

KERALA HIGH COURT

Commissioner of Income-Tax

Vs

Indian Chamber of Commerce

ITR. Nos. 56, 57 and 58 of 1968

(P. Govindan Nair and M.U. Isaac, JJ.)

22.10.1970

JUDGMENT

P. Govindan Nair, J.

1. The Income-tax Appellate Tribunal, Madras Bench "B", has stated a case with reference to the years of assessments 1962-63, 1963-64 and 1964-65 and has referred to the following question for our decision.

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that, the income of the assessee is exempt from taxation under Section 11 of the Income-tax Act, 1961, for the assessment years 1962-63, 1963-64 and 1964-65?"

2. The assessee is the Indian Chamber of Commerce, Cochin, registered under Section 23(1) of the Cochin Companies Act, 1920. The objects of the association are seen from its memorandum of association which are extracted in the order of the Tribunal as well as in the statement of the case. We may refer to a few of these objects as seen from the memorandum as they are relied on by counsel on behalf of the revenue. They are Clauses (a),(b),(c),(h), and (i) which read as follows :

"(a) To promote and protect the trade, commerce and manufacture of India, or any part thereof, and in particular of the Cochin State.

(b) To watch over and protect the general commercial interests of India or any part thereof, and the interest of persons engaged in trade, commerce or manufacture in India, and in particular in the Cochin State.

(c) To encourage a friendly feeling and unity among commercial men in their common good. . . .

(d)

(h) To arbitrate in the settlement of disputes arising out of commercial transactions between parties willing or agreeing to abide by the judgment and decision of the chamber.

(i) To do all such other things as may be conducive to the preservation and extension of trade, commerce or manufacture or incidental to the attainment of all the above objects or any of them."

3. The assessee has been issuing weightment certificates as also conducting survey of the goods to be exported. For this they charged a fee to those who require the certificates from the assessee. Members of the chamber as well as non-members approached the chamber for certificates. For the corresponding accounting years pertaining to the years of assessments 1962-63, 1963-64 and 1964-65 the income received by the assessee on this account amounted, respectively, to Rs. 1,66,734, Rs. 2,09,959 and Rs. 2,71,929. The assessee claimed exemption for all the three years of the income referred to above under Section 11(1)(a) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The Income-tax Officer held that the purpose of the association cannot be held to be a "charitable purpose" within the meaning of that expression as defined in Section 2(15) of the Act. The Income-tax Officer also held that in any view of the matter the assessee is not entitled to the exemption of the entire income as Section 11(2) has not been satisfied. The assessee appealed unsuccessfully. But the Tribunal in further appeal held that the purpose for which the association is formed is a "charitable purpose" within the meaning of that expression in Section 2(15) of the Act and allowed the exemption permissible under Section 11(1)(a) of the Act. The Tribunal did not find specifically about the quantum of the exemption to which the assessee is entitled. We are by the question referred to us called upon only to answer the general questions as to whether the income can be said to be derived from property held on trust wholly for "charitable purpose".

4. No point has been raised before us that the income in question is not income from property of the association held for the purpose of the association. The only point that has been argued before us is that the purpose of the association is not a "charitable purpose" as defined in Section 2(15) of the Act. This argument, on the face of the decisions of the Privy Council in *In re The Trustees of the 'Tribune'*, *All India Spinners' Association v. Commissioner of Income-tax, Bombay*² and *Commissioner of Income-tax, Bombay City v. Breach Candy Swimming Bath Trust*³, cannot prima facie be accepted Counsel made bold to urge such a contention only because of the changes that have been made in regard to the definition of "charitable purpose" in the Act. The definition in the Act under Section 2(15) is in these terms :

"2. In this Act, unless the context otherwise requires,-

(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

5. Counsel submitted that the clauses in the memorandum that we have read spell clearly an activity in the nature of a business as the clauses refer to commerce and trade and that the objects of the association as seen from the memorandum make it clear that at least one of the objects is an activity for profit. This submission we are unable to accept. The objects as seen in the clauses are well-known objects, objects that have been the subject-matter of scrutiny in *Commissioner of Income-tax, Madras v. Andhra Chamber of Commerce*⁴, wherein it was held that those objects are objects of general public utility and therefore falling with the last part of the definition in Section 4(3)(i) of the Indian.

¹(1939) 7 I.T.R. 415 (P.C)

³(1955) 27 I.T.R. 279 (P.C)

²(1944) 12 I.T.R. 482 (P.C)

⁴(1965) 55 I.T.R. 722 : (1965) 1 S.C.R. 565 (S.C)

Income-tax Act, 1922. Going through the memorandum of association of the assessee, therefore, we have no doubt whatever that the association is one for a charitable purpose. This leads us to the second line of contention raised by counsel that even so it will not be a "charitable purpose" as the activity of issuing certificates for weighing and survey involves an activity for profit. Counsel submits that if in achieving the charitable purpose some activity has to be carried on for profit then it ceases to be a "charitable purpose" as defined in the Act and he seeks to gain support for the contention from the wording of the definition of "charitable purpose". He laid stress on the words "object not involving the carrying on of any activity for profit". If there is any activity which results in profit, the "charitable purpose" ceased to be a "charitable purpose" for the purpose of the Act., Counsel submitted further that the very object of the amendment is to achieve this result. He referred us to the commentaries on the section defining 'charitable purpose' and urged that no other meaning can be attributed to the definition. We are unable to accept the contention that the wording of the definition in the section permits such an interpretation. It is not for us to glean from the speeches made at the time of the introduction of the Bill what was sought to be achieved. This, we think, will be of no use for us in interpreting the language of the section. A plain reading of the section makes it clear that in order to take an object of general public utility outside the scope of the definition that object must involve carrying on of any activity for profit. "Involve" means comprise or imply and it, therefore, follows that the object must imply the carrying on of an activity for profit. It is not sufficient, we think, if there is some activity carried on which results in profit. There must be an activity in the form of business because the activity must be for profit and that activity for profit must be involved in the objects of general public utility. This last element we are unable to find in this case. This question as such has not arisen in any of the numerous decisions that have been cited before us. Since even in relation to the business activity a trust can be created the question in these cases was only whether the activity was for private profit or whether the activity was in furtherance of the objects of the trust. We venture to think that even when an activity is in furtherance of the objects of a trust and even if such activity results in profits, the definition will not be attracted unless the objects involve carrying on an activity for profit. The objects of this association do not involve carrying on of any activity for profit. What has been done by the Chamber has not been suggested to be not in furtherance on the objects of the Chamber. If in carrying on such objects there is resulting excess of income over expenditure that cannot be brought in as income liable to tax under the Act by virtue of Section 11(1)(a) of the Act.

6. We, therefore, answer the question referred to us in the affirmative that is, in favour of the assessee and against the department. We direct the parties to bear their respective costs.

7. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal as required by Sub-section (1) of Section 260 of the Indian Income-tax Act, 1961.