

BOMBAY HIGH COURT

Chaturbhuj Vallabhdas

Vs

Commissioner of Income-Tax

(H Kania, Kt., C.J. Chagla, J.)

18.09.1945

JUDGMENT

Harilal Kania, Kt., Ag. C.J.

1. This is a reference under Section 66(7) of the Indian Income-tax Act, 1922, by the Tribunal of Income-tax, inviting the Court's opinion on the following question:-Whether in the circumstances of the case and on a true construction of Clause 15 of the will of the late Gordhandaa Khetsey the income from the deceased's residuary estate is income from property held in trust or other legal-obligation, wholly for religious or charitable purposes so as to be exempt from assessment under Section 4(3) (i) of the Act ?

2. The material facts are few. Gordhandas Khetsey made his will dated April 30, 1934, and died on February 27, 1935. He left a large estate. Clause 15 of the will runs as follows:My trustee shall utilise my residuary property for such acts of charity as he deems proper. But if my trustee thinks fit, he can give a one-fourth part of my residuary property to all or one or more than one of my daughters or to the sons of my daughters.

3. In the statement of case it is stated that the residuary estate consists of immovable properties in Bombay and its suburbs and also securities. The taxing authorities sought to tax the whole income of the residue on the ground that it did not fall under Section 4(3) (?) of the Indian Income-tax Act. Before the Assistant Commissioner it was in fact found that a certain amount was spent for religious and charitable purposes and he permitted the amount to be exempted from tax. Except for that, he directed that the balance should be taxed at the maximum rate. The assessee appealed. The Commissioner did not appeal against the order of the Assistant Commissioner. Before the Tribunal it was argued that the word, " charity " used in Clause 15 of the will was not covered by the definition of " charitable purpose " found at the end of Section 4 of the Act. That definition runs as follows:

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. It was contended on behalf of the Commissioner that the word 'charity' was indefinite and may include public or private charity, and also benevolent or philanthropic objects, Therefore, the income of the residue was not exempt from taxation under the Act. This line of reasoning is found in the judgment of the Tribunal. The assessee asked the abovementioned question of law to be referred to the Court and the matter has thus come before us.

4. In my opinion the meaning put on the word "charity" (used in Clause 15 of the will) in the judgment of the Tribunal is incorrect, ".Charity" without any further qualifications has a recognized meaning in law. It amounts to a general charitable intention for objects well recognized as charitable in law. It is to be noticed in this case that the original will is in Gujarati but the testator has deliberately used the word "charity" (an English word) in writing out Clause 15. This may be due to the fact that the Gujarati word "dhoram" has been held to be void for uncertainty. We are not concerned in this case with what the Gujarati equivalent may be, or what effect can be given if a Gujarati word was used. Taking the word "charity" as used in Clause 15 I see no justification for the conclusion of the Tribunal that it would include benevolent or philanthropic objects or it may be private charity. The expression "private charity", strictly speaking, is a misnomer. The words "charity" or "charitable purpose" or "charitable object" are defined in various sections of different Acts of the Indian Legislature. In all of them the idea of public benefit is clearly involved.

5. It was sought to be argued on behalf of the Commissioner that in the present case by the use of the word "charity)" without the word "public" the use for public was not necessarily indicated. In this connection Mr. Setalvad relied on the judgment of, the *Privy Council in All India Spinners Assn. v. Commis. of Income-tax*¹ In that case the Court was considering whether the objects of the association were charitable or not. It must be noted that the word "charity" was not used as one of the objects of the association. Their Lordships emphasised that in the definition given in the Income-tax Act the word "public" was used and it was of importance. From that Observation it was sought to be argued on behalf of the Commissioner that unless the word "public" was used in connection with the objects mentioned in the settlement, the same was not within the meaning of "charitable purpose" as defined in the Act. In my opinion that argument is unsound. Their Lordships were only considering the particular objects of the association before them, and in considering the different objects emphasized the view that if the use was for the benefit of the public or a section of the public it was an important factor to be considered in determining whether the object was charitable or not. In my opinion it is misreading that case to say that when in a settlement the word ""charity" is used without any qualifications or limitations it is not covered by the definition found in the Income-tax Act, unless the word "public" is expressly used in connection with "charity." I would put the position in a different way. The word "charity", if

used generally, necessarily connotes the use for the public. Therefore when the word "charity" is used, there is nothing to include in it objects of private benefit only. In my opinion, the word "charity," if used generally or without qualifications or limitations, falls within the definition of 'charitable purpose' found in Section 4 of the Act.

6. One of the tests to be applied is whether the gift in question is valid in law. This argument was supported by the observations of the Privy Council in *Tribune Press Trustees, Lahore v. Income-tax Commissioner*² In the course of the judgment it was observed as follows (p. 251): .Their Lordships are in agreement with this view and see nothing in the Indian Income-tax Act to discharge the Court of its responsibility in coming to a finding as to the character of the object of a trust-a matter which bears directly upon its validity. Therefore if a gift to charity is held valid according to the laws of India, it is a relevant factor to be considered in deciding if it is a charitable purpose within the meaning of the Act, *Runchordas v. Parvatibai*³ and *Trikumdas Damodatr v. Haridas*⁴ show that the word 'charity,' used generally, gives rise to a good bequest or gift in India. In my opinion, therefore, the construction put upon that word in Clause 15 of the will by the Tribunal is not correct. The word "charity" used generally and without limitations by itself is sufficient to fall within the definition of charitable purpose given in the Indian Income-tax Act and the argument of the Commissioner on this point must be rejected.

7. It was next argued that in the present case by Clause 15 no specific property is set apart for charity and therefore the case is covered by the second part of Section 4(3) (i) which runs in these terms:

4. (3) This Act shall not apply to the following dasates of income:- ' (i) Any income derived from property held under trust or other legal obligation wholly for religious or, charitable purposes, and in the case of property so held in part only for Such purposes, the income applied, or finally set apart for application, thereto. It was argued that in the present case the residuary estate was not property held' in trust or for other legal obligation ' wholly' for religious or charitable purpose. At most therefore only such portion of the income as is proved to be applied for such purposes should be exempted from tax. Mr Setalvad relied on the judgment of the-Privy Council in *Mmlcma M. I. R. Malak v. Commissioner of Income-tax, C.P.*⁵ In. that case a property was settled on trust under a deed dated August 25, 1917. The objects of the trust were further explained and extended by another deed dated November 25, 1922. An examination of the documents showed clearly that the income-of the trust property was applicable to purposes many of which were neither religious nor charitable. On the construction of the documents their Lordships held that the income of the property so settled was not held in trust wholly for religious or charitable purposes. There can be no doubt on that point. Their Lordships then observed as follows (p. 487): Nor is it suggested that any part of the property is set aside for any charitable or religious

purposes, so that it can be identified as appropriated exclusively to such purposes,...Relying on that observation and the statement in the case here that the residuary-estate consists of immovable properties in Bombay and its suburbs as well as securities it was argued that the assessee cannot point out any particular) property which was set apart exclusively for charitable purposes, and therefore the case was not covered by the first part of Section 4(3) (i) of the Act. In my opinion, this argument is unsound. What their Lordships of the Privy Council were concerned with was a case in which several objects were mentioned in a deed to which income could be applied. It was not stated in the deed what portion of the income was to be applied, for the purpose set out in a particular clause. The result was that the trustees could use any portion of the income or the whole income for either charitable or non-charitable purposes. In such circumstances it was obvious that the Board had to hold that exemption could be granted only in respect of what was actually used for charitable purposes. The observation quoted above has to be read in the light of those facts. Their Lordships had under those circumstances to state that as it could) not be identified that any part of the property was appropriated exclusively to charitable purposes the first part of Clause (i) of Sub-section (3) could not be applicable. I am; unable to read that observation as meaning that the trustees must point out a particular property (i.e. a house, or a security giving the number) to bring into operation the first part of the clause. Residuary estate is recognised as property in law. If so, a clearly defined portion of the residuary estate is equally "property" within the meaning of law. In the present case by Clause 15 the testator had directed his trustee to utilise three-fourths of the income of the residuary estate for charity. That clearly falls within the first part of Clause (i) of Sub-section (3) of Section 4 of the Act. As regards the remaining one-fourth part the trustee is given the option to spend it either for charity or to give the same over to one or more of the testator's daughters or the sons of his daughter. To that part the second portion of Clause (t) may be applied. "We are not concerned with that point as it is agreed between the parties that the question before the Court should be limited only to three-fourths of the income of the residue. In my opinion that income is clearly covered by Section 4(3) (i), first part. That portion of the residue is held wholly for charitable purposes within the meaning of the Income-tax Act and is completely exempt from tax.

8. Our answer to the question submitted for the Court's opinion (limited to the three-fourths of the income of the residuary estate) is in the affirmative. The Commissioner to pay the costs of the reference.

Chagla, J.

9. I agree, In my opinion when an assessee claims exemption under Section 4(3) (i) on the ground that the income is derived from property: held under trust or other legal obligation wholly for religious or other charitable purposes, the responsibility is cast upon the Court to determine

and decide whether such trust is a valid one. In the case of *Tribune Press Trustees, Lahore v. Income-tax Commissioner (1939) L.R. 66 I.A. 241: S.C. 41 Bom. L.R. 1150(Suupra)*, the trustees of the Tribune claimed exemption under Sub-section (3) of Section 4 on the ground that the income was spent for the advancement of an object of general public utility and their Lordships of the Privy Council there pointed out; that it was the duty of the Court to determine what the character of the object was; whether in the opinion of the Court the object was such as would advance public utility. In the case before us the testator has not indicated the object of the charity. All that he has stated is that the trustee should spend the income of his residue for such acts of charity as he deemed proper. Now, in my opinion, considering the fact that this is, the will of a Gujarati speaking person writing in the Gujarati language, it is clear that the intention of the testator, by; using the word " charity " which is an English expression, was to indicate and disclose a dominant and overriding charitable intention which was not the case before the Privy Council, to which I have referred. Their lordships cast a duty upon the Court to determine whether the printing of the, paper was for the purpose of public advancement. Similarly it is our duty to determine whether the bequest contained in Clause 15 is a valid charitable bequest. It is clear on the authorities, and I need not refer to them, that if a dominant charitable intention is disclosed although the object of the charity is not indicated the Court will not permit the charitable bequest to be defeated but if necessary may administer the trust and undertake the control of the trust. Therefore in my opinion this is a; good charitable bequest, and if it is; a good charitable bequest, it falls within the terms of Section 4(5) ('i') and is a trust for charitable purposes. I therefore agree that the answer to the question referred to the Court should be in the affirmative and the Commissioner should pay the costs of the reference.

Cases Referred.

- 1(1944) 47 Bom. L.R. 233: S.C. L.R. 71 I.A. 159
- 2(1939) L.R. 66 I.A. 241: S.C. 41 Bom. L.R. 1150
- 3(1899) I.L.R. 23 Bom. 725: S.C. 1 Bom. L.R. 607, P.C
- 4(1907) I.L.R. 31 Bom. 583: S.C. 9 Bom. L.R. 560
- 5(1930) 4 I.T.C. 486, P.C