessee, the main argument is that the shebait does not come within the language of the specific classes of persons mentioned in Section 41, namely (1) Courts of Wards, (2) the Administrators-General, (3) the Official Trustees, (4) receiver or manager appointed by or under any order of a Court and (5) any trustee or trustees within the meaning of that section.

12. The only possible category under which a shebait can come under Section 41 of the Income-tax Act is 'receiver or manager' or 'trustee'. The words 'appointed by or under any order of a Court' are words which qualify both the receiver and the manager. A receiver in order to come within Section 41 of the Income-tax Act has to be a receiver appointed by or under any order of a Court. A private receiver appointed by agreement of parties or by private arrangement in a mortgage deed not appointed by or under any order of a Court cannot answer this description of a receiver mentioned in Section 41 of the Income-tax Act. Lord Russell's observation at p. 401 (of ITR) in the Privy Council in *Keshardeo Chamria v. Commissioner of Income-tax, Bengal, reported in*[3] is an authority for this view. The same view was taken by a Division Bench of the Madras High Court in Joint Receivers of the Estate of *Arunachala Mudaliar v. Commissioner of Income tax, Madras reported in*[4] The word 'manager' is also obviously qualified by the words "appointed by or under any order of a court". Therefore, it follows that the present shebaits cannot come within the category of "receiver" or 'manager' within the meaning of Section 41 of the Income-tax Act because the shebaits in this case were not appointed by or under any order of a court.

13. The question then is can the shebait be considered as a trustee within the meaning of Section 41 of the Income-tax Act. No doubt it is true that in the facts of the case in a previous assessment year, not now before us, it was held that the shebait was not a trustee by the application of the authority of 1950-18 ITR 713 : AIR 1951 Calcutta 309. But then the question now placed before us on this reference raises the entire question of the meaning and interpretation of Section 41 and as such the question is open to us to decide whether a shebait can be a trustee within the meaning and context of Section 41 of the Income-tax Act. See *New Jehangir Vakil Mills Ltd. v. Commissioner of Income-tax, Bombay*[5], *Kusumben D. Mahadevia Bombay v. Commissioner of Income-tax Bombay*[6], and *Commissioner of Income-tax, West Bengal v. Khaitan and Co*[7].,

14. On behalf of the assessee it is contended that the shebait is not a trustee at all. For this purpose reliance was placed on three main decisions, namely, *Vidya Varuthi Thirtha v. Baluswami Ayyar*[8], *W.O. Holdsworth v. State of U.P*[9]., and *Mahant Moti Das v. S.P. Sahi*[10], On a careful perusal of these authorities it appears to us that the ratio of these

[3] 1939-7 ITR 394
[5] 1959-37 ITR 11
[7] 1962-45 ITR 170 at p. 175 (Cal).
[4] 1961-41 ITR 432 at p. 445 (Mad)
[6] 1960-39 ITR 540
[8] 18 Ind App 302
[9] 1958-33 ITR 472 : AIR 1957 SC 887

[10](1959) Supp (2) SCR 563

decisions comes only to this that a shebait is not a trustee in the English sense of the term or within the meaning of Indian Trusts Act which does not apply to she-baits in the present case. On the contrary, these authorities clearly establish this position that the obligations and duties of a shebait are at least those of the nature of a trustee.

15. The Privy Council in 48 Ind App 302 made the following significant observation which has become celebrated exposition of the law on the subject :

> "In no case was the property conveyed to or vested in him, nor is he a 'trustee' in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration."

They Privy Council in that case particularly observed the fundamental differences between English trusts and the Hindu and Mohammadan systems and drew the attention that for that difference the Indian Legislature in enacting the Indian Trusts Act deliberately exempted from its scope the rules of law applicable to wakf and Hindu religious endowments. The decision of the Supreme Court in 1958-33 ITR 472 : AIR 1957 Supreme Court 887 is not a decision on Debuttar property or on Section 41 of the Income-tax Act. There the Supreme Court discussed at pages 479-81 (of ITR) : (at pp. 890-892 of AIR) the position of a trustee in connection with Section 11(1) of the U.P. Agricultural Income-tax Act and in that context referred to the English Law and Indian Trusts Act neither of which is applicable to a sbebait. Reliance was placed on the observation of the Supreme Court in Holds-worth's case, 1958-33 ITR 472 at page 480 : AIR 1957 Supreme Court 887 at p. 891 namely, -

> "These definitions emphasise that the trustee is the owner of the trust property and the beneficiary only has a right against the trustee as owner of the trust property. The trustee is thus the legal owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries but he does not hold it on their behalf."

The considerations do not arise in the present context where the argument is only confined to the fact whether the word "trustee" as used in Section 41 of the Income-tax Act can be interpreted to include the present shebaits. The more appropriate case for our present purpose is the decision of the Supreme Court in *Moti Das v. S.P. Sahi*[11], here specially at p. 574 (of Supp SCR) dealing with the question of Hindu religions trust it is expressly made clear that a shebait is not a 'trustee in the technical sense'. It is said there that although a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebaitship as a mere office. The shebait has not only duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property. Thus it is well settled that in the conception of shebaiti both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other.

16. These authorities, therefore, do not support the proposition that the shebait of a Hindu deity is not a trustee in any sense of the term. All that they say is that the shebait is not a

[11](1959), Supp 2 SCR 563

trustee in the English sense or in the sense of the Indian Trusts Act or in the sense of holding the legal estate. Where the dedication is outright and absolute to a Hindu deity, the gift is to the deity. The deity is the done; the deity is the legal owner. The she-bail in that context cannot be a legal owner as a trustee in the English sense. But the whole concept of division of legal and beneficial ownership is the English concept of an English trustee where under the English law a separation was made between a legal estate and an equitable estate. No such separation exists in India between law and equity or between legal ownership and equitable ownership, as settled by a long line of decisions beginning from the Privy Council and which it is unnecessary to repeat hero. The question therefore remains whether a shebait can be construed to be a trustee within the meaning of the words as used in Section 41 of the Income-tax Act.

17. Before giving our answer to this question it may be useful to refer to another decision on Section 92 of the Civil Procedure Code where also the word 'trustee' is used but which has also been consigned as not to be a 'trustee' within the technical English sense. In *Laxmanrao Umajirao v. Govindrao Madhorao, reported in*[12] a Division Bench of the Nagpur High Court of Vivian Bose and Sen, JJ., after discussing authorities at page 218 observed as follows :

> . . the words "trust' and 'trustee" have not been defined in the Code and the words as used in Section 92 have not been used in any technical sense of the term as used in English law."

18. Looking at the context of Section 41 of the Income-tax Act it appears to us that it occurs in Chapter V of the Income-tax Act which deals with 'liability in special cases'. It first deals with guardian, trustee and agent in Section 40 of the Income-lax Act. Section 41 deals with Courts of Wards and other authorities and guardians, Section 43 appearing in the same Chapter deals with agents as including persons treated as such. Looking at the context on this point we are of the opinion that the word 'trustee' is nor need in Section 41 of the Income-tax Act in the technical English sense but covers persons who have to discharge the duties and obligations in the nature of a trustee which a shebait does having regard to the express pronouncement of the Privy Council in Vidya Varuthi's case.

19. Such a trustee, however, within the meaning of Section 41 of the Income-tax Act, must have to satisfy the express condition mentioned in the language of that section, namely, "appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise". That means the trustee, in order to come within the meaning of Section 41 of the Income-tax Act, although need not be a trustee in the English technical sense, he has nevertheless to be (1) appointed under a trust, (2) declared by express instrument in writing and (3) testamentary or otherwise. In this case the shebait was appointed by a duly executed instrument in writing which was testamentary. The shebaits were appointed by a Will. No doubt, the Will does not describe the shebait as a trustee but that in my view is not necessary having regard to the well-settled function and office of shebait nor is it necessary to convey the properties to the trustees because here the trustees are not the legal owners but the deity is the done and the legal owner of the property. In that sense the English technical law of Trust will not apply to a shebait. From that point of view also not all shebaits will come within the meaning of the word

[12] AIR 1950 Nag 215

'trustee' as used in Section 41 of the Income-tax Act unless such a shebait is appointed under a,

trust declared by a duly executed instrument in writing whether testamentary or otherwise. It is common knowledge that dedication in Hindu Law may be oral. In such a case a shebait under an oral endowment will not answer the description of trustee as used in Section 41 of the Income-tax Act. But in the facts and circumstances of this reference and as raised on this reference it is quite clear that the shebait is within the meaning of the word 'trustee' as used in Section 41 of the Income-tax Act and I hold accordingly.

20. In this connection and on this point the observations of the Supreme Court in *Aggarwal Chamber of Commerce Ltd. v. Ganpat Rai Hiralal*[13], may be seen where the Supreme Court of India after referring to such well known decisions as *Archer Shee v. Baker*[14], and Executors of *Estate of Dubash v. Commissioner of Income-tax*[15], approved of the observation of Viscount Cave in *Williams v. Singer*[16], where the principle of this Chapter of the Income-tax Act and the relevant sections, thereunder was enunciated to be –

> "..... that the person charged with tax is neither the trustee nor the beneficiary as such, but tile person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the State a proportion of the profits chargeable and this end is attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found."

21. We are reinforced in this conclusion about the interpretation of the word 'trustee in Section 41 of the Income-tax Act by the further consideration that the legislature had in mind in Section 41 wakfs and wakf deeds under the Mohammedan law. If a trustee under any wakf deed which is valid under the Musalman Wakf Validating Act can become a trustee under Section 41 of the Income-tax Act as indeed he is by express words used in Section 41, then it seems a little illogical to exclude shebaits under a Hindu religious endowment or dedication. To draw a distinction between shebaits and mutwalis in this context of Section 41 of the Income-tax Act will mean that mutwalis will continue to be liable to pay income-tax but shebaits will not. Prima facie it would be a patent inequality and discrimination between different religions which would be clearly unconstitutional within the guarantees of the fundamental rights of the Constitution. Such an interpretation which will make Section 41 of the Income-tax Act un-constitutional should, therefore, be avoided.

22. Dr. Pal made a clever argument on this point by saying that because mutwulis were expressly included the she-baits must be held to be impliedly excluded on the principles of "expressio unis". That argument is clearly fallacious. The general words in the context in which this question arises are the 'trustee' and 'trustees'. Therefore, all those who come within the general meaning of the words 'trustee or 'trustees' understood not in the English technical sense nor in the Indian Trusts Act which is expressly inapplicable to Hindu and Mohammadan endowments, could not be said to be impliedly included. If a she-bait in Hindu law or even a mutwali under the Mohammedan law answers the description of a trustee as qualified in Section 41 then he is already included. Secondly, this argument fails to notice the history and language of introduction of the Mussalman Wakf Validating

[13] 1958-33 ITR 243 at pages 251 and 252: (AIR 1958 SC 269 at p. 273) [15] 1951-19 ITR 182
[14] (1927) 11 Tax Cas 749 [16] (1921) 7 Tax Cas 387

Act in Section 41 of the Income-tax Act. The language is :

> "Including the trustee and the trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913."

Therefore, the mutwalis or trustees under the wakf deed were brought in as "including". They had to be expressly included because wakf deeds were held to be bad according to the strict Mohammadan law where any personal benefit in the shape of maintenance and support of a Mohemadan founder of his family, children and descendants was held to vitiate the wakf and the Wakfs Validating Act, 1913 was passed in order to validate such wakfs and, therefore, those trustees who were formerly held to be trustees under an invalid wakf trust because of that personal benefit had to be expressly brought in. The history of this legislation is therefore clearly contrary to the interpretation for which Dr. Pal pleads.

23. It will be appropriate here to make a reference to the decision of the Supreme Court in *Commissioner of Income-tax, Kerala and Coimbatore v. Puthiya Ponanichintakam Wakf reported in*[17] where it was said at p. 177 (of ITR) : (at pp. 166-167 of AIR) :

> "In express terms it (Section 41) equates the muthawalli of a wakf to a trustee. For the purpose of Section 41 the muthawalli is treated as a trustee and, on the analogy of a trustee, he holds the property for the benefit of the beneficiaries. There is no scope for importing the Mohamedan law of wakf in Section 41 when the Section in express terms treats the muthwalli as a trustee, though he is not one in the technical sense under the Mohamadan law. If the argument of the learned counsel for the respondent be accepted, it would make Section 41 of the Act otiose so far as wakfs are concerned, for in every case of wakf the property would be held for the Almighty any not for any person."

24. The reason for the conclusion that a shebait, in certain cases, of a Hindu deity who answers the requirements of a trustee with the conditions mentioned in Section 41 the Income-tax Act can be a trustee for the purposes of that section is further reinforced by consideration of the fact that Hindu endowments and Mussalman Wakfs have both been within the purview of the Income-tax Act and that being so shebaits and mutwalis should be made responsible for the payment of Income-tax in connection therewith. For this purpose reference to Section 4(3)(i) may be useful. Section 4 deals with the application under the Income-tax Act. It says that subject to the provisions of this Act the total income of any previous year of any person includes certain incomes, profits and gains mentioned there. Now Section 4 is just as much a charging section of the Income-tax Act as Section 3, as pointed out by Kania, J., in the Federal Court in *Chatturam v. Commissioner of Income-tax, Bihar reported in*[18]. "The liability to pay the tax is founded on Sections 3 and 4 of the Income-tax Act which are the charging sections". Sub-Section (3) of Section 4 exempts certain incomes, profits and gams. Amongst such exemptions, Section 4(3)(1) of the Income-tax Act says :

> "Subject to the provisions of clause (c) of Sub-Section (1) of Section 16 any

[17] 1962-44 ITR 172

[18] 1947 FIR 116 at p. 125: (AIR 1947 FC 32 at p. 35)

> 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 at the end of this Sub-Section (3) of Section 4 an attempt to define charitable purpose and it is provided there :

> "In this sub-section charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in clause (i) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income from property held under a trust or other legal obligation for private religious purposes which does not enure for the benefit of the public."

25. A reference to the above provision makes it clear at once that it is not the intention of the Income-tax Act to give a general tax exemption to income accruing from religions or charitable purpose and that there is at least an explicit attempt to draw n distinction between a 'privite' religions purpose/ and objects of 'general public utility' or which "enure For the benefit of the public. It is, therefore, not unreasonable to draw the conclusion from this interpretation that income of private religious purpose is within the ambit of the income-tax. If so, then the question would be in many cases as to who shall pay the income-tax. Therefore, it is necessary that such an interpretation should be given to Section 41 of the Income-tax Act as would make it possible to assist in effective interpretation of Section 4(3)(1).

26. On this point, notice should be taken of on an important decision cited at the Bar. In *Commissioner of Income-tax Madras v. M. Jamal Mohammad Sahib*[19], a Division Bench of three learned Judges including Leach C.J., Somayya and Patanjali Sastri, J., observed at page 385 that the exemption applied only to a trust the object of which was public utility and relief on the Privy Council decision in *Trustees of Tribune Press Lahore v. Commissioner of Income-tax, Punjab*[20], where Sir George Rankin laid down at p. 422 (of ITR) :

> "It is to be observed moreover, that under the Income-tax Act the test of general public utility is applicable not only to trusts in the English sense but is to be applied to property held under trust 'or other legal obligation' - a phrase which would include Moslem wakfs and Hindu endowments."

Therefore, it is clear that the incomes of Moslem wakfs and Hindu endowments are liable to income-tax in appropriate cases and they are within the ambit of the Income-tax provided of course they are not exempted on the ground of public utility or on the ground of public benefit as mentioned in Section 4(3)(1). This distinction between public and private religious endowments or debuttar was also clearly drawn by a Division Bench decision of this Court in *Commissioner of Income-tax, West Bengal v. Administrator-General of Bengal, reported in*[21] But in that

[19] 1941-9 ITR 375 : AIR 1941 Mad 535 [20] 1939-7 ITR 415 [21] 1952-21 ITR 241 : AIR 1953 Cal 329

case there was no actual dedication nor a gift nor an absolute debuttar at all in favor of the deities, as in the instant case before us.

27. A further reason in support of the conclusion I have reached is furnished by reference to another part of Section 41 of the Income-tax Act. The reference is to the first proviso to Section 41(1) of the Act and specially to the words "artificial juridical person". Although this proviso refers to the question of maximum or minimum rate or rather which rate should be applicable, it is obvious that the legislature had in view not merely ordinary living person but the legislature had also in view 'artificial juridical person' as coming within the contemplation of Section 4(1) of the Act while using the word "person". This Section 4 of the Act, as pointed out already on the highest authority, is as much a charging section as Section 3 of the Income-tax Act. Now a person includes an artificial person. It includes a company or a legal corporation. The doctrine of "artificial juridical person" has also been extended to the Hindu deity. It is needless to multiply authorities on the well settled principle that the Hindu deity is a juridical entity and a juridical person. It will be enough to cite the Privy Council decision in *Prosunno Kumuri Debya v. Golab Chand Baboo, reported in*[22] *Pramatha Nath v. Pradyumna Kumar, reported in*[23] *Income-tax Appellate Tribunal Bombay v. Managing Trustee Shri Radha Madho Trust, Saugor, reported in*[24] *Shri Shri Jyotishwari Kalimata v. Commissioner of income-tax. Bihar and Orissa, reported in*[25] and *Commissioner or Income-tax, West Bengal v. Pullin Behari Dey, reported in*[26] and *Commissioner of Income-tax, West Bengal v. Sm. Ashalata Devi*[27]*,* The classic observation made by Lord Shaw in 52 Ind App 215 at p. 250 : (AIR 1925 PC 189 at p. 140) may bear repetition :

> "A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus and the recognition thereof by Courts of law, a "juristic entity". It has a juridical status with the power of suing and being sued.
> * * * *

It is unnecessary to quote the authorities; for this doctrine, thus simply stated is firmly established."

28. Finally on the construction of Section 41 of the Income-tax Act Dr. D.P. Pal for the assessee laid great emphasis on the expression "In the like manner and to the same amount as it would be livable upon and recoverable from the person on whose behalf such income, profits or gains are receivable." He, therefore- argues that unless the person on whose behalf such income is received by the shebait is an assessable person under the Income-tax Act, Section 41 cannot be applied to the shebait. This argument, attractive as it is, is based on fundamental fallacy. Its attractiveness arises from the fact that Section 41 is intended to reach representatives only like the Courts of Wards, the Administrator-General, the Official Trustee, the Receiver or Manager or Trustee. Therefore, it is contended by the assessee that unless the principal himself is assessable the representative cannot be assessed. But when this attractive proposition is analysed it will reveal many points of weakness. In the first place, the tax under Section 41(1) of the Income-tax Act is levied upon and recoverable from such representative. From that point of view it is a

[22]2 Ind App 145 (PC)
[23]52 Ind App 245
[24](1946) 14 ITR 470 at pp. 475-76 AIR 1946 Nag 397 at p. 399
[25]1946-14 ITR 703 at pp. 712-13 : AIR 1947 Pat 178 at p. 179
[26]1951-20 ITR 314 at p. 321 (Cal)
[27]1951-20 ITR 326 (Cal)

charging section so far as the representative is concerned. The significant words in this section from this point of view are "the tax shall be levied upon and recovered from such" etc. The other significant part of this section is that these representatives mentioned in Section 41(1) of the Act

"are entitled to receive on behalf of any person". Now this expression and particularly the words "any person therein would include an artificial juridical person such as a company or a deity. Therefore, the assumption that a deity is not an assessable person at all, begs the question. In fact the deity is always an assessable person in view of the authorities and the propositions that I have tried to expound. The deity is all the more so because otherwise there would be no question of claiming exemption on the ground of public religious purpose. It is only a person liable to assessment who can claim exemption. Incidentally if must be emphasized that the principle and scheme of exemptions such as those mentioned in Sections 14, 15 and 16 of the Income-tax Act or even any other section do not contemplate either expressly or impliedly any exemption in favour of the Hindu deity or Hindu debutter as such. Finally, the fallacy of this argument lies in the fact that the expression "in the like manner and to the same amount as it would be leviable upon and recoverable from a person" does not at all mean that that other person should be assessable in the way that the argument assumes. Indeed the interpretation is that because that other person or the principal for whom the income is received is not otherwise available that the tax is levied upon the representative and is recoverable from him by express language of Section 41(1) as quoted above. The reference to 'like manner' and 'same amount' only shows the manner and amount of the levy. In fact it is a fiction by which the representative or the agent of the particular class mentioned in Section 41(1) is brought within the fold of taxation. The words are would be leviable upon and recoverable from and they carry therefore, the suggestion that something would have been there but somehow is not and therefore the device of levying the fax on the representative recipient of that income. Indeed this conclusion is supported by the penultimate expression in Section 41(1) of the Act before the first proviso begins and which reads as follows :

> "and all the provisions of this Act shall apply accordingly."

Now these words can only mean that the provisions of this Act would not have applied normally but they are nevertheless applied because of the situation contemplated in Section 41(1). I am not unmindful of the provision contained in Sub-Section (2) of Section 41 of the Income-tax Act which says that Sub-Section (1) will not prevent direct assessment of the person on whose behalf incomes, profits or gains are receivable. No doubt it does not prevent where such direct assessment is possible in case of persons who are not artificial or unavailable as a juristic entity like the Hindu deity and who can be directly assessed even though there are representatives within the meaning of Section 41 of the Income-tax Act.

29. For these reasons and authorities cited above we therefore return an affirmative answer to the question asked and hold that on the facts and in the circumstances of the case the assessments on the deities through the shebaits under the provisions of Section 41 of the Indian Income-tax Act were in accordance with law but not as manager but as trustees within the meaning of that section us interpreted by us.

30. Normally that would have brought to an end this reference. But this approach to Section 41 of the Act in this case has been inextricably connected with two other larger questions. One is whether a Hindu deity is at all assessable or a chargeable unit under the Indian Income-tax Act; the other is whether in the case of an absolute debutter and dedication the purpose can invariably as a matter of law he described as a public religious purpose. To some extent I have already

answered these problems. It will be necessary only now to go into greater details on the basis of arguments advanced at the Bar on these points.

31. The main submission is that a Hindu deify is not assessable or changeable at all as a unit of assessment under the Income-tax Act. In support of this submission many arguments are put forward. In the first place, it is said that the Income-tax Act when it was introduced never contemplated or had in view a Hindu deity. It is no doubt true that Hindu deity is never mentioned us such in the Income-tax Act. Companies, firms, artificial juridical persons, associations and individuals and many other categories are expressly mentioned as a possible or probable unit of taxation but no Hindu deity as such. Not without force it is contended that the Income-tax Act is a self-contained statute and exhaustive of the matters dealt with therein and vague principles of equity and good conscience should not be introduced into the construction of the Income-tax Act. That is perfectly right. There can be no two opinions on that point. But the whole question is whether the Hindu deity comes within the meaning and language of the Income-tax Act. I have indicated that the word 'person' and the expression "artificial juridical person' are found in the Income-tax Act and therefore the Hindu deity as a juristic entity and as an artificial juridical person is within the meaning and connotation of that concept. Whether the word 'person' was originally intended in the Income-tax Act to cover a Hindu deity is, therefore, not material. What is essential now is to find out whether the word 'person' as such can be interpreted to include an 'artificial juridical person' tike a Hindu deity. On a pure question of interpretation I have come to the conclusion that the deity is such a person.

32. But the main attack of the assesses on this ground is inspired by Section 3 of the Income-tax Act which is said to be the only charging section although that is not quite correct as we have already indicated. No doubt Section 3 is a charging section. In fact its marginal note is 'Charge of Income-tax'. The main argument on behalf of the assessee in this case is that the Hindu deity is not an individual. The deity in this case could not be brought within the other expression used in Section 3 of the Act namely, 'other association of persons'. That is the only use of the word 'person' in Section 3 of the Act. Here the assessment has not been made on the two deities, Mahadeva and Kalimata, jointly as 'association of persons'. Our attention was drawn to the history of this section when previously the words 'association of persons' was 'association of individuals, it is said with considerable force and apparent reasonableness that a deity or God is not an individual. No doubt it will be a little odd to think God or a deity as an individual. Both physically and practically a Hindu deity obviously for practical purposes cannot do many things which a human individual can do, namely, vote in election, be director or managing director of companies and many other things. At the same time, a Hindu deity is treated certainly in many respects as an individual. Indeed that is what Lord Shaw in Privy Council said in 52 Ind App 245 where Mukherji, J.'s observation in *RambrahmaChatterjee v. Kedar Nath Banerjee*[28], was approvingly quoted at p. 251 in the Privy Council report in Indian Appeals . It is said there –

> "It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would he treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest."

So the Hindu deity is also treated as an individual in that respect. No doubt he is not an individual in the ordinary sense nor is he an ordinary individual at all. That a deity is not only an it individual but individual plus something else may not disqualify him from being an individual if he has got by custom, convention or local fiction attributes of an individual. A deity can sue or be sued, no doubt through the shebaits. But to be a plaintiff or a defendant is ordinarily a right or obligation of an individual.

33. To counter this theory or argument, Dr. Pal relied on the decision of the Bombay Division Bench consisting of Beaumont, C.J. and Wadia, J. in *Commissioner of Income-tax, Bombay Presidency v. Ahmedabad Millowners' Association, reported in*[29] This case was really concerned with the meaning of the expression 'association of individuals' before the amendment of the words 'individuals' into 'persons' in Section 3 of the Income-tax Act. There the Ahmedabad Millowners' Association consisted of 61 members, 60 of whom were limited companies and only one human being and the question was whether the association was chargeable to income-tax within the meaning of the expression 'association of individuals' used in the then Section 3 of the Income-tax Act. The Court held that the individual in Section 3 at that time meant a human being and did not include a company and, therefore, the expression "other association of individuals" did not include an association of companies and one human being. Beaumont, C.J. at p. 373 of that report (ITR), made the observations :

> "individual where first used, must mean a human being because it is used as something distinct from a joint family, firm and company.
> * * * * *

One cannot give to the word 'individuals' in the expression 'association of individuals' a different meaning to that which a word 'individual' bears where it appears in the same phrase."

34. Now this was the main case on which Dr. Pal relied for the assesses to contend that the deity is a divinity and not an individual. His difficulty is that this observation has not been approved subsequently. A Division Bench of three learned Judges consisting of Leach, C.J., King and Krishnaswamy Ayyangar, JJ., in *Commissioner of Income-tax, Madras v. Salem District Urban Bank Ltd., reported in*[30] where the same section and the same expression came up for discussion and decision took an entirely different view. At page 278 of the report (ITR) Leach C.J. in discussing this question and after quoting the

[28]36 Cal LJ 478 : AIR 1923 Cal 60
[29]1939-7 ITR 3R9 : AIR 1939 Bom 363
[30](1940) 8 ITR 269 : AIR 1940 Mad 612

Bombay view of Beaumont C.J. made the following observations :

> "While it is true that ordinarily in conversation the use of the word 'individual' would be taken to denote a person, the word has in fact a far wider meaning."

35. The word 'individual' may have an extended or a narrow connotation according to the context of the statute and the particular section in which it appears and that is well illustrated in the decision of the Supreme Court in *Commissions of Income-tax, Madhya Pradesh and Bhopal v.*

Sm. Sodra Devi, reported in[31] where the majority judgment construed the word 'individual' in Section 16(3) as restricted in its connection to mean only the male species and not the female species. An unreported decision of a learned single Judge of this Court in *Sri Sri Sridhar Jiew v. Income-tax*[32] arising out of proceedings under Article 226 of the Constitution also takes the view after discussing some of the cases that the Hindu deity or the idol can be construed to be an individual within the meaning of Income-tax Act.

36. I have already analysed the general scheme of the Income-tax to show that a Hindu deity can be either an individual or a person or both under Sections 3, 4 and 41 of the Income-tax Act. It is no doubt true, that the deity may not be an individual or a person in some other sections of the Income-tax Act as pointed out by the Supreme Court in the case just quoted and that the interpretation of the word 'individual' will depend on the context of the particular section in which it is used. For instance, Section 48 dealing with refunds and for claims for refund in proscribed forms by individuals, or Sections 51 and 52 dealing with failure to make payment or deliver returns or making false statements of declaration by an individual may not be strictly applicable to a deify as an 'individual'. Obviously a deify cannot be prosecuted or imprisoned. Nevertheless in that context the shebait or the human ministrant of the deity will answer the 'responsibility imposed by these sections, Similarly the rules of returns of income under Section 22 may not be appropriate for a deity us an individual. But nevertheless that is no ground for holding that the deity is not an assessable unit at all within the meaning of Sections 3, 4 and 41 of the Income-tax Act, it being always remembered that these formalities for returns in the forms can and must be complied with by the shebait, or the manager or the trustee as the case may be.

37. Apart from the leading case of 52 Ind App 245 on this point, some brief references may be made to one or two other authorities. The leading case on the point is *Manohar Mukherji v. Bhupendranath a Full Bench decision of this Court reported in*[33] At page 478 (ILR Cal) of that report these classic observations were made.

> "But this analogy of a human transfer need not be carried too far, for the deity is not in need of property, nor does it hold any what is given to the deity becomes available to all.

The deity is the recipient of the gift only in an ideal sense; the dedicated property belongs

[31](1957) 32 ITR 615 : AIR 1957 SC 832

[33] ILR 60 Cal 452 : AIR 1932 Cal 791

[32] Office in Matter No. 93 of 1961 (Cal)

to the deity in a similar sense; in reality the property dedicated is in the nature of an ownerless thing. In ancient times, except in cases of property dedicated to a brotherhood of sanyasis, all endowments ordinarily were administered by the founder himself and after him his heirs. The idea of appointing a shebait is of more modern growth. When a Hindu creates an endowment, its management is primarily in him and his heirs and unless he appoints a shebait he himself fills that office and in him rests that limited ownership, - notwithstanding that, on the one hand, he is the donor and, on the other, the recipient on behalf of the deity, the juridical person, - which has to be exercised until the property offered to the deity has been suitably disposed of. The true principle of Hindu Law is what is mentioned in the Chhandogya Upanishada, namely, that the offerings to the gods are offerings for the benefit of all beings (Chap. 5, p. 24 R. 2-5). and Raghuandan has quoted a text of Matsya Sukta which says : Having made offerings to a God, the sacrificial fee also should be given to the God. The whole of that should be given to a Brahmin otherwise it is fruitless."

38. A very exhaustive treatment on the subject is to be found in a decision of the Division Bench of this Court in *Tarit Bhusan v. Sri Iswar Sridhar Salagram Shila Thakur, reported in*[34] where it is said that n Hindu idol although a juristic person, this juristic person is of a peculiar type. It is conceived by the Hindus as a living being its own interests apart from the interests of its worshippers and it is recognized as a juristic person capable of being the subject of legal rights and duties but only in an ideal sense. See the observations at pages 490-91 of that report. Pal, J. at page 532 of that report (ILR Cal) observed as follows :

> "Though an idol is thus recognized as a juristic person capable of suing and being sued, strictly speaking it has no material interest of its own. The efficient subject or the rights ascribed to an Idol must ultimately be some human beings. It must be they who enjoy such rights and, if law protects such rights, it is because of the existence of such ultimate human concern. The Idol, as the juridical person, only affords the technical means of developing the juristic relations between those ultimately interested in the endowed property and the strangers. The so called interest of the Idol is merely an ideal interest very different from the interest which an infant has in his property. The introduction of the Idol and its recognition as a juristic person are more a matter for the procedure and the procedure in India recognizes the Idol as having a locus staudi in judicio."

39. No doubt, the concept of 'juristic personality of a Hindu deity' is a result of an unhappy mixture of Roman jurisprudence, the Anglo Sexon jurisprudence and the technical law of trust. It has come up for severe criticism by learned Jurists and scholars. Dr. S.C. Bagchi, LL. D. in his Ashutosh Mookerjee Lectures, 1931 on Juristic Personality of Hindu Deities, has illustrated in Lecture III, pp. 51-78 the misuse of a juridical concept by citing some well-known decisions of law courts, which decisions seem to accept the view that the deities are juristic persons in Hindu Law. He traces Vedic concepts, deals with the notions expressed in the Mimamsa texts and elaborately discusses the text of Sulapaini, Raghunandana and the leading Privy Council and other decisions on this subject. At page 60 he says :

[34] ILR 1941 (2) Cal 477 : AIR 1942 Cal 99

> "The very fact that the deity alone cannot support an establishment, that he must stand either behind a manager or a trustee, rules him out of court. He is a person in name, not in law for all purposes.'

He criticized the Privy Council decision in 48 Ind App 302 that the Hindu deity is a juristic person and also Maitland's view on 'corporation sole' and the applicability of the doctrine of 'corporation sole to a Hindu deity. Dr. Bagchi's conclusion appears at page 78 in these terms :

> "A deity is not a complete juristic person. The attempt at making an idol a plaintiff or a defendant in a law suit is based on a wrong notion of juristic personality."

40. The Indian Scholar is not the only critic of those views. English scholars have been equally critical of the view taken by the Privy Council in 52 Ind App 245 . In 41 Law Quarterly Review, 419-422 (sic) says at page 421 :

"From the point of view both of pure jurisprudence and of practical utility, it is submitted that the appropriate English conception was not that of a corporation but that of a trust for charitable purposes, the property being vested in the shebaits as alternating trustees. Not, of course, that the English law could be applied wholesale; a purely family worship of this kind would not be a public charitable purpose in the eyes of English lawyers and the rule against perpetuities would therefore be infringed. Still the main principle mutatis mutandis is a useful one. It is extraordinary how chary we have been in India of using the most original and far-reaching of English legal conceptions". Sir Frederick Pollock, the learned Editor, at page 422 at the end of Prof. Fitz Gerald's Comments adds the most significant remarks in these terms :

"If the Fiction Theory of juristic person is right, the Thakur is as good a person as the Secretary of State for India in Council; both are fictitious. But if, as now seems the better opinion, if is wrong in principle and has never been positively adopted by our authorities (unless a fiction can be respectable and responsible) : see (1925) Ch 577, the personified idol is an inconvenient anomaly which ought to be got rid of if it is not too late."

41. Prof. P.W. Duff writing on the personality of an idol in 3 Cambridge Law Journal, at pages 42-48 discusses the decision of the Privy Council in 52 Ind App 245 and the analogy between idols and corporation and the theories of Dr. Gierke, Pollock, Maitland, Dicey and Geldart. The learned Professor concludes by saying at page 48 :

"On the whole he will probably be very little distressed by the lip-service of judges to theories which he considers unsound and will listen with equanimity to language placing corporations on a level with idols, so long as the courts continue to treat all associations as real and living organisms.

But the real anomaly is indicated by Prof. Duff at page 44 of that article in the following terms :

"It has been necessary to deny the idol interests of its own and a will of its own; but when we come to rights, the case is very different. For interests are a matter of economics or psychology and wills of psychology or metaphysics; but rights are absolutely within the sphere and under the control of the law. Radha Shanisimderji has no emotions or desires; he is not a Psychological unit and no court or legislature can make him one; but if the Privy Council says he is a juristic entity, then he is. A legal system can withhold all rights from a human being, who is then called a slave and it can equally bestow rights on a subject other than a human being, which may then properly be called a juristic entity or person and said to have legal personality."

42. Dr. B.K. Mukherjea's Tagore Law Lectures on Hindu Law of Religious and Charitable Trust, Original Edition of 1952 discusses at length the theory of juristic personality of the Hindu Idol. At page 45 he says –

> "The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests."

But the deity is owner in the secondary sense. He further says at page 46 that neither God nor any supernatural being could be a person in law. Dr. Mukherjea makes it clear at pages 47-48 that the administrators or managers of endowments are trustees in the general sense. At pages 65 and 66 Dr. Mukherjea makes the following observation while discussing the Charitable Endowment Act and the expression 'Charitable purpose;

> "Properties dedicated for religious and charitable purposes are, under almost all systems of law, excluded from operation of the rule against perpetuity and they are generally exempted from liability to pay income-tax."

He quotes in that connection Section 4(3) of the Indian Income-tax Act, but points out that religious purpose is not defined in that section but charitable purpose is described as in-chiding relief of the poor, education, medical relief and the advancement of any other object of public utility. Speaking on the difference between English law and the Indian law on this subject Dr. Mukherjea points out at page 395 of his lectures :

> "One fundamental distinction between English and Indian Law, lies in the fact that there can be no religious trust of a private character under Hindu law which is not possible in English law."

43. To summarise the conclusion on this point I will only say this that the deity is and can be an individual or a person within the meaning of the Income-tax Act and certainly so within the meaning of certain particular sections which I have already mentioned. Section 3 of the Income-tax Act in essence provides inter alia :

> "..... tax at that rate or those rates shall be charges for that year in accordance with and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, etc.. ..."

The trend of that section is that the idea is to tax all sources. It is a tax on the total income of the previous year on every individual etc. It was certainly not intended to exclude the Hindu deity as such. If it can be excluded it can only be by way of a particular interpretation of the word 'individual used in that context. The exemptions intended to be given by the Act such as in Sections 14 to 16 of the Income-tax Act do not exempt the Hindu deity. It was contended on behalf of the assessee before us that Section 3 is not only a tax on the total income but it must also be found in the hands of the individuals and others expressly mentioned there and a contrast was attempted to be built up by reference to Section 1 of the English Act where income wherever found who intended to be classed in the tax irrespective of persons or where it appears. Locking at the schedule to the English Act that argument does not appear to be at all convincing. But even taking Section 3 of the Income-tax Act to mean not incomes in general but incomes of particular individuals etc. as correct, the question is no more advanced than what has already been indicated, namely the question depends on interpretation whether the word 'individual' includes a

Hindu deity or not, in the context of Section 3. There is no principle why a Hindu deity should nor be taxed if he, in law, is allowed to own property even though in the ideal way, to sue for it, to realise rent and to carry on business, to apply the income for specific purposes, no doubt in ideal sense and no doubt must be through human agents. Exemption, if any, is granted in the case of public religious purposes as already mentioned above and therefore impliedly it must mean that all other endowments or dedications over which the deities are in charge should be liable to pay tax. The misfortune is that some ideas not wholly applicable and borrowed from Roman and Anglo-Saxon jurisprudence, have unnecessarily complicated the picture of Hindu law and Endowment and of Debuttar. In essential concept of course the Hindu law was very different. But the gloss and the adhesions that we have acquired through centimes of administration of this branch of the law do not make it any longer possible to harp back to the pristine conception of Hindu Jurisprudence in the matter of dedication of property to a Hindu deity. It was really formally and trully res sacra and res extra Commercium. This aspect of the problem will become more important when I come to deal with the second branch of the question about public and charitable purpose. It is interesting to find that Churches and chapels enjoy no statutory exemption, as such, from tax under schedule A of the English law but may be entitled to exemptions as trusts established for charitable purposes only. It is, however, the practice of the Inland Revenue in U.K. to exempt all places of worship except as regards ground rent and mortgage interest. See Simon's Income-tax, 2nd Edition. Vol. 1 Section 519 page 415.

44. The last point urged in this respect on behalf of the assessee is the important question whether in Hindu law an absolute dedication must always be regarded as for public religious purpose and as such entitled to exemption within the meaning of Section 4(3)(1) of the Income-tax Act.

45. Now Hindu law according to the original 'shastras', as I understand them, never made any distinction between public and private religious purpose. Religion, according to Hindu sastras, as I understand them, is always for universal good and universal welfare. Dedication whether made by an individual or otherwise, private))' or publicly, is always for the good of the universe 'jagathitaya'.

46. The Hindu law of dobuttar in its original form is a dedication of property and incomes thereof to the deity. The deity or the god is the donee and becomes the owner of the property and the income. It is not within my conception of Hindu law, that a Hindu deity or a Hindu God can be for a private purpose in any sense of the term. He represents always a public purpose par excellence and the epitome thereof. On the basis of such original notions, therefore, it is a little difficult to take the view that where the dedication is absolute and where the debuttar is absolute it can nevertheless be for a private religious purpose. This original notion is supported by the observation already quoted from the Full Bench decision in ILR 60 Cal 452 at p. 478 : AIR 1932 Calcutta 791 at p. 803. There are other authorities in this connection which I shall presently notice.

47. In *Rupa Jagshet v. Krishnaji Govind, reported in*[35] it was distinctly laid down by a Division Bench of the Bombay High Court of Sir Charles Sargent, C.J. and Kemball, J., that the Hindu Law, unlike the English law with respect to charities, makes no distinction between a religious endowment having for its object the worship of household idol and one which is for the benefit of the general public. At page 171 Sargent, C.J. observed :

> "This distinction, which obtains in English law with respect to charities, is not to be found in the Hindu text-writers. The idol itself, as is explained in West and Buhler's Hindu law, p. 201, is looked on 'as a kind of human entity, the religious services of which are allowed by Hindu law to be provided for in perpetuity. In *Ashutosh Dutt v. Doorga Churn*[36], no objection was taken to the alleged endowment being in favor of the household idol, but solely that the whole property was not devasthan."

In another Division Bench decision of the Bombay High Court in *Manohar Ganesh v. Lakshmiram Govindram, reported in*[37] it was again emphasised that a trust for a Hindu idol and temple is to be regarded in India as one created for public charitable purposes within the meaning of Section 539 of the old Code of Civil Procedure. Pointed attention was drawn in that case at page 263 of the report about the distinction between the English law and Indian law on the subject by the following observation of West, J. :

> "A trust is not required for this purpose : the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English laws."

Again at page 64 West, J. observes :

> "Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed extra commercially. ...."

48. But the difficulty in the way of the assessee on the authorities in this respect is a subsequent decision by the Bombay High Court in *Bhagwan Sitaram v. Namdeo Narayan reported in*[38] There a Division Bench of Mudholkar, J. and Tambe, J., emphasised that Hindu law recognized endowments to a private as well as a public temple; and it did not invariably follow as a matter of com so that whenever property was endowed for the purpose of a deity, a public

[35] ILR 9 Bom 169

[36] LR 6 Ind App 182 (PC)

[37] ILR 12 Bom 247

[38] ILR 1957 Bom 525 : AIR 1957 Bom 168

trust was created and that the temple (in which the deity -vas installed) was a public trust. It was pointed out in that case that the question whether a trust for a temple was a public trust depended on the circumstances of the case and the fact that the temple was open to Hindu public in general was only a relevant circumstance. The view expressed by the previous Bombay decision in ILR 12 Bom 247 does not appear to have found favour with Mudholkar, J., as will appear from the observation at p. 526 (of ILR Bom) : (at pp. 168-169 of AIR) :

49. The point is of peculiar and practical importance in the facts of this case. It will be appropriate here to record that the facts of this case show an absolute dedication and an absolute debuttar. I have already set out the terms of the will on this point earlier in this judgment. Recollecting those terms now it will be clear that really no personal or private benefit as such was reserved for the testation or his family except that the shebaitship was to run along the male heirs of his two adopted sons. But as pointed out by the authorities this was not decisive of the question whether the debuttar was public or private. It is possible to reconcile the distinction between public and private debuttar which has crept into the Hindu law of endowment by taking the view that where the debuttar is absolute and where the dedication is absolute to the deity, it is

always for a public religious purpose because the deity is not u private purpose at all in the Hindu concept. But there may be other kinds of debutter which are known as partial debuttar or where properties are only charged in favour of debaseva. In that case the dedication is not to the deity as such and the deity is neither the donee nor the owner of such properties. In that case the deity is only a beneficiary in the ordinary sense of the term. In such a case the question of private religious trust or private religious purpose may very well arise because either the whole of the income or the whole of the property may not be charged or is only partially dedicated to the deity and in that event that which is public may be exempted and that which is private may come within the fold of taxation. That is one way of justifying the distinction between public and private religious purpose in the Hindu law of debuttar and endowments as at present settled by the reported cases. Pursuing this view a little further it will be necessary to make some more reference to judicial authorities.

50. The Supreme Court decision in *Deoki Nandan v. Murlidhar, reported in*[39] is relevant on the point. It was laid down there that the issue whether a religious endowment was a public or a private one was a mixed question of law and fact the decision of which must depend on the application of legal concepts of a public and a private endowment to the facts found. It is said there that the distinction between a private and public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. That is a broad test. It is emphasised in that decision that though under Hindu law an idol is A juristic person capable of holding property and the properties endowed for the temple vest in it, it can have no beneficial interest it the endowment and the true beneficiaries are the worshippers, as the real purpose of a gift of properties to an idol is not to confer any benefit on God, but the acquisition of spiritual benefit by providing opportunities and facilities for those who desire to worship. But the point is more acutely raised in the decision of the Supreme Court in *Menakuru Dasaratharami Reddi v. Subba Rao reported in*[40] At page 800 or that report Gajendragadkar, J., who delivered the judgment of the supreme Court after drawing the

[39]1956 SCR 756 : AIR 1957 SC 133
[40] AIR 1957 SC 797

distinction between complete and partial debuttars, clearly enunciated and laid down the law that "if the dedication is complete, a trust in favour of public religious charity is created".

51. Here on the facts, as already indicated, except the nominal benefit of residence in the Thukurbadi which was not compulsory and except that the shebaity will follow the male line of heirs of the testator, no private or personal profit is really reserved in this absolute debuttar. The daily expenses of the debaseva and expenses on the festivals are the only items on which the moneys are to be spent. Indeed the clauses in the will set out above make it clear that ever, the unspent money shall go to the reserve fund to be spent for particular religious festivals and for no other purpose.

52. But although Gajendragadkar, J., made the above observation, there are certain other subsequent decisions of the Supreme Court which it is now necessary to notice. Menakura's case, AIR 1957 Supreme Court 797 was not a case of actual dedication to a deity but a case for dedication for 'public and charitable purpose; Deoki Nandan's case, 1956 SCR 756 was a case of dedication to a deity. The Supreme Court in *State of Bihar v. Sm. Charusila Dasi reported in*[41]

specially at pages 614-16 (of Supp SCR) : (at pp. 1008-1009 of AIR) discussed in this content public and private endowments. For instance, it lays down that the fact that the idol was installed in the precincts of the residential quarters but not in a separate building was not itself decisive of question of public and private dedication. It also considered at page 616 (of Supp SCR) the question of pronamis' paid by the public. It lays down also that one of the relevant considerations by which to decide whether the trust was a public trust or not, will be, if by the trust deed any right of worship has been given to the public or any section of the public answering a particular description. In this case before us we have noticed that 'pronamis' were paid by outsiders. It is also to be noticed that the Will did not give any express right to members of the public to worship nor did it expressly confine the right of worship to the members of the testator's family. The Supreme Court discussed religious and charitable trust again in *Narayan Bhagwantrao v. Gopal Vinyak, reported in*[42] This case also proceeded on the distinction between public and private endowment recognised in the present modern Indian law of Hindu endowments. It is said there that the vastness of the temple, the mode of its construction, the long user by the public as of right, grant of land and cash by the Rulers, taken along with other relevant factors were consistent only with the public nature of the endowment in the particular case. The observation by the Privy Council in this respect may not be out of place. In *Bhagwan Din v. Gir Har Saroop*[43]*,* the Privy Council laid down that :

> "dedication to the public was not to be readily inferred when it was known that the temple property was acquired by grant to an individual or family. Such an inference, if made from the fact of user by the public, is hazardous, since it would not in general, be consonant with Hindis sentiments or practice that worshippers should be turned away; and, as worship generally implies offerings of some kind, it is not to be expected that the managers of a private temple should in all

41(1959) Supp (2) SCR 601 43 reported in 67 Ind App 1
421960 (1) SCR 773 .

> circumstances desire to discourage popularity. Thus in *Mundacheri Koman v. Achuthan Nair*[44]*,* the Board expressed itself as being slow to act on the mere fact of the public having been freely admitted to a temple. The value of public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right."

53. Applying this principle of the Privy Council, it cannot be held in this case that the mere fact that the records show that some 'pronamis' were paid by the public or outsiders will make the whole endowment in this case a public endowment. That will be too "readily inferring" a public endowment against which the Privy Council has cautioned. It will be worthwhile to remember in this case that it was not a case of claim by the assesses at any stage that the whole on this endowment was exempted under Section 4(3)(i) as an endowment of public religious purpose and it must be repeated that the 'pronamis', which the outsiders had paid have in fact been exempted. This view was also emphasised by another Privy Council decision in *Parma Nand v. Nihal Chand, reported in*[45] the Privy Council observed :

> "There can be no doubt that even in a private shrine the public may worship, but the question is whether they do so without any permission, leave or license and as of right.

This test has not been satisfied in the present case."

54. I can equally say applying that principle that the test has not been satisfied in the present case before us. Again the Privy Council in that case observed at page 259 (of Ind App); :

> "In the case of a public trust, the beneficiaries are either the public at large or a considerable portion of it answering a particular description. Now, there is no documentary or oral evidence to show that the property was expressly dedicated for the use or the benefit of the public. Are there any circumstances from which the dedication of the properly to a public trust can be implied ?"

55. I do not find, on an analysis of the provisions of the Will and the circumstances and the facts of this case which I have examined any decisive factor which can show that such an inference can at all be drawn.

56. To wind up the discussion on the subject it will be appropriate to quote Mayne's Hindu Law, 10th Edition at page 915 where the law is put briefly and succinctly in the following terms :

> "The distinction in Hindu law between religious and charitable endowments is a modern one.

Religious endowments are of two kinds, public and private. In a public endowment, the dedication is for the use or benefit of the public. But when property is set apart for the worship of a family god, in which the public are not interested, the endowment is a private one."

[44] 61 Ind App 405

[45] 65 Ind App 252 where at page 261: (AIR 1938 PC 195 at p. 198)

57. J.C. Ghose in his Tagore Law Lectures for 1904 on the Law of Hindu Endowments and Religious Institution Vol. II at pages 61, 72 and 73 points out that in ancient time the Hindu law did not recognize any difference between public and private religious purpose but some how through the languages of English law and through decided cases the distinction has now crept in.

58. In that view of the matter it appears to me that it is too late in the day for this Court now to go back to original Vedic law on the subject and I must with regret. come to the conclusion that a valuable original contribution of Hindu jurisprudence has been lost almost unobtrusively by misapplication of foreign jurisprudence and by failure to notice before it was too late, that Hindu jurisprudence was very different on this point from other systems of jurisprudence of the world.

59. For the reasons and authorities discussed above it must follow that the answer to the question must be in thy affirmative and that the assessment on the deity through the shebaits under the provisions of Section 41 of the Income-tax Act in the facts and circumstances of this reference was in accordance with law.

60. Having regard to the nature of the problem involved in this Reference, there will be no order as to costs.

Laik, J.

61. Lord Siva (Sri Sri Iswar Mahadeva Thakur) and Holy Kalimata (Sri Sri Anandamoyee) are being chased by the Commissioner of Income Tax, at whose instance this Reference is initiated, on the ground that the said Deities have formed "an association of persons" and are attempting to evade the payment or tax on income. But in this fight by the Revenue with the invisible enemy and in this race if the Department misses to fuse itself with the brilliance of the highest Gods in Heaven and at least with the Idols in the temples and thereby to enter Nirvana (the state of ultimate bliss) and if by any chance it finds union with Gods of horrifying aspects, in this race of chasing through hell and high water, the Revenue might have to haunt different sites, for the rest of their time and wander about for ever, for realisation of the taxes from the Hindu Deities and possibly without success Those who are asked by the statute to batten on minors, lunatics or idiots, would not of course hesitate to draw the line in the case of the Deities till it is settled by the highest judicial authority, but fortunately, the consecrated Idols are not yet extinct though unfortunately they have shown no interest either in legislation or in tax matters.

62. I have understood the question as framed, to be composed of two parts, viz., whether under Section 41 of the Income-tax Act, 1922 (referred to hereafter as the Act), the assessment on the Deities as such, are lawful and the second part, viz., whether the assessments on the shebaits under the said section are permissible. On this second part again, further points arise, viz., (1) whether a Hindu Deity or God can be at all a unit of assessment tinder the Act and (2) whether in case of a complete dedication in favour of an Idol, the religious purpose would be taken as public and therefore the income is exempt front taxation under Section 4(3)(i) of the Act.

63. As it is a case of down-to-earth approach to the problems and as there is no reported decision of the Supreme Court, exactly touching the points, raised in this reference and as the observations made in numerous other decisions of different Courts, some of which at least reveal exercises in futility and as the concept of a Hindu Deity by some of the gentlemen, having periwigs and wearing knee-breaches, three-cornered hats and silver-buckled shoes, being mercifully non-religious, which concept is difficult to reconcile at places, it might serve a useful purpose to give as a background. a short narration about the views, ideas and concept as I understand of a Hindu Deity, Idols and consecrated or otherwise, of Hindu Religious Institutions and Endowments in the background of Hindu Religion. I give a short account of Temples, Mutts, etc., which are closely connected with the concept of a Deity and Idols. They are of numerous categories and naturally divergent and variegated, as well as enormous in the aggregate. As in the very nature of things, it is impossible even to indicate the law, on all the points noted by my learned brother, a brief historical survey of legislation's regarding the- temples and the Idols and the treatment of the properties in relation to them, would no! be altogether out of place. It will be useful to have an idea of existing set up also. The question is a complex one and does not admit of any uniform treatment or ready solution in all cases as custom and usage and rights and obligations are all so blended to that it is difficult to separate them.

64. Concept or a Hindu Deity, according to many, is in a state of flux, as if it is awakening to new realities and quickening to new impulses. But it would be a mistake to identify the same as a sad echo of a dusty past or that the Deity stands aloof and shuttered, often in ruins and the country around is scattered only with the anonymous remains of a Vedic age. Ignoring all iron-tiers and despite yawning rifts; temples, wind whipped, sun-burnt and eroded through ages, bear silent witnesses to the tact that they are not mere museums. Idols still linger in the dark interior of their

crumbling pile. Deity belongs still to the daily life of millions in our land, where progress, though with painful slowness, is not necessarily divorced from tradition. Not forgotten, they are yet yielding their pride of place to newer symbols of life, which centre, on no one thing in particular, but on everything at once.

65. Isolated by original vedic law and emotion alike, Anglo-Saxon concept of a Hindu Deity or God of a Hindu Religious Institution and also concept by persons, having other or even same religious faiths (one or two instances I would cite later), honeycombed with decisions, (many of which apparently based on undigested original Sanskrit texts) try to leap and proudly fly from one concept into another at once. Probed deeper and surely, though reluctantly, is dragged out a nameless sense of common grievance, viz., anything about Hindu Deity. Idols and temples in print, should not have been passed off as the authorities for all sorts of propositions of Hindu Law on Debuttar. The gauntlet has been thrown here by the Revenue. The challenge is to be met by (he Deity with their protecting wings, if they can.

66. To test the question whether a Hindu Deity or God is assessable to income-tax, one should know some basic and fundamental facts viz., that Hindus belong to several denominations of the Hindu faith. A reverent and religious attitude and a continuous quest for the realization of the Supreme have been the feature of the long continued history of Indian ('originally bracketted with 'Hindu') thought and experience. Hinduism being 'a way of life' has recognized as equally valid, every approach to the Supreme being or*****(Marathi word) (Paramatman) as an impersonal, formless and indescribable entity or as Iswara (Deity), manifested in various forms and incarnations, supplication and prayer to whom and worship of whom, may satisfy the cravings of individual souls and enable them to concentrate on something beyond. It is to satisfy these cravings and not for realising the 'pronamis and to cater to the manifold needs of individuals and groups that temples were established, worship and prayers in those temples were organized and festivals were contemplated; some of which are mentioned in the will of Naskars, executed more than 60 years ago and which also provides for the appointment of the testator's two adopted sons as the shebaits. Religious and cultural activities are associated with temples, dedicated to multiform manifestations and embodiments of the Supreme Being in one or other of its several aspects, comprising the idea of the Divinity of Trinity or of the idea of Vishnu and Laksimi, Shiva and Sakti or even local regional and other Idols with particular incidents. Various sects and groups who have dedicated to the worship of the one, envisaged as a father or mother a kinsman, a friend or lover. But the activities amongst others of Sankara, Ramanuja, Madhwa, Chaitanya and recently of Rama Krishna, the ideals and doctrines of particular forms of all-embracing Hindu creed were expounded. Swami Vivekananda has said "It has become a trite saying that idolatry is wrong and every man swallows it without questioning. I once thought so and to pay the penalty of that, I had It. learn my lesson sitting at the feet of a man who realised everything through Idols. I allude to Rama Krishna Paramhansa.

67. Temple or Church, it cannot be doubled, is the kindergarten of Religion, where suffering millions of burning men and women, cry with parched throats. The idea of building temples or churches came to the human mind unconsciously. Temple is there to give an atmosphere of holiness. In every temple, if one stands by and carefully listens, one will find the worshippers are applying all the attributes of God. Temples are objects of reverential resort and centres of spiritual enlightenment, for the popularisation of tenets appertaining to particular institutions or groups of institutions and to Hindu thought in general and for effecting sublimation of ideals. In

the Samhitas, there is no specific mention of temples but only of a Supreme Being in its various manifestations. No abode for the Deity or God was existent. At later period (after the Brahmanas and the 108 Upanishadas), the devotion to personal God is inculcated.

68. The Vedas of divine language (no other language being older than that) are original scriptures of the Hindus collected and culled through centuries. The Hindus cannot help smiling, reading its criticism, made in sunken thoughts, of course with polished phrases, by the Western people and reading particularly modern criticism, where one thought stumbles more than the other.

69. Several decisions of high authorities referred to by my learned brother are essentially the outgrowth of English ideas. They should be better understood in relation to English history involving the conflict between the Church and the State and the differentiation made between religious and charitable uses.

70. In the Vedic period there are references to the Goddess Parvati and her consort Siva under various names. The idea of a personal God is developed in the Ramayana, the Mahabharata, the Puranas and the Upapuranas (literary vehicles for interesting the common man in metaphysics and philosophy through stories and parables and engendering in him a quest for the higher values of life) and is well exposed in the Bhagavat Gita and the Brahma Sutras. The images of the Puranic Deities, generally of Siva and Vishnu, were worshipped by the Emperors. The worship of Sakti or the female principal described as a consort of Siva in different forms of Uma, Parvati, Durga, Kali, thereafter became popular. The ideas so evolved have survived till now, but one should have the basin knowledge about the elementary forms of the Idols or images of the Hindu Deity. It is not an uncommon sight that a Jain image with its five-headed serpent, is being worshipped as Lord Shiva and 'Bibhuti' (ashes) are applied on the same.

71. Temple, in some form or other, to continue the account, was known in the Sutra period. Dharma Sastras of Goutama make definite mention of temples. By that time charitable endowments and the idea of grant of lands etc. for charitable or pious purposes were well established. During Kautilya's time we find that images were installed in temples or open shrines which were not of individual ownership. From the Second Century B.C. to the Seventh Century A.D. Rock-cut Cave temples were constructed at places like Ellora (Kailash temple), Ajanta, etc. Construction and gradual development of temples in the Southern part of India as well as in Bomeo, Sumatra and Java can be traced during the last 13 or 14 centuries. The account of the temples might be concluded by referring to the University of Nalanda where religion occupied an important part in the daily life of the students. Rituals and worship were obligatory on every student in the Institution. In other words, temples were religio-cultural planks. It also served as a place where disputes were settled, arbitration resorted to and justice administered. The temple of Dharamshila at North Korea and the temple of Sakhi Gopal near Puri, bear illustrations.

72. On the other hand every one knows about successive invasions on temples from about 10th century A.D. Somenath Temple at Gujarat (along with other 44 temples), Martand in Kashmir, Nateraja in Chidambaram, Brahadishwar in Tanjore, the Minakshee at Madurai and the great temple of Rameswaram as well as the temples at Srirangam and Kanchipuram bear witness. Viswanath temple at Varanasi was destroyed with 71 other temples. Famous temples at Brindaban met with the same fate, Kesava's temple at Mathura was razed to the ground and one of the historians says that all the richly jewelled Idols (at least five of them of pure gold with five

yards height with eyes formed of precious stones) were taken to a place of worship where they were placed on its threshold so that they may be trodden under foot by the "true believers" and one cannot expect the real concept of a Hindu Deity or God from such type of persons. I would attempt hereafter to give, in brief, when dealing with the question of individuality of God, the concept, as I understand, of the Hindu Deity.

73. As to the account of other temples of all India importance there are Hari-Ke-Charan at Hardwar, Badrinath and Kedernath on the Himalayas, Mahankal in Ujjain, Vishnupad at Gaya, Baidynath at Deoghar, Kalighat and Dakshinesswar with 12 Siva temples in this City of Calcutta, Srikrishna Mahaprabu at Navadwip, Jagannath at Puri, Tirupati (Balaji) in Andhra Pradesh, Nathdwara and Pushkar in Rajasthan, Guruvayur in Malabar, Dwaraka and Bet Temples, which Srikrishna himself is reported to have founded. Temples were mostly erected by former rulers and chieftains by way of solace to their souls. In course of time the general public came to worship in private temples constructed by the zemindars and other rich persons in Bengal and Bihar, where Idols were installed for the worship of the members of the family. Closely connected with Hindu Religion Haridwar, Mathura, Varanasi, Ajodhya, Ujjain, Kanchipuram and Dwaraka are the seven celebrated cities of ancient and medieval India. Biddhyachal, Gaya, Deoghar, Puri, Bhubaneshar are still some of the celebrated religions centers.

74. I have given the above account of some of the temples. because a temple though a temporal setting for the eternal, promises with bold vividness the grace of God to those, who have faith and who believe.

75. It is no doubt true that Temples, Churches or Books are only the supports, the helps of the spiritual childhood; and Images, Crosses and Crescents are so many pegs to hang the spiritual ideas on, but the Hindus worship in Temples with all their feelings and actions, with their tears and their smiles, with their joys and their griefs with their weeping and their laughter, with their curses and their blessing, with their praises mid their blames. Hindus in general do not buy off the priests and try to obtain from them a passport to Heaven.

76. On the historical survey of legislation, one does not get the exact jurisdiction or relationship between the Idols and the temples on the one hand and the properties endowed or infant for the Deba Sheba, on the other from the early texts available such as Narada, Biramitrodaya. Kautilya's Artha Sastra. Mann declared that the Deity should be respected. The Britishers, after their advent when found income from endowments being mis-spent, passed legislations viz., .Regulation 19 of 1810 for the old Presidency of Bengal, Regulation 7 of 1817 for the old Presidency of Madras and Regulation 17 of 1827 for the old Presidency of Bombay. The Control exercised by the East India Company over temples and other endowments was statutorily asserted and supervision of religious and charitable endowments was attempted to be vested in the Government. By the time the Charter Act of East India Company was renewed in 1833, the British had firmly entrenched themselves. In 1839 agitation was started in the United Kingdom that the function of a Christian Government was not to administer Hindu endowments and provide for the maintenance of Hindu temples and Mahommadan mosques but to observe a strict policy of nonintervention in religious matters. In fact a debate followed in the House of Commons, in 1842.

77. Ultimately in the year 1863, Religious Endowment Act (Act 20 of 1863) was passed

repealing in part the said Bengal and Madras Regulations, which were not only found defective but also met with disastrous results meantime. The trustees between 1842 and 1863 became hereditary. In 1864 the Official Trustee Act (Act 17 of 1864) was passed (now repealed by Act 2 of 1913), by which property could vest in trust for charitable purposes other than religion. Agitation of public opinion from 1870 in regard to the need of a legislation led to the insertion in 1877 of Section 539 in the old Code of Civil Procedure on the analogy of the powers of the Court of Chancery in England. The same is practically embodied in Sections 92 and 93 of the present Code of Civil Procedure. Bills were introduced in Madras Legislative Council in 1872, 1877, 1883 and 1886, but met with no success, for one reason or the other. Dr. Rash Bibari Ghose also placed a Bill before the then Imperial Legislature which was not passed. In the year 1890 the Charitable Endowment Act (Act VI of 1890) was enacted. Came 30 years thereafter, Charitable and Religions Trusts Act, (Act 16 of 1920). Both related to public trusts. I may mention that the Religions Trust Bill of 1960 (but not intended to apply to Sikh, Viuslim, Christian, Jew or Parsee religious trusts) is now pending in the Lok Sabha. Of course, it is not a rag bag of notions on anything for public accommodation to voting rights but in what final terms the Bill may emerge, it is to be seen. If some of the clauses as considered by some, are negotiable, it is said, there may be then horse-swapping, some of it, perhaps in mid-stream. The submission that the Bill will be filibustered, might be without the word of lie.

78. As to the State Enactments regulating Hindu Religious endowments, Madras produced Act 1 of 1925 which was replaced by Act 22 of 1959, amended by Act 40 of 1961. Madras Act 19 of 1951 is in force in the State of Andhra Pradesh as amended by its legislature. In Assam, we get Assam Act 9 of 1961 in Bihar, Act 1 of 1951, in Orissa, Act 2 of 1952 and thereafter Act 18 of 1954. In Mysore, there were Regulations in 1927, amended by Act 1 of 1937. Similarly in Hyderabad there were Endowment Regulations in 1940 and the Rules made thereunder. In Travencore-Cochin there is Act 15 of 1950 and in Madhya Pradesh, Act 31 of 1951 as amended by Act 23 of 1958. Bombay passed Act 29 of 1950 which was amended next year. Bombay Act (now Maharashtra and Gujarat) also deals with endowments connected with Muslim, Christian and other non-Hindu Religions. Rajasthan passed Act 42 in the year 1959. Besides the Pilgrims Act, there are at least four special Acts regarding five particular temples, viz., Sri Badrinath Temple Act 1959 (extended to Sri Kedarnath temple in 1948), Bodh Gaya Temple Act, 1949, Nathdwara Temple Act (Rajasthan Act 13 of 1959) and Jagannath Temple Act, 1954. Bills are under consideration in the States of Mysore andhra Pradesh and Uttar Pradesh. In Punjab and West Bengal we have no existing legislation.

79. Though the control of the religious and charitable endowments has become vested in Courts and though control is against the fundamental principle either of Hindu Law or of English Law, but the facts as to litigation for about 60 years regarding the Viswanath temple at Varanashi, the litigation for about 40 years regarding Bodh Gaya inclusive of the conflicting claims between Hindu Mahants and the Budhists till the Bodh Gaya Act came in 1949 and the protracted litigation for several decades about Srioathji Temple at Nathdwara till the Act came in 1959 - cannot be lost sight of. Several plots of lands in Ajodya connected with the birth of Sri Rama, are the subject matter of litigation between Hindus and Muslims, Kalighat and Tarakeswar Temples have also come before the Courts and one of such is stated to be pending in the Supreme Court. It is distressing to note that some of the shebaits of Bindhyachal temple have alienated their rights even to the Muslims. Similar rights in certain river ghats at Varanashi have been purchased by Muslims from Hindus.

80. Control of the Courts over religious Institutions varies from country to country and again from State to State in the same country. Under the Statutes against Superstitious uses, enacted during the time of the Queen Elizabeth, every one knows no gifts or bequests to the Roman Catholic Church or to any Institutions under the direction of the Pope at Rome, were recognised as valid in law. Many of the disabilities of various religious denominations were swept away by legislation from about 1829, when the Catholic Emancipation Bill was passed by the Parliament. In this Country after substantial grants were made to temples with liberal gifts of land, Hindu Kings however exercised supervision over temples and endowments.
81. As to the short account of Mutts, besides several well-known mutts (both celibate and non-celibate) e.g. Gosavi, Ahobilam and Embar; Mutts at Udipi and Tarakeswar and non-Brahmin Mutts in South India there are several Jain temples and Institutions (such as famous shrines of Oilwara and Ranekpur (Rajasthan) Pawapuri and Rajgir (Bihar) and Pareshnath in this City of Calcutta and other Jain Institutions in Bombay, Madhya Pradesh, Madras and Mysore which are governed by the same laws as applied to Hindu "Religious Institutions. By and large, they are public trusts with big purse, the capital of one or which exceeds a crore of rupees but the beneficial interest is said to have vested in an uncertain and fluctuating body of persons.

82. Among the Buddhist endowments, where the control of the Court does not differ the interesting history of Both Gaya, including the installation and consecration of several Idols, there by a Hindi; Samivasi in or about the year 1590, are wellknown.

83. Apart from the legislation as to the Shebaits and Mathadhipatis, connected with the endowments there are Pujaris, Archavas and others who are directly concerned with the Seva Puja of the Deity. "Pandas" thousands in number, who cannot also be ignored, are governed, not by different law.

84. To complete the picture, there are also Sadhus and Sannyasis of different orders and organizations -- Hindus, Buddhists and Jains. Out of 6 million Sadhus in India, mam are undoubtedly pious and dedicated persons. Unfortunately some of them are made to form Societies; and politics have penetrated and are made to penetrate in this class also. Sanghas and orders founded by Buddha might be taken note of Bairagis also claim a place.

85. Monastic ideal is not confined to India. According to a foreign writer, Christians were from the early days divided into vulgar Christians and ascetic Christians. The Order of Monks spread from Egypt and the early Christian Churches in Egypt claimed that the number of monks in the country was equal to the number of the remainder of the people.
86. There are other religious organisations which do missionary works such as Bharat Sadhu Satnaj, Mahabodhi Society, Bharat Sevasram Sangha, Arya Samaj, Prarthana Sainaj, etc. It is stated that Ram Krishna Mission which did nothing but wonderful missionary works, following the footsteps of Swamiji, now find little time to devote to the same.
87. Going back to great Britain, it is well known that prior to the passing of the First Charity Commissioners Act, Courts of Justice in England used to exercise powers for centuries. In 1960, the Charities Act is passed in the United Kingdom, making certain major reforms in the administration of Charitable endowments. According to Hindu tenets. Charity was a part of religion and both are integrated parts of Dharma. According to Hindu sages and seers, Dharma of Rita or rule of righteousness is the upholder of the universe both in ifs moral and physical

aspects; and religion and charity are fused together in the conception of Dharma. In the Rig-Veda, Ista (Yoga) Purtam (Kshema) is said to be the means of going to Heaven.

88. Coming to the other aspect, it cannot be overlooked that religious Institutions are now faced with grave dangers on various fronts. Due to recent land Reforms legislations in almost all the States in India, the endowments are undergoing rapid changes. A number of States like Andhra Pradesh, Gujarat, Kerala, Madras, Madhya Pradesh, Orissa and Uttar Pradesh have exempted religious and charitable Institutions from the provisions of land ceiling, while certain other States like Bihar have fixed a higher acreage as the ceiling area for these Institutions. A few States like Mysore, Punjab and Rajasthan have not exempted these Institutions from the ceiling provisions at all. In certain States again, provision has been made in the relevant enactments low the payment of a perpetual annuity equal to fair rent or net-income based on fair rent. Provisions differ from State to State as to tenancy reforms in the land where the Idols are the recorded owners.

89. Among other dangers, glaciers are approaching to the Kedar Nath Temple and the detritus is approaching to its very close. Trees are found growing in Gopurams of Krishna temple at Dwarka and Jagannath temple at Puri. If a fractional part of the attention of the authorities, that is now bestowed upon Taj, Jumma Masjid, Sanchi, Bodh Gaya, Saniath, is diverted to Hindu temples and shrines, it is said, the position would have been greatly different.

90. In many of the small religious Institutions, the effect of the various legislations might not even keep a bare minimum income enabling them to maintain the daily worship and rituals and to provide for their repairs and renovations. In my opinion though the resources of the temples have been reduced, the income from the offerings of the devotee pilgrims alone, would be able to maintain the daily worship. In many temples, the offering or Pranami exceeds lacs of rupees each year. It exceeds I crore of rupees annually in the case of Tirupati temple alone, where Jains also give offerings to Lord Venkateswara. Eyes are also cast on the costly jewels of many images and nobody knows how long. Tiru Narayan Swami at Melkote will wear the golden Crown. These legislations are swift as the executioner's blade, both rich in skill and strong in courage. Many would ascribe them as acts of grave sacrilege but in my view they may equally be signs of and a prelude to things to come, for the glory of God and the illumination of his people.

91. In order to clear the ground for discussing the points further, which really deserve considerations, the scheme and certain provisions of the Act viz.; the Income-tax Act, 1922 regarding its basic, broad and fundamental principles,, relevant for the present reference, may with convenience now be dealt with.

92. From the year 1860 (Act 32 of 1860) the position regarding tax on Hindu Deity is not clarified even up to the present day.

93. " Assesses" under Section 2 of the Act means a person. "Person" again is an inclusive definition like clause 3(42) of the General Clauses Act. There are six categories of assessees (Section 3) :

(a) the individual;
(b) the Hindu undivided family;

(c) the company;
(d) the local authority;
(e) the firm or the partners of the firm individually;
(f) other association of persons.

They are the units of assessment. The word "assessee" is not used in the Act throughout in the strict sense of the definition. The assessee as it is well-known, is not only the person by whom the tax is payable, but on whose income, profits or sains, an assessment is based. A firm generally (without taking note of the difference of its position before or after 195(3) and an association (which is not a juridical entity) are yet regarded by the Act as assessable units. Companies are excluded from claiming earned income on the ground that they are inanimate entities incapable of personal exertion.

94. Now, if we go to the main charging section, namely, Section 3 of the Act, (Section 4 being held also to be a charging section by the Supreme Court, not accepting the dictum of the Privy Council), it will appear that the liability to tax does not depend on the assessment. The charging words of the Act are not the same as those of the English Statute. "Income" in Section 2(6c) of the. Act is an expression of elastic ambit. It is again an inclusive definition and not exhaustive. The Act describes sources of income and prescribes methods of computing income, but it discreetly refrains from saying, what constitutes income. It does not throw any light on the general concept of the word. Some of the learned fudges likened it pictorially to the fruit of a tree or the crop of a field. Receipt of income may be by or on behalf of the assessee. A receipt may be taxable as income although it contained no element of profit or gain. Mr. Meyer asks us to remember these basic principles.

95. Exemption of tax in the Act, being of two kinds, is an exception to the general rule, which is taxation. Certain incomes are exempt from charge and are also excluded from the assessee's total income. Certain other items of income though exempted From taxation but they are to be included in the assessee's total income. Section 4(3)(i) of the Act, pointedly raised in this Reference, applies also to profits held under legal obligation", a phrase held to include Muslim wakfs and Hindu endowments.

96. So far as the balance sheet of reported decisions made by us in tax matters, regarding property held in part only for religious or charitable purposes go, they may be classed into four heads, - (1) where the whole property was dedicated to an Idol or stated to be settled upon charitable trust. It might again be subject to a portion of the income being given to the shebait or to the grantor's heirs or other persons, (2) where the heirs took the property beneficially but subject to a charge in favour of charity or an Idol, i.e., a case of partial debut-tar (3) Where the owner retained the property in himself but granted the community or a section of it, right to use the same and (4) where the property was held upon trust to apply a specified part of the income to charitable purposes and the balance of the income to non-charitable purposes. A question arises in this reference as to in which head, it may be classed, Decisions lay down that trusts for "charitable or philanthropic", "charitable or patriotic', "charitable or public or benevolent" or "religious, educational and other parochial" purposes, are void. It was also held that "charity" or "charitable purposes" being words of art. are to be construed in their legal, precise or technical sense, different from their popular meaning. Indian and English law being different, charity if my view should not be equated with Hindu religion.

97. The cases, in which the question of religious and charitable endowment or religious and charitable purposes had come up before the Courts, were too many and not all decisions were easy to reconcile. They fluctuated as gently and respectably as the emotions of a Victorian maiden. As some of the decisions are inconclusive, if I refrain from examining them, I do so, not out of want of respect for the teamed Judges who were parties to the decisions but because I am content to found my judgment upon the principles of Hindu Law and the principles laid down by the Supreme Court and following the binding decisions of this Court. It is a depressing experience to me that the whole subject is enveloped in an artificial atmosphere. The trouble is, that persons practicing religion other that Hinduism, differ about the concept of a religious and charitable object of the Hindus. The position is made worse with their words of wisdom regarding concept of Hindu Deity and Idol, position of shebait, pujari, archaka or dharma-karta in relation to an idol or Deity, regarding concept of the position of a shebait, trustee and/or manager and lastly with the word of wisdom regarding the idea about the nature of a Hindu Religious endowment, being public or private. I need not repeat discussing the cases, its they are in bulk. I would now refer to some of the Supreme Court decisions only, placed before us, which certainly throw light in the matter, the elaborate discussion of some of which has been finished by my learned brother just a little while ago.

98. As the question in the Reference has to be answered, always keeping in view the broad principles laid down by the Supreme Court which discuss amongst others whether a Deity is mortal or immortal, whether a Hindu Debutter fails, whether the Vedas have divine authority, whether any grant is necessary for the dedication of property to religious purpose in the background of Hindu religion, I may first refer to the case of *Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar reported in*[46] Mukherjea, J., as he then was, who spoke for the Court, held feat 'religion' is a term which is hardly susceptible of any rigid definition. Religion, according to him, is a matter of faith with individuals or communities and it is not necessarily theistic. Dealing with the same topic though in another context, in the case of *Venkataramana Devaru v. The State of Mysore, reported in*[47] Venkatarama Ayyar, J. spoke for the Court in the same vein. Gajendragadkar, J., in the case of *Durgah Committee Ajmere v. Syed Hussain Ali, reported in*[48] observed to the effect that there is an essential difference between what is fundamentally a matter of religion and what may be regarded as encrustations, which are not of the essence of religion. S.K. Das, J. delivering the judgment on behalf of the Court in the case of 1959 (Supp) 2 SCR 563 : AIR 1959 Supreme Court 942 after relying on the judgment of Mukherjea, J., in the case of *Angurbala Mullick v. Debabrata Mullick reported in*[49] held, that religion is not confined to religious beliefs only, but is extended to religious practices as well. By implication it is also held therein that the Vedas have the divine authority and the Brahmins have spiritual authorities, both of which are not recognised by the Jains. It is also held by the same learned Judge in the case of *Mahant Ram Saroop Dasji v. S.P. Sahi, the second one in the series of four, delivered on the same day*[50]*, reported in* that the Deity is immortal and a Hindu debutter will not fail even if the image is broken, lost or stolen, on the reasoning, that the original object does not cease to exist Jagannadha Das, J. in the case of *Saraswati Ammal v. Rajagopal Ammal, reported in*[51] held that the ground of religious merit, though lacking in public benefit but having Shastrie basis, is sufficient. The principles, namely, that the religions purposes according to Hindu Law are not confined to purposes

[46]1954 SCR 1005 : AIR 1954 SC 282
[47]1958 SCR 895 : AIR 1958 SC 255
[48]1962 (1) SCR 383 : AIR 1961 SC 1402
[49]1951 SCR 1125 : AIR 1951 SC 293

[50]1959 (Supp) 2 SCR 583 : AIR 1959 SC 951
[51] AIR 1953 SC 491 : 1954 SCR 277

which are productive of actual or assumed public benefit and that they must be determined according to Hindu notions, were recognized and affirmed by his Lordship in the said decision. Gajendragadkar, J. in delivering the judgment in the case of 1957 SCR 1122 : AIR 1957 Supreme Court 797 holds that no instrument or grant is necessary for the purpose of dedication of property to charity and to religious or charitable purposes. Conduct of the parties and user of the properties may be sufficient.

99. In laying down as to who would be the beneficiaries in a Hindu Religious endowment, Venkatarama Ayyar, J., delivering the judgment on behalf of the Court in the case of 1956 SCR 756 : AIR 1957 Supreme Court 133 which has a great bearing in the instant reference held that under the Hindu Law, the Idol was a juristic person capable of holding the property; the Idol was the owner of the endowed property but the property vested in the Idol, only in an ideal sense. His Lordship made it clear that the Idol could not make use, enjoy, dispose of and protect the endowed properties. According to the said decision they were owners only in a figurative sense. The principle that an Idol was not a beneficial owner, was established, according to his Lordship, beyond all controversy and that a Hindu Deity could have no beneficial interest as Gods had no beneficial enjoyment. Purbamanansa Medhatithi's commentary on 'Devesthan' was relied on. It was further held that the gift was not to confer any benefit on God but the benefit was conferred on those, who worship the Deity or the Idol. A spiritual benefit was acquired by the worshippers. In other words, the true beneficiaries of religious endowments were not the Idols but the worshippers. Really the transfer such as gift or endowment is not a transfer to a 'sentient being'. Besides referring to Lewin on Trusts and Dr. Bijan Kumar Mukherjea's Treatise on Religious Endowments (Tagore Law Lectures), the cases reported in ILR 1942 (1) Cal 211 : AIR 1942 Calcutta 343 *Mahomed Nabi v. Province of Bengal*[52]*; Bhupati v. Hamlal*[53] *and* were relied on. His Lordship also observed that the religious endowments of the Hindu could be validly created in favour of the Idol or temple without performance of ceremonies.

100. In discussing the Law on complete and partial dedications, it is held in the case of Menakuru (supra) that the enjoyment of the property inevitably suggests the right to enjoy the property in one's right and this notion is not reconcilable with the theory of complete dedication of property in favour of charity. In a judgment delivered by Kapur, J., in the case of *Yogananda Lakshmina-rasimhachari v. Agastheswaraswami Varu, reported*[54] *in* where a question arose as to whether a grant to the trustees was made individually to them, it was held that us the lands were endowed for the purpose of "Kalyan Utsabam and for other purposes, they indicate "benefit of the Idol" and therefore constitute a specific trust. It; is submitted that the theory of Idol's benefit is not accepted in Deokinandan's case (supra). Hidayatullah, J., in the case of *Narayan Bhagwantrao Gosavi Balajiwala v. Gopal Vinayak Gosavi reported in*[55] held that the properties belonged not to any 'individual' but to the Deity (Sawaymbhu) as owner, obviously drawing a distinction between a Deity and an 'individual'.

101. In dealing with the legal position of the sacred office of a Shebait and his rights and liabilities vis a vis a trustee in the English sense, I may first refer to the case of Angurbala 1951 SCR 1125 (supra) that the relation of a shebait to the Idol was not that of a trustee in

[52] ILR 37 Cal 128 : 14 Cal WN 18 (FB)
[53]67 Ind App 1 : AIR 1940 PC 7
[54]1960 (2) SCR 768 : AIR 1960 SC622
[55]1960 (1) SCR 773 : AIR 1960 SC 100

the English sense- The shebait enjoyed the right partially of a character of a proprietary nature. In the case of *Kali Pada v. Palani Bala reported in*[56] it was held by Mukherjea, J. that the shebaitship combined in it, both the elements of office and property. The trusteeship carried no beneficial interest with it. In the case of Shirur Mutt, 1954 SCR 1005 (supra.) it is held that the office and property, duty and personal interests are all blended together in the concept of a Mahant or a Shebait and it has no relation to concrete property rights. Jagannadha Das, J., in the case of *Rajkali v. Ram Rattan, reported*[57] *in* held that the Shebait combines office of a pujari with the office of a manager. In the case of Mahant Ram Saroop, 1959 (Supp) 2 SCR 583 (supra) our attention was drawn that the expression trustee is equated with the expression shebait and both the expressions have been used freely in the some sense in the judgment. The same learned Judge who delivered the judgment in the case of 1959 (Supp) 2 SCR 601 held that the religions Institution and the property form one whole and the liability, if there be any, should be imposed on the trustee. The decision reported in ILR 60 Cal 538 : AIR 1933 Calcutta 519, *Prosaddas Pal v. Jagannath* was distinguished and the decision in the case of *re : Charnshila Dassi, reported*[58] *in* was noted, in which the trustees were assessed for payment of income-fax. In a recent case of the Supreme Court, viz., *Guru Estates v. Commissioner of Income-tax, appearing in the blue print, (now reported in*[59]*)* Shah, J., held that the amount of money known as 'aunadans' collected by the "pandas" from the pilgrims to the temple of Lord Jagannath Puri, are not exempt under Section 4(3)(i) or (ii) of the Income-tax Act on the ground that they are not religious or charitable Institutions.

102. On the status of a family Idol and as to whether a temple is a public or private one, there are again several decisions of the Supreme Court. One of the tests of a public temple laid down in the case of Rajkali, 1955-2 SCR 186 : AIR 1955 Supreme Court 493 (supra), is that where be Idol has been shastrically installed and consecrated and the worship is performed in accordance with the Shastras, it is a public temple, if not, it is a private one. In Deoki Nandans case, 1956 SCR 756 : AIR 1957 Supreme Court 133 (supra) it was held that if the temple was not located within the precincts of a residential quarter and if the same was used by the public freely, without any interference and as a matter of right, the temple would be a public one. Again, whore only the family members are entitled to worship, the dedication would be to a family Idol. The validity of perpetual endowment for the maintenance of worship of even family Idols was recognized in the case of Saraswati, 1954 SCR 277 (supra). It was established in Narayan's case, 1960-1 SCR 773 : (AIR I960 SC 100) (supra) that if none of the family members had interest in the temple or properties, the properties would obviously not be private and the Idol could never be a family Idol. The principles laid down by the judicial Committee in Bhagwan Din's case, 67 Ind App 1 (supra) were distinguished and these laid down in the case of *Srinivasa Charia v. Evalappa Mudaliar*[60]*,* were applied.

103. On the question of public or private trust the principle that in a trust for family Idol, public may be interested" as well, is held in the case of Mahant Ram Saroop, 1959 (Supp) 2 SCR 583 (supra). Raghubar Dayal, J., in the case of *Poohari Fakir etc. v. Commissioner Hindu Religious and Charitable Endowments, reported*[61] *in* held that the temple in that particular case was private, observing that

[56]1953 SCR 503
[57]1955 (2) SCR 186 : AIR 1955 SC 493
[60]49 Ind App 237
[58] ILR 1956 (1) Cal 173 : AIR 1947 Cala 148 : 50 Cal WN 521
[59] AIR 1963 SC 1452
[61] AIR 1963 SC 510

in the Madras Presidency, there is a presumption that the temples and their endowments formed

public charitable (rusts because private temples were practical) unknown there. Deokinandan's case, 1956 SCR 756 : AIR 1957 Supreme Court 133 (supra), laid down further that where the beneficiaries wore specific or specified individuals, ascertained or capable of being ascertained, the (rust became a private trust; but where the beneficiaries were general public or a class thereof and they constituted a body incapable of ascertainment, intended to benefit the general body of worshippers, it became a public trust. The said principles applied to religious endowments as well. Menakuru's case. 1957 SCR 1122 : AIR 1957 Supreme Court 797 (supra) also lays down that if dedication is complete, a trust in favour of public religious charity is created; if partial, a charge in favour of the charity is attached and the property retains its original private and secular character. Again, if substantial income is applied for the use of the charity and an insignificant sum is kept for the worshippers it might still be a case of complete dedication. Then is no general rule. It is again held in the case of Mahant Ram Saroop. 1959 (Supp) 2 SCR 583 (supra) that where the public is not interested in the worship, it becomes a private trust. In the case of *State of Bihar v. Bhabapritananda Ojha*[62], the learned Judge (S.K. Das, J.) holds that in the temple of Baidyanath, admittedly to be a public trust, the lingam was sheltered in it and dedicated, to Mahadeva, who is one of the assessees in this reference.
104. After broadly reviewing the said several decisions it may now be relevant to enquire as to whether God under the Hindu concept can be conceived as an Individual and whether the Deity as such is an 'Individual' under the provisions of Section 3 of the Income-tax Act and thus makes itself fit for a unit of assessment. Mr. Meyer appearing on behalf of the Revenue, submits with great force that there is always an element of human being in a Hindu Deity. Hence, the Deity is an 'Individual' and according to him is thus fit to be assessed as such, under the Income Tax Act.

105. For the said proposition, Mr. Meyer relied on the famous decision of the Judicial Committee of the Privy Council in the case of 52 Ind App 245 in which the Hindu Deity was likened by their Lordships to a human being. Their Lordships quoted with approval, "a useful narrative of the concrete realities of the position" from the judgment of Sir Ashutosh Mookherjea in the case of 36 Cal LJ 478 : AIR 1923 Calcutta 60 in which the Hindu Deity is conceived as a living being and is treated in the same way, as the master of the house would be treated, by his humble servant.

106. I do not accept the argument of Dr. Pal that Sir Ashutosh's distortions led to the aberrations of Lord Shaw in Pramatha's case but I take it that in the context of anglo-saxon domination, it is only an expression to excellent sentiments.

107. At the outset I may say that the Western people did not give sufficient freedom in religious matters. The result, Religion is according to the notion of the majority of the Hindus, a stunted, degenerated growth with Westerners who were partly successful to mutilate the same in order to make it a modern shop-keeping religion. It cannot be disputed that some men, even the most intellectual, all over the world, are spiritual savages. God is only a suggestion to them. Upon that suggestion, they throw their own ideas and cover them. They even believe that God would carry their burdens.

[62] 1959 (Supp) 2 SCR 624 : AIR 1959 SC 1073

108. Love and desire for ceremonials, dressing at certain times, eating in a certain way and shows and mummeries of religion like these, are to me only external religion, because our standard is the sense. Such desires have caused a veil to come in between external religion and the truth. It is only a dull reflection of which is inside.

109. It is true that on the subject of anthropomorphic and physical conception of Gods we get some reference from Rig Veda and Atharva Veda. Praises and hymns speak of the Deities and represent them like conscious being. They are sometimes described with menlike limbs. So also are their designations. They are also stated to have possessed of things used by men.

110. In Babylonion or Greek Mythologies we find one God struggling upwards and he assumes a position and remains there, while the other Gods the out. Zeus then comes to the front. Of all the Molochs, Jehovah became Supreme and the other Gods are lost for ever. The Buddhists and the Jains raised each of their prophets to the God-head and all others were made subservient to Buddha or to Jaina. Buddha, who himself speaks that he is the twenty-fifth Buddha (twenty four before him are unknown in history), wherever he went, it is stated, tried to pull down every old thing sacred to the Hindus, to the dust. So did the Jains. It is submitted, that in the name of religion, their heads, as it were, are penetrated more into the secrets of heaven, though their feet are clinging to the earth.

111. All religions have therefore their own mythologies. The Christian believes that God took the shape of a dove and came down to earth. The Jews think that if an image be made in the form of a box or a chest, with an angle on either side then it is sacred to Jehovah, The Hindu believes that God is manifested. But each one again thinks that it is not a mythology but a history. It is strenuously argued that the dualists only believe in a personal God who is purely anthropomorphic; such as a God with a rod in his hand ready to punish or God sitting in heaven or ruling the world. In the New Testament if is taught "our Father which are in heaven." The Persians also have the old theory of two Gods creating this world - - one good and one bad. It is again stated that Mumbo Jumbo in Africa and God in heaven are the same. On the other hand, the old Hebrew people did not care for heaven. It cannot be denied that all the religions of Europe and Western Asia are dualistic. These dualists it is again submitted, cannot conceive of higher spiritual ideas unless they bring then down to their own level. Religion in a sense, becomes an object of entertainment to them.

112. As the unthinking masses want concrete ideas, something the senses can readily grasp Symbols become necessary to them in stages. Realisation of God, in ray view, is something behind this world of sense, this world of eternal drinking and talking nonsense, this world of false shadows and selfishness (sec also the observations of V. Aiyyar, J. in *Deokuandan's case, 1956 SCR 756 : AIR 1957 Supreme Court 133* (supra) about the Idol being not a 'sentient being'). Religion is not a doctrine, not a rule. (See Mukherjea, J. in the Supreme Court case of Shrirur Math, 1954 SCR 1005 (supra)). It is a process. Real religion, in my view, begins, where this little universe ends.

113. Whether a particular image of Shiva or Kalimata is established or not, Gods or Deities are ever existent. Collating all the texts of Manu, as quoted by Hemadri and Maheswara and the texts of Sanka and of Gautama and the principles extolled in the Dharnia Shastras of Apastambha and Baudhayan, the Saptapatha and Parasara, any opinion contrary to the above, cannot be established. Cod is neither the body nor the mind but beyond them both, the omniscient and the omnipotent being. He is omnipresent. Without hands, he grasps everything. Without feet, He can move. He is the deathless, the eternal. Him the sword cannot pierce, Him the fire cannot burn, Him the water cannot melt. Him the air cannot dry say the ancient sages. He is the ancient one

beyond all darkness. Ai the head of all laws, proclaim the Vedas, stands one, by whose command the wind blows, the fire burns, the clouds rain and death stalks upon the earth. Him, neither the sum, nor the moon nor the stars illumine. He in my judgment, is the Brahman of the Hindus, the Ahura - Mazda of the Zoroastrians, the Buddha of the Buddhists, the Jehova of Jews, the father in heaven of the Christians.

114. The idea that God created the universe in one minute and then went to sleep and since then. He is sleeping, is an association of all sorts of hobgoblins with the real concept of a Deity. He is not a personal Governor of the universe. He is not a human being immensely magnified. This idea is very soothing to many, something like the effect that comes from an opiate. From all the theories of the Hindu concept the residium is, that God is the witness, rather manifester of the universe. He is the cause of its projection, continuance tend dissolution.

115. The mistake is that we want to tie the whole world down to our plane of thought and to make our minds the measure of the whole universe. We think that we are the manufacturers of Gods. But God is not to be made, as He already exists. As we are earth bound, it is no doubt difficult to give up the idea of body of a God, but this idea when analysed, becomes nothing but a burial ground. A God once known becomes finite and is no more God. As it is difficult to conceive this, that is why we hide our heads in the ground like the hunted hare and think we are safe in our thought of God having a body. The idea that there is a tradition of God who lives behind a veil somewhere and the priests only give us a passport to enable us to see his face is again an attempt to see the divine through the veil of ignorance. God is established upon His own majestic changeless self. He is self-evident. He is behind all worship. Out of his fire, comes life. His shadow is death -- sang the Rishis. We always fret and fume only because all that we see of God, is only a part.

116. If we boil down all the philosophies and scrutinise them we will find that God is beyond all touch, beyond all form, beyond all taste and beyond all law, He works through all hands, sees through all eyes, walks on all feet, breathes through all bodies, lives in all life, speaks through every mouth and thinks through every brain. He is the life of all the sons of the past. God is universal. Thus the Deity can never be an 'Individual', under the Hindu concept.

117. I have barely touched the hem of the garment of the science, viz., the concept of a Hindu Deity but I have made it clear that a Hindu does not worship the material body of the Idol made of clay, wood, stone, silver, gold or other metal. The Hindus worship the eternal spirit of the Deity. It cannot, therefore, be said with any approach to truth, that the great Rishis and their commentators who declared the Hindu law, had such a grass idea of the Divinity, they worshipped.

118. Although slightly extraneous to the subject, it will not be altogether out of place to mention, that all the Superior religions are of Asiatic origin. They had their growth and they owe their origin to the country between the Ganga and the Euphrates. Not one great religion has risen in Europe. The history of the world is a standing witness to this fact. When Europe was a baby, sprawling on the floor trying to swallow his thumb, Indian philosophers already reached their culmination. India declared five thousand years ago, which we are now merely reiterating the same truth in a different language, that progress is from seen to the unseen but never in reverse direction. It cannot be disputed that all over the world, there have been changing, jumping and

howling sects, who titilate the nerves of others for a moment, after taking nibbles from hero and nibbles from there, but the philosophy of India percolates throughout the whole civilized world, moving and permeating as it goes. This formed the theme of the sacred books of Asia, though brokenly described by some foreign commentators. Everytime it was almost feared that the Hindu religion was at an end and some people think that under the tremendous sledge-hammer blows of scientific research it is crumbling into pieces of porcelain; but we should try to get beyond such prattle of men, to whom religion is only little intellectual assent or dissent.

119. Apart from the above view, the word 'Individual' as appearing in the Income-tax Act, should be taken, in my opinion, to be used and applied in contradicton to Corporation. In my judgment, there is no and cannot be any, divinity theory, ascribed to the word 'Individual' in Section 3 of the Act. There is great force in the argument of Dr. Debi Pal, appearing on behalf of the assessee, to the effect that the provisions of Sections 4A, 16(3), 32, 48, 55 of the Act, Rule 19 and the Form of the Return required to be submitted by the assessee under the Rules and the signature of the individual as such, do not fit in, if the Deity is brought in within the concept of 'individual' in Section 3 of the Act, particularly when the Supreme Court has laid down that the individual would have to sign the return. It is difficult to follow Mr. Justice Banerjee's reasonings given in his decision in the case of Matter No. 93 of 1961 (Cal), still unreported. The Supreme Court's decision in Sodra Devi's case, dealing with Section 16(3) of the Act, reported in 1957-32 ITR 615 : ((S) AIR J957 SC 832) referred to by my learned brother, to the effect that the individual does not include females, makes me bold to hold that the word 'individual' cannot include the divinity namely the Hindu Deity or Idol and in any event the Female principle viz.; Mother Kalimata.

120. I am not unmindful that in some cases the extended meaning is given to the word 'individual' so as to include a group of persons forming a unit such as Corporation, University, Bar Council, State Trading Corporation or the trustees of a baronetcy trust and also to include at minor or a person of unsound mind. I am also not unmindful that in the context the 'joint Hindu family' may include the individuals under the Wealth Tax Act, but keeping myself strictly confined to the Income-tax Act and the question raised in the Reference I accept the other view, namely, that the individual can only mean a natural person i.e., a living human being. The view I take, is supported by the decision of the Canadian Supreme Court in the case of *Settled Estates Ltd. v. Minister of National Revenue, reported*[63] *in* where it was held that the word 'individual' must be 'natural living person'. Though the principles are evidently concealed, the decisions of the Supreme Court, specially the case of Narayan, 1960-1 SCR 773; (supra) have made it easier for me

[63] 1960 Canadian Tax Cas 173

to lay down, that the Hindu Deity is not an individual.

121. The question as to the concept of a Hindu Deity was answered once for all thousands of years ago. I have only made a restatement of the answer, which I have attempted to do above. I do not pretend to throw a new light on this all absorbing question. It is my humble attempt to put the ancient truth in the language of the modern times. As Swami Vivekananda puts it

> "it has been the theme of the poet's and sages, of priests and prophets. Kings on the throne have discussed it, beggars in the street have dreamt of it. The best of humanity have approached it and the worst of men have hoped for it. It will not die so long as human

nature exists".

In my view the concept of God is a fundamental element in human constitution and religion is a constitutional necessity of human mind. In this stress and hurry of our materialistic life, though the world has become a lost balance still we are debtors to the world, giving us opportunities for exercise in a grand moral gymnasium. No study has taken so much of human energy whether in times past or present, as the study of the concept of God. However, immersed we are in our daily occupations, in our ambitions, in our works, in our struggles, sometimes the mind stops and wants to know about God. It is as old as the history of humanity. It is also my definite view that no army carries the banner of so wide an Empire as that of Hinduism.

122. I have made a little digression but only with a view to show that if we all ditto without just cause, we would be like Egyptian mummies in a museum, looking vacantly at one another's face.

123. Mr. Meyer next contended that a Hindu Deity is a juristic person like any other juristic person under the English system and thus becomes a unit of assessment under the Act. He again cited the said decision of the Judicial Committee in the case of 52 Ind App 245 (supra), in which Lord Shaw observed at p. 250 (of 52 I A) that a Hindu Idol is a "juristic entity". It has a juridical status with the power of suing and being sued. It is also observed that the "duties of the piety" are "duties to something existing" which, "symbolizing Divinity", has in the eye of the law a status as a separate persona". When the Western people undertake to explain our religion, it appears, they are so wonderfully complicated. To follow the said observation is only to adopt the new that we cannot completely wipe out the past principles, laid down in the British regime, which were allowed to continue, for the better or for the worse.

124. The idea that a Hindu Deity is a juridical person is based upon the following facts : (1) that the Deity is likened to a human being (2) that the image of the physical manifestation of the Deity or the Idol is that of a person (3) because the Deity owns, uses and enjoys the property and (4) lastly the Deity gets the benefit by the dedication or endowment.

125. I have already dealt with in great details so far as the first "two tests are concerned viz.; the Deity is likened to human being and that the physical manifestation is that of a person. I like to add only that it is not clear to me, whether an Idol gets recognition as a possible subject of rights in his or her own interest or whether it is recognised, because of the existence of some ultimate human interest of those, benefited directly or indirectly by the Debuttar. Strictly speaking, the law of the present age at least does not concern itself with anything outside human interest and all the recognitions and protections afforded to the Deity must have been thought necessary because of the existence of some ultimate human interests. It might utmost be said that the juridical personality of the Deity is "only the technical means of developing the juristic relations" between the several human beings differently interested in the Institutions.

126. On the test as to the ownership and use of the property of the Deity, though the decision in the case of *Maharanee Shibessuree v. Mothooranath*[64], lays down that the Deity is the owner of the property but their Lordships of the judicial Committee themselves have explained, in the case of 2 Ind App 145 (152) (PC) that it is only in an ideal sense that the property can be said to belong to a Deity. "Probably this is the true legal view when the dedication is of the completed

kind known to the law", again observed their Lordships of the Judicial Committee in the case of *Jagadindra Nath v. Hemanta Kumari*[65],

127. In favour of this view, we have the doctrine of Medhatithi, the oldest and most authoritative of the commentators of Manu (Verses of Manu, Mandalik's Edition) and Second Book of the Institutes of Manu, supported by Durgacharyya's commentary on Nlrukta which says that the primary meaning of property and ownership is not applicable to God. A thing belonging to the Gods is an imaginary ownership of the images or likeness imagined to be Gods. The "Gods have no ownership of their own" and so the primary sense being inadmissible here, the secondary sense alone should be accepted. All the commentators understood the said Rule to say that it has a secondary or figurative sense different from what it bears, when used in relation to human beings.

128. No Hindu Deity is supposed, except by a fiction, to enjoy the benefits arising out of use of property in the sense, that these words may be used with respect to human beings. Gods do not use the property according to pleasure nor is found their exertion for protecting the property, described to be of that character, in popular view. To accede to the argument that the Hindu Deity is the owner of the property, in my view is to allow a fiction to be built on fiction to the hindrance and not for the furtherance of justice.

129. It should therefore be held that the Deity is the owner of the property only in an ideal sense and its enjoyment is also ideal enjoyment. The real material enjoyment must ultimately be with some human being. Though the Idol is recognised as a "juristic person capable of suing and being sued" strictly speaking, it has no material interest of its own". The efficient subject of the rights ascribed to an Idol" as, I have already said "must ultimately be some human beings". "It must be they, who enjoy such rights and if law protects such rights, it is because of the existence of such ultimate human concern." The so-called interest of the Idol in the property is merely an ideal interest, very different from the interest which an individual has in his property.

130. Dr. Pal contended that a juristic person under the English system has no body or

[64]13 Moo Ind App 270 (PC)

[65]31 Ind App 203 (PC)

soul. It has no rights except those which are attributed to it on behalf of some human beings. Dr. Pal further contended, that the case of a Hindu Deity as similar to that of a juristic person, can be effected only to this extent, that both must act through some agents. In this submission the analogy should not extend beyond this. The law, according to him recognises the shebaits for this purpose and appoints them, as it were, to be the persons who are to represent the Deity for all juridical purposes.

131. There is no statutory provision as to the juristic person being made applicable to the case of a Deity. I do not think that the rule of a juristic person involves any such principles of justice and practical experience, as would entitle me to extend it to the case of a Deity by analogy. In any event, the said principle cannot be applied in the case started under the Income-tax Act.

132. The fiction that an Idol is capable of holding the property must be kept within proper limits and must be employed cautiously and subject to many limitations as held by the Supreme Court in the case of Deoki Nanclan, 1956 SCR 756 : AIR 1957 Supreme Court 133 (supra).

133. The Hindu Deity is not a juristic person in the Hindu conception either. Our legislatures including the Income-tax Act, do not expressly treat him as such.The judicial Committee of the Privy Council treated the Hindu Idols as juristic persons, only for the procedural purposes in litigations. In my judgment the introduction of the Idol's recognition as a "juristic person" is "more a matter for the procedure, recognising the Idol as having it locus standi in judicio". If the Deity is still called a multi-purpose juristic person, that must be" said with a heavy lump in the throat. I may observe that, unsusceptible of precise meaning, the so-called juristic personality of a Deity is easily exaggerated.

134. It insist not therefore, in my judgment, be assumed too readily that a Hindu Deity is a juridical person for all purposes and that a "Hindu Deity stands on precisely the same footing capable of the same rights and subject to the same liabilities as an ordinary sentient being. The proposition that a Hindu Deity is for all purposes a juridical person is a proposition too broadly stated.

135. I am not basing my opinion solely on the philosophical reasons but it is conclusively established from the texts of the ancient lawgivers and the authoritative commentators, sufficiently indicated above, as well as from the of the Supreme Court that according to the Hindu notions, which must be the guiding factor to so determine, as held by the Supreme Court in the case of 1954 SCR 277 (supra), the Hindu Deity is not a juridical person for all purposes. At best the Hindu Deity is a juridical person only in an ideal, figurative or secondary sense, with which sense the Income Tax Act docs not concern itself. Whether this ideal sense means more than that of the dedication to a Deity or is a compendious expression of the pious purposes for which the dedication is designed, may be a question. But it is sufficient, for the purpose of this Reference to hold the above view, which I have taken; and which, in my opinion, represents the law, supported even by the decisions of the Judicial Committee of the Privy Council at least from the year 1833 down to the year 1897. "Too late" (a sadly familiar expression) is not the only verdict that I can reach in this Reference.
136. On the last test of juridical person, the proposition, that the dedication to a Deity has the same characteristic and is subject to the same benefits, enjoyments and restrictions as a. gift to a human being, is inconsistent with the first principles of Hindu jurisprudence. By dedication, in my judgment, benefit is conferred of the worshippers and also on the shebaits of the Deity and on the ministrants. who conduct it. The ordinary conception of a gift is not applicable to the case of a dedication to the Deity. A gift in its favor whether the image has to be prepared and destroyed periodically or once for all, is valid. The true Hindu conception, from dedication for the establishment of the image of the Deity, is that religious merit and spiritual benefit accrue to the founder and material benefit accrues to the person in charge of the worship and to the creatures of God.

137. From the general principles laid down by the Supreme Court, it would not be safe and correct to say that when the dedication is complete, still the endowment would be private, By nature, it would be public. The concept of the Hindu Deity or Idol, as stated earlier, supports the said view. The said principle finds support also in Shri Golap Sastri's Hindu Law, 5th Edition page 711 etc. and Dr. B.K. Mukherjea's Tagore Law Lectures on Hindu Law of Religions Endowment, (2nd Edition), specially at pages 12, 40, 41, 50, 58, 71, 74, 75, 89 and 90. Pandit Prana Nath Saraswati in his Tagore Lectures on Hindu Law of Endowment also stated that

debutter property by nature is impartible, the reason being that the property dedicated to God is not private. The Full Bench decision of this Court in the case of *Bhupari v. Ramlal* (supra) supports this view. The Supreme Court decision in Menukuru's case (supra) and that of this Court in ILR 60 Cal 538 : AIR 1933 Calcutta 519 do not decide to the contrary. The case of ILR 12 Bom 247 lays down that there is no necessity of trust in Hindu Law. Though the learned Advocate Mr. Meyer, appearing on behalf or the Department, states, that the said proposition reported in the said decision is a bit widely stated, as noticed in ILR 1957 Bom 525 : AIR 1957 Bombay 168.

I find that not only the said decision of Manohar Ganesh was cited with approval by Dr. Mukherjea in his said Tagore Law Lectures but he further stated at page 58 thereof that the Deities are generally exempt from Income-tax.

138. It has been argued, though philosophically, that it is a contradiction in terms to talk of the creator accepting anything, in the legal sense of the word from a creature; and that it is inconceivable that laws which were made for, if not by men, should be applicable to a Deity.

139. It requires to be reminded that the phrase "religious purposes" has not been defined in the Income-tax Act. Why the legislature should be whimsical, no one can explain. But there is no oddity, as gifts for religious purposes prima facie would include advancement, support and protection of a religion and its tenets. English doctrine of superstitious uses does not apply in India. In the underlying concept of law, all religions are equal. Religions endowment to a Hindu Deity, in my view, is for spiritual welfare of all mankind and not for any particular class of persons. Hence I may conclude that when there is complete dedication in favor of a Hindu Idol or Deity it cannot but be public and it would be exempted from taxation under Section 4(3)(i) of the Act. I do not think that the Deity needs to pray in aid any such rule or principle exists in a form, which would be applicable here. But at any rate the construction of the Act which I favor, has the merit of avoiding it, whereas the Revenue's contention admittedly inflicts it.
140. In the long run, the decision of this reference depends and the question remains to be answered as to whether a shebait should be assessed under the provisions of Section 41 of the Act. The scheme of this section is, that a person who receives an income is chargeable. Section 41, as is well known, is not exhaustive. It is merely a machinery section and does not affect the incidence of taxation under Sections 3 and 4 of the Act, which are charging sections. It is true that in this enabling section, the Department, if it so chooses, can take steps to assess the trustee or other representatives or it may assess the beneficiary direct. But the language in Section 41(1) is mandatory. If one compares the language of Section 40(1), it appears that there is no direct assessment on minors, lunatics or idiots but only on their guardians i.e., it specially deals with the trustees 6f minors, lunatics and idiots; while Section 41 deals with the trustees in general. In my view the tax-should be levied on the shebaits under the provisions of Section 41, which section has been expressly made applicable to the trustees and Mutwallis appointed under a valid deed of Wakf. The relevant decisions, referred to by my learned brother, which I am not repeating, hold that the shebaits of a Deity are liable for payment of income-tax. Though a trust in the English sense of the word was unknown to the Hindu law and though the shebaits are no trustees in the English sense (see the case of Supreme Court of Augurbala supra); but their obligation are, like those of the trustees (see the case of Supreme Court of Charushila, 1959 (Supp) 2 SCR 601 : (AIR J.959 SC 1002) (supra). Section 43(2) also makes it clear. I am not repeating the observations of Viscount Cave in (1921) 7 Tax Gas 387 which have been dealt with by my

learned brother. I might only add that the principles laid down therein has been applied by the Supreme Court in Durbash's case, 1951-19 ITR 182 .

141. The question appears to be simple, but on the surface. The argument has therefore been long and elaborate. This comes about because, in order to meet the case made against the tax payers, they had been obliged to go back to the beginning of the income-tax, in order to demonstrate that the Revenue is wrong and they are right. It is a good thing no doubt from time to time to get back to first principles as in the instant Reference, of Hindu Law, to help to resolve some troublesome problem. The difficulty about doing this in relation to income-tax problems is usually that principles, first or similar, are few and far between and such of them as may exist are expressed in the language, which today at times is obscure.

142. As to the authorities, there is little value, in parading them all, seeking from them an implication, now one way and now the other and relying on judicial remarks, made without this problem being in mind at all. This is not intended as a criticism of the arguments of their side, which indeed have been most helpful. It is merely my reason for keeping an examination of the authorities down to a minimum. I feel, that some decisions, like rushing torrents have moved down sweeping through the narrow turns, hemmed in between struggling lawgivers, to show, how they have already thrown a long shadow over the religious field and how many still remain heavily under the influence of the decisions (English notions), which benumb thought. Some of them walked into the footsteps of others, in condition of confusion; and they are, in my view, not sign posts to a new start but are milestones in the same old journey of cross purposes and missed turnings.

143. On and consistently with the totality of the principles on all the different aspects stated above, I have arrived at the conclusion I namely, that the Hindu Deity is not a unit of assessment being neither an 'Individual', nor a juristic person as such. In my judgment, though the reasoning cannot be extended far enough to cover the Deity but I am of opinion that the Naskars in this Reference are in the position of the nature of a trustee though not in the English sense. They cannot escape the position of at least mere trustees as discussed above. Provisions of Section 41 of the Income-tax Act, 1922 are applicable to the petitioners, as the assessments on the shebaits under the said provision of the Act are lawful. But to conclude I his much is not necessarily to concede that the Hindu Deity as such is liable to income-tax. I need say no more than this.

144. Lastly, I may mention that Anandamoyee Kalimata was in existence in the F.B. case of ILR 37 Cal 128 : 14 Cal WN 18 (FB); is in existence in this Reference and will always be in existence. It is my conviction, that candles will still flicker before the Idols and in the temples with the subdued splendour, preserving the same sense of divinity, though with the marks of vicissitudes but with the lasting feeling of centuries of worship of the Hindu Deity. The Supreme Court declares in the case of Mahant Ram Saroop Dasji, 1959 (supp) 2 SCR 583 (supra) that the Deity is immortal.

145. I accordingly, agree, respectfully, in the answer proposed by my learned brother and I also agree with no order for costs as passed by him.
Reference answered accordingly.