

## KERALA HIGH COURT

Commissioner of Income-Tax

Vs

Cochin Chamber of Commerce

(V G Nambiyar, C.J. G B Nair, J.)

20.09.1977

### JUDGMENT

#### **Gopalan Nambiyar, C.J.**

1. These references are by the Income-tax Appellate Tribunal, Cochin Bench, which has sent up certain questions of law for determination and opinion by this court. The question of law referred under Section 256(1) "of the Income-tax Act by the Tribunal in I.T.Rs. Nos. 51 and 52 of 1975 is as follows : " Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the provisions of Section 28(iii) are not applicable to the facts of the case ? "

2. The question arises in respect of the assessment years 1971-72 and 1972-73. The Tribunal declined to refer the second question of law. Reference of the said question was sought to be compelled on an application made to this court under Section 256(2) of the Act. This court compelled the reference and accordingly I.T.Rs. Nos. 78 and 79 of 1977 are before this court in respect of the said question, reference of which was declined by the Tribunal and was compelled by this court. The question referred is as follows:

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the income of the assessee is exempt from tax under Section 11 of the Income-tax Act, 1961 ?"

3. The question compelled and referred also relates to the same two years 1971-72 and 1972-73.

4. It would be convenient to deal first with I.T.Rs. Nos. 78 and 79 of 1977. Paragraph 2 of the statement of the case sent up by the Tribunal is as follows :

" The assessee is a chamber of commerce. It is registered as a company under Section 25 of the Companies Act. There is a regular memorandum of association governing the conduct of the chamber of commerce. The assessee's receipts during the accounting years are given below :

1971-72	1972-73	Rs.	Rs.	
				Subscription from members 20,960 21,160
				Entrance fee from members 3,500
				Measurement and weighment fees 1,85,087 1,81,464
				Certificates of origin and other certificates 12,663 12,337
				Sampling and survey fees 8,442 8,949
				Sale of publications Interest on Government securities 7,132 8,196
				Dividends 3,133 2,746
				Interest received (gross) 10,638 13,887
				Miscellaneous receipts 5,980 5,704
				Profit on sale of fixed assets ... Provision for doubtful debts written back .. Profit on redemption of investments ...2,58,510 2,55,486

The question that has been agitated before us is whether the receipts shown under the above heads are entitled to exemption under Section 11 of the Income-tax Act read with Section 2, Clause (15), of the same, or whether the exemption is to be denied on the ground that the Cochin Chamber of Commerce has been carrying on an activity for profit which would dis-sentitle it to earn the exemption under Section 11 of the Act. The exact effect and import of the exemption under Section 11 read with Section 2(15) of the Act was recently expounded by the Supreme Court in *Indian Chamber of Commerce v. Commissioner of Income-tax* [1975] 101 ITR 796 (SC). It was pointed out that Section 2(15) must be interpreted according to the language used therein, and against the background of Indian life, and that the benefit of the exemption from total income is taken away, if in accomplishing a charitable purpose, the institution itself engages in activities for profit. We are sparing ourselves the need to expatiate further the principles which have been elaborated in the judgment of the Supreme Court. The decision of the Supreme Court was based on the observations in an earlier pronouncement in *Loka Shikshana Trust v. Commissioner of Income-tax*<sup>1</sup> The court noticed the cleavage of judicial opinion on the point. It reversed and overruled the decision of the Kerala High Court in *Commissioner of Income-tax v. Cochin Chamber of Commerce and Industry*<sup>2</sup> and affirmed the decision of the Calcutta High Court in *Commissioner of Income-tax v. Indian Chamber of Commerce*<sup>3</sup>

5. In the light of the above principle laid down by the Supreme Court it is plain, and there was no controversy, that the receipts from : (1) Measurement and weighment fees, (2) certificates of origin and other certificates, (3) sampling and survey fees, (4) sale of publications, (5) miscellaneous receipts, (6) profit on sale of fixed assets, and (7) profit on redemption of investments cannot qualify for the exemption under Section 2(15) read with Section 11 of the Act. This was fairly realised by counsel for the assessee. But he contended that in regard to the following items, viz.:

1. Interest on Government securities ;

2. Dividend; and

3. Interest received (gross), the question has neither been discussed nor found as to whether the

Chamber of Commerce can be said to be carrying on an activity for earning profit within the meaning of the words used in Section 2(15) of the Income-tax Act. Counsel rightly pointed out that the approach to this question will have to be in the light of the exposition made by the Supreme Court in the decision noticed supra, and that the Tribunal and the assessing authority had proceeded on the basis of this court's pronouncement in Cochin Chamber of Commerce's case [1973] 87 ITR 83 (Ker) referred to earlier. We think the submission of counsel is well-founded ; and that in respect of items referred to by him it is not only fair and proper, but very necessary, that there should be a fresh investigation and finding by the Tribunal. In the light of the above, we answer the question referred as follows:

6. In regard to the following items mentioned in the statement of the case, viz.:

1. The measurement and weighment fees
2. Certificates of origin and other certificates
3. Sampling and surveying fees 4 Sale of publications
5. Interest on Govt. securities
6. Dividends
7. Interest received (gross)
8. Miscellaneous receipts
9. Profit on sale of fixed assets
10. Provision for doubtful debts written back
11. Profit on redemption of investments;

we answer the question in favour of the department and against the assessee. In respect, however, of the following items in the said paragraph, viz.:

1. Interest on Government securities,

2. Dividends, and

3. Interest received (gross), we direct the Tribunal to take back the Appeals Nos. 231 and 232/Cochin/ 73-74, to its file and proceed to investigate the question in the light of the observations contained herein and proceed to enter its finding thereon in accordance with law. We, answer the question referred against the assessee and in favour of the department to the extent indicated above. There will be no order as to costs. LT.Rs. Nos. 51 and 52 of 1975.

7. In the light of the answer that we have given to the question of law referred in I.T.Rs. Nos. 78 and 79 of 1977, the question of law referred in I.T.Rs. Nos. 51 and 52 of 1975 has become academic and there is no need to answer the same. We accordingly, decline to answer the question of law referred in these two/income-tax references. No order as to costs.

Cases Referred.

1[1975] 101 ITR 234 (SC)

2[1973] 87 ITR 83 (Ker)

3[1971] 81 ITR 147 (Cal)