

CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Indian Chamber of Commerce

(P.B Mukharji, C.J. T Basu,. J.)

29.05.1970

JUDGMENT

P.B. Mukharji, C.J.

1. In this income-tax reference under Section 256(1) of the Income-tax Act, 1961, the following question of law has been raised for an answer by this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the activities carried on by the assessee from which it derived, (a) arbitration fees, (b) fees for certificate of origin, and (c) its share of profit from Messrs. Calcutta Licensed Measurers, were not activities carried on for profit within the meaning of Section 2(15) of the Income-tax Act, 1961, and, accordingly, the income derived from such activities was exempt from tax under Section 11 of the Income-tax Act, 1961 ?"

2. The facts raising this controversy are as follows: The assessee is the Indian Chamber of Commerce. The assessment year is 1964-65 and the corresponding accounting year is the year 1963. The assessee-company was registered under Section 26 of the Indian Companies Act, 1913, and was permitted to omit the word "limited" from its name.

3. The income on which the tax is questioned arises in this case from three different sources. The first is the arbitration fees. The second is the fees for certificate of origin. The third source arises from the share of profit of the assessee which arises in the following way. Formerly, the Chamber had a measuring department where it used to undertake all types of weighment and measurements for the benefit of the traders in general for which it charged fees. The Bengal Chamber of Commerce, a sister concern, had also a similar department. By an agreement dated the 20th March, 1962, the two chambers of commerce agreed to carry on the business formerly carried on by the two chambers in their measuring departments in partnership under the name and style of Messrs. Calcutta Licensed Measurers on and from the 1st April, 1962.

4. The Income-tax Officer found that, apart from receipts by way of admission fees, members' subscription, affiliation and other receipts which were not assessable as no specific services were rendered in respect thereof, the assessee-chamber had derived income from these three sources. The chamber's return for 1964-65 showed profit of Rs. 1,58,690, comprising gross receipts from, (i) arbitration fees amounting to Rs. 4,792, (ii) fees from certificate of origin amounting to Rs. 4,552, (iii) miscellaneous receipts of Rs. 208, and (iv) share of income from M/s. Calcutta Licensed Measurers amounting to Rs. 1,69,779. After deducting expenses of Rs. 47,641, the net profit of Rs. 1,58,690 was arrived at. The Income-tax Officer held that the income derived by the assessee from arbitration fees, fees for certificate of origin and the share of profit from Messrs. Calcutta Licensed Measurers, was assessable to tax. He was of the opinion that in the definition of "charitable purpose" in Section 2(15) of the Income-tax Act, 1961, the words "not involving the carrying on of any activity for profit" had been introduced and as the aforesaid activities of the assessee constituted activities for profit the surplus received from these sources were taxable income in the hands of the assessee. He determined such taxable income at Rs. 1,58,482.

5. On appeal by the assessee-chamber the Appellate Assistant Commissioner substantially agreed with the decision of the Income-tax Officer that these activities were activities for profit and the income derived therefrom would constitute business income taxable under the Income-tax Act, 1961. The Appellate Assistant Commissioner, however, accepted the alternative contention of the assessee that the losses brought forward from the previous years should be set off against business income for this year.

6. On the assessee's appeal to the Tribunal, however, the Tribunal allowed the appeal by applying the decision of the Supreme Court in *Commissioner of Income-tax v. Andhra Chamber of Commerce*, . On an analysis of the objects in the memorandum and articles of association of the Indian Chamber of Commerce, the assessee, the Tribunal came to the conclusion that the main objects of the assessee were objects of general public utility and, according to the decision of the Supreme Court, the assessee was entitled to exemption from tax under Section 11 of the Income-tax Act, 1961. The foundation of the assessee's argument on this reference is that the Indian Chamber of Commerce is a company for a charitable purpose within the meaning of Section 2(15) of the Income-tax Act, 1961. This charitable purpose, according to the assessee, is "advancement of any other object of general public utility not involving the carrying on of any activity for profit" under Section 2(15) of the Income-tax Act, 1961. In support of this contention the memorandum and articles of association were invoked to emphasise that the objects of the Indian Chamber of Commerce, the assessee, are (a) to promote and protect the trade, commerce, and industries of India, and, in particular, the trade, commerce and industries in or with which Indians are engaged or concerned, (b) to aid and stimulate the development of trade, commerce

and industries in India with capital principally provided by or under the management of Indians, (c) to watch over and protect the general commercial interest of India, or any part thereof, and the interests of persons, in particular, the Indians, engaged in trade, commerce or industries in India, (d) to consider all questions connected with trade, commerce and industries, and to initiate or support necessary action in connection therewith, and (e) to do all other things as may be conducive to the development of trade, commerce and industries or incidental to the attainment of the above objects or any of them. Therefore, Dr. Pal for the assessee argues that these are "objects of general public utility" within the meaning of Section 2(15) of the Income-tax Act, 1961. In that view he is supported by the Supreme Court decision in *Commissioner of Income-tax v. Andhra Chamber of Commerce*, and the observations made therein. These objects are now settled by the Supreme Court decision to be objects of general public utility. There can, therefore, be no further argument about it.

7. Dr. Pal for the assessee has also relied on Clauses 4 and 8 of the memorandum of association of the Indian Chamber of Commerce. Clause 4, inter alia, states:

"The income and property of the association, whensoever derived, shall be applied solely towards the promotion of the association as set forth in this memorandum of association and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend or bonus or otherwise howsoever by way of profit to the persons who at any time are or have been members of the association or to any of them or to any persons claiming through any of them."

8. Then again Clause 8, inter alia, provides :

"If, upon winding up or dissolution of the association, there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the associations, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the association to be determined by the members of the association present at a general meeting."

9. Dr. Pal for the assessee has also relied on such well-known authorities on the point as the Privy Council decision in *In re Trustees of the Tribune*, [1939] 7 I.T.R. 415 (P.C.), *All India Spinners' Association v. Commissioner of Income-tax*¹, *Commissioner of Income-tax v. Radhaswami Satsang Sabha*², and *Commissioner of Income-tax v. Breach Candy Swimming Bath Trust*³. He also relied on a series of stock exchange cases to illustrate, his argument on "object of general public utility" by reference to *Commissioner of Income-tax v. Calcutta Stock Exchange*

Association Ltd., , Delhi Stock Exchange Association Ltd. v. Commissioner of Income-tax⁴, and a decision of the Andhra Pradesh High Court in Hyderabad Stock Exchange Ltd. v. Commissioner of Income-tax⁵,

10. We do not consider it necessary to examine in detail these different authorities. They are all to be distinguished on the ground that they did not deal with the new amended law defining "charitable purpose" under Section 2(15) of the Income-tax Act, 1961, by the introduction of the expression "not involving the carrying on of any activity for profit". This is the crucial expression on which the answer to the question depends. It involves a question of interpretation and a construction of that expression in Section 2(15) of the Income-tax Act, 1961.

11. The statement of the case and the question raised indicate that the income arising from these three sources in question in this case are described as "activities for profit". That would indicate that it was common ground between the revenue and the assessee in the proceedings for taxation leading up to the decision of the Tribunal that, (i) these were activities, and (ii) that the incomes taxed were profits as will be evident not only from the statement of the case and the question raised, but also from paragraph 7 of the decision of the Tribunal.

12. It should be noted here that of the three sources from which this income is derived in this case, only one, viz., arbitration is expressly provided in Clause 3(i) of the objects of the association in its memorandum providing "to arbitrate in the settlement of disputes arising out at commercial transactions between parties willing or agreeing to abide by the judgment and decisions of the Tribunal and the associations." The two other sources of income, viz., fees for the certificate of origin and the share of profit from Messrs. Calcutta Licensed Measurers, are not expressly provided at all in the memorandum of association. It may also be noted that no power is expressly provided in the memorandum for charging fees or levying fees for any kind of work of this nature.

13. Dr. Pal for the assessee submits that the proper interpretation of Section 2(15) of the Income-tax Act, 1961, would be that the object of general public utility must itself involve the carrying on of any activity for profit. That was the main thesis of his argument. He therefore submits that the objects, as described in the memorandum of the assessee, Indian Chamber of Commerce, as such do not ipso facia involve the carrying on of any activity for profit within the meaning of Section 2(15) of the Income-tax Act. 1961. We are unable to accept this submission of Dr. Pal for the assessee. We shall state our reasons briefly.

14. The expression "the advancement of any other object of general public utility not involving the carrying on of any activity for profit" plainly indicates that it is not the object of general

public utility which would involve the carrying on of any activity for profit but the "advancement" of that object. Otherwise, it will lead to a self-contradictory situation because the reason for including the object of general public utility as a charitable purpose was that it was not a charitable purpose with a blanket cover for any object of general public utility but with the severe limitation that the advancement of an object of general public utility would not involve the carrying on of any activity for profit or else it would not be a charitable purpose within the meaning of Section 2(15) of the Income-tax Act, 1961. That, in our view, is the true, import, meaning and significance of this new definition with the expression "the advancement of any other object of general public utility not involving the carrying on of any activity for profit", In other words, the advancement of any other object of general public utility would be a charitable purpose provided that its advancement does not involve the carrying on of any activity for profit. The wisdom behind this limitation is plain. The expression "object of general public utility" is an expression of wide import and it was therefore thought necessary by Parliament in its wisdom to impose certain restrictions on the area of the object of general public utility and the area selected is that its advancement must not involve the carrying on of any activity for profit.

15. An appropriate interpretation of Section 2(15) of the Income-tax Act, 1961, is to consider the expression "not involving the carrying on of any activity for profit" as qualifying the expression "the advancement of any other object of general public utility" and not the other classes of charitable purpose mentioned in that section like relief of the poor, education and medical relief. That is the only way by which to avoid a conflict between Section 11 and Section 2(15) of the Income-tax Act, 1961, specially with the provisions of Sections 11(1)(a) and 11(4) of the Income-tax Act, 1961.

16. This view of the interpretation of the expression the "advancement of any other object of general public utility not involving the carrying on of any activity for profit" under Section 2(15) of the Income-tax Act, 1961, would be consistent with and not contrary to Section 11(1)(a) and Section 11(4) and also Section 28(iii) of the Income-tax Act, 1961. Sections or definitions in a statute should not be read in isolation but in the whole context of the statute. The expression "any other object of general public utility" under Section 2(15) does not expressly refer to trade or business, for a normal connotation of "general public utility" would not directly include trade or business. But, after the decision of the Supreme Court in the Andhra Chamber of Commerce case, it was quite clear that the wide expression "any other object of general public utility" under Section 2(15) would include objects for promotion of trade or commerce without any profit motive as coming well within charitable purpose. The present amendment introduced by the Income-tax Act, 1961, by adding the words "not involving the carrying on of any activity for profit" was to put this wholesome limitation upon any and every object of general public utility

of various description becoming a charitable purpose and thereby qualifying for exemption. It is to be noticed that the word used in this new law is "activity" and not trade or business. Normally, a trade or business is always with profit or with profit motive, though, no doubt, under some recent statutes as in the Sales Tax Act, the new concept of business without profit is being introduced.

17. In the light of this interpretation, Section 11 and Section 28 fall in harmony. Section 11(1)(a) of the Income-tax Act, 1961, excluded, inter alia, "income derived from property held under trust wholly for charitable or religious purposes" with certain qualifications. In other words, this provision incites that a property has to be held under trust wholly for charitable purpose before this income could be excluded. The question then is whether a business undertaking could be itself such a trust. Hence, Section 11(4) of the Act provides, inter alia: "For the purpose of this section, 'property held under trust' includes a business undertaking so held." These provisions introduce the concept of "property held under trust" wholly for charitable purposes and this property may be the business undertaking itself so that income arising from such business undertaking would, subject to the qualifications of Section 11, qualify for the exemption. It needs to be remembered that Section 11 of the Income-tax Act, 1961, . comes under Chapter III of the statute dealing with incomes which do not form part of the total income. The next section to which reference may be made in considering the interpretation of Section 2(15) of the Income-tax Act, 1961, is Section 28 which comes under Chapter IV of the Income-tax Act dealing with computation of total income and dealing in particular with profits and gains of business or profession. Significantly, Section 28 provides inter alia, that the income chargeable to income-tax shall, among other incomes, include "income derived by a trade, professional or similar association from specific services performed for its members". It illustrates the principle that if "specific services" are rendered by a trade, professional or similar association, then the income derived from it would be chargeable to income-tax. Therefore, we are of the opinion that the interpretation which we have given to Section 2(15) of the Income-tax Act, 1961, will be consistent with these statutory provisions like Section 11 and Section 28 which we have just now considered.

18. It will be, however, appropriate for us to indicate in this connection that these other sections are referred to for the purpose of interpreting Section 2(15) of the Income-tax Act, 1961. In point of fact, however, the only contention before the Tribunal was as stated by it, "The point for our decision is whether by the introduction of the additional words in the definition of charitable purpose in the 1961 Act, the receipts of the assessee from non-members for certain services rendered to them are not entitled to the exemption under Section 11 as such services constituted carrying on of activities for profit". From this it would appear to follow that the receipts in this

case were from services rendered to non-members and, therefore, on the facts here no question arises under Section 28(iii) of the Income-tax of 1961 which is confined only to "members". Secondly, the proceedings of taxation up to the decision of the Tribunal never raised any dispute on the point whether this was at all a property held under trust within the meaning of Section 11 of the Income-tax Act, 1961, and as we have said the taxation proceeded on the assumption that the property was held under trust whatever that property may be. We do not, therefore, propose to travel beyond the statement of the case and the frame of the question raised in discussing in this reference whether it could at all be said that the income from these three different sources, (a) arbitration, (b) certificate of origin, and (c) measurement, was at all arising from any property held under trust by the assessee, Indian Chamber of Commerce. It will, therefore, be not necessary to discuss the Privy Council dictum in *All India Spinners' Association v. Commissioner of Income-tax*, that how far property held in trust can include the organisation itself, particularly when in a case such as this where there is really no stock-in-trade for such activities for profit as issuing certificates of origin and charging arbitration fees and also has to a large extent the fees realised from measurements and weighments.

19. Reference was made in a decision recently given on February 12, 1970, by the Mysore High Court in *Commissioner of Income-tax v. Sole Trustee, Loka Shikshana Trust*⁶, and reference was made to the "Short Notes of Current Cases" appearing in [1970] 76 I.T.R. (Sh. N.) 17. We do not think it is a desirable practice to rely on such short notes of current cases without the full judgment before the court. But we do not think that the view we are taking is in any way inconsistent with such short notes as have been placed before this court.

20. Dr. Pal for the assessee referred to the English cases to explain and illustrate the concept of "activity for profit". In the first place, he relied on the decision in *Trustees of the National Deposit Friendly Society v. Skegness Urban District Council*⁷, and specially the observations of Lord Denning at page 612 explaining the field of legal charities. Lord Denning observes there:

"In law 'charitable' is a term of art with a technical meaning which is narrower than its popular meaning."

21. That is very well settled in the law of charities today. But there is little application of the English principle here to the facts of the present reference on the ground that the English statute is very different from the Indian statute. The English statute there was concerned with the expression "an organisation not established or conducted for profit" under Section 5(1)(a) of the Rating and Valuation (Miscellaneous Provisions) Act of 1955. We have no such expression in Section 2(15) of the Income-tax Act, 1961, like "established or conducted for profit". The other decision was *North of England Zoological Society v. Chester Rural District Council*, [1959] 3

All E.R. 116 (C.A.), dealing with the same section of the same English statute and it followed the above observations of Lord Denning.

22. For these reasons, we answer the question in the negative and in favour of the revenue. We hold that the activities carried on by the assessee in the facts and circumstances from which it derived, (i) arbitration fees, (ii) fees for certificate of origin, and (iii) share of profit from Messrs. Calcutta Licensed Measurers, were activities carried on for profit within the meaning of Section 2(15) of the Income-tax Act, 1961, and were liable to tax and were, therefore, not exempt from tax under Section 11 of the Income-tax Act, 1961.

23. Each party will bear its own costs.

T.K. Basu, J.

24. I agree.

Cases Referred.

- 1[1944] 12 I.T.R. 482 (P.C.)
- 2[1954] 25 I.T.R. 472 (All.)
- 3[1955] 27 I.T.R. 279 (Bom.)
- 4[1961] 41 I.T.R. 495 (S.C.)
- 5[1967] 66 I.T.R. 195 (A.P.)
- 6[1970] 77 I.T.R. 61 (Mys.)
- 7[1959] A.C. 293 ; [1958] 2 All E.E. 601 (H.L.)