

BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

The Grain Merchants Association

(John Beaumont, Kt., C.J. Kania, J.)

23.03.1938

JUDGMENT

John Beaumont, Kt., C.J.

1. This is a reference by the Commissioner of Income-tax under Section 66(2) of the Indian Income-tax Act, 1922, raising a point of no great difficulty. The assessee is the Grain Merchants Association of Bombay and they had put in their return declaring a deficit of Rs. 1,819. Their income, material for the present purpose, consists of interest earned on investments. Admittedly that source of income is liable to tax, but the assessee Association say that they are not liable since they fall within the exemption contained in Section 4(3) of the Act. That section provides that tax is not payable in respect of any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes. Then there is a proviso to it to the effect that 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. The assessee has passed a resolution, in point of fact after the date of the order of assessment, though we are told, that it only declares what was their previous custom, which provides that the income which is now in question will be spent as per the resolutions of the committee of the Association passed from time to time on matters of commercial and other small as well as big works of public utility. The only real question is whether these words fall within the words of the proviso to Section 4(3) viz. "general public utility". In my opinion an object of general public utility means an object of public utility which is available to the general public as distinct from any section of the public ; and the objects of this Association are clearly, to my mind, to benefit works of public utility confined to a section of the public, i.e. those interested in commerce. I think, therefore, that the assessee does not bring themselves within the exemption contained in Section 4(3) and that the answer to the first question must, therefore, be in the affirmative. The second question also will be answered in the affirmative.

Kania, J.

2. I agree.

3. Per Curiam. Assessee to pay the costs of the Commissioner of Income-tax taxed on the original side scale less one hundred rupees.