

BOMBAY HIGH COURT

Commissioner of Income Tax

Vs.

Walchand Diamond Jubilee Trust

Income Tax Reference No. 75 of 1957

(M.C. Chagla, C.J. and S.T. Desai, J.)

20.03.1958

JUDGMENT

M.C. Chagla, C.J.

1. The question that arises in this reference is whether an income arising from a certain trust is exempt from tax on the ground that it falls within Section 4(3)(i) of the Indian Income-tax Act. The trust in question was constituted on the Diamond Jubilee of Mr. Walchand Hirachand, a well-known industrialist of Bombay and the trust-deed which is dated 31st May, 1943 sets out the objects of the trust. The recitals clearly state how the trust came into existence and the origin of the trust was the celebration of the 61st Birthday of the Settlor and a committee of the employees of the Settlor presented to him a sum of Rs. 4,11,111/- and the recital further points out that the Settlor was anxious to strengthen the hands of the organization which controlled the various companies in which the Settlor had an interest and, therefore, he thought it necessary to maintain a uniform control over the management and working of the Premier Construction Co., Ltd., by centralizing the voting power in the company in the hands of a certain definite body instead of having it spread over in individuals or small groups. Then we have the operative clause which provides that the trust fund shall be invested in the purchase of shares of any kind of the Premier Construction Co., Ltd. Clause 2 provides that for 18 years the income is also to be invested in the shares of the Premier Construction Co., Ltd. and Clause 3 provides that on and after the expiry of the period of 18 years the net income derived from the investments is to be utilized for all or any one of the four objects mentioned in that clause and those objects are, giving scholarships, medical relief, monetary help to the poor and needy and relief to the poor and distressed in time of famine, cyclone, floods, earthquake, etc. There is a proviso to this clause which entitles the Trustees to give preference to such persons as are eligible under the four objects enumerated and who are at time or have in the past been employees of the Premier Construction Co., Ltd. Clause 4 also casts an obligation upon the Trustees to attend meetings of the Premier Construction Co., Ltd. and to exercise their vote in such manner as would be

conducive to the furtherance of the various objects of the trust.

2. The first question that we have to consider is whether the income from this trust is derived from property which is held under trust wholly for religious or charitable purpose; and the contention of Mr. Joshi is that, on a true reading of this section, what is required is that in the year of account in which the exemption is claimed there must be a trust in existence for religious or charitable purposes from which the income in respect of which exemption is sought is derived. Mr. Joshi says that, when we look at the scheme of this trust-deed, it is clear that in the year of account no such trust was in existence. What is urged upon us is that the trust for charitable purposes would only come into existence after 18 years and prior to the 18 years there is no trust whatever for any charitable purpose, the only obligation upon the Trustees being to invest the income in the shares of the Premier Construction Co., Ltd. Mr. Joshi is right that before we grant an exemption to the assessee under Section 4(3)(i), we must be satisfied that at the relevant time - and the relevant time is the year of account - there is property which is impressed with a charitable trust, that property yields income and it is that income for which exemption is sought. Now it is not disputed that the four objects to which reference has been made are objects of a charitable nature and that a trust in respect of those four objects would be a trust which would fall within the ambit of Section 4(3)(i). What is said is that there is no obligation with regard to these four objects until a lapse of 18 years; it is only after 18 years that there is an obligation upon the Trustees to spend income on these four objects; and, therefore., at the relevant date what is in existence is not a trust for a charitable purpose, but a trust for an entirely different purpose. Now, this raises a rather important question. When you analyze the provisions of the trust-deed, the scheme which emerges is clear. The Settlor did not wish the Trustees to spend the income of the trust on the charitable objects immediately. He wanted the trust fund to increase and expand and after the trust fund had expanded, he wanted the income of that trust fund to be spent on the charitable objects. In other words, the trust-deed contains a scheme for accumulation of income and for the accumulated income to form part of the trust fund; and there is also a provision for the accumulation to go on for a specific period of time and on the expiry of that time the income of the enlarged trust fund to be spent on the charitable objects. Can it be said that, because the income of the trust is not to be spent immediately or in the relevant year on the charitable objects, therefore the income is not exempt although the object of the trust may be a charitable object ?

3. Now for the purpose of Section 4(3)(i) what the Court has to consider is what is the nature of the trust with which the property, is impressed. In other words, the question that the Court has to ask itself is; What is the object of the trust ? Is it a charitable object or a religious object ? If the property is impressed with a charitable trust or the object of the trust is charitable or religious, then the income derived from such trust or property would be income which would fall within the ambit of Section 4(3)(i). It is fallacious to suggest that the object of the trust for the first 18 years is to invest monies in a particular manner. That is not the object it is a mode of investment; it is a direction given by the Settlor how the income is to be utilized for the ultimate object of its being spent on the objects of the trust. It is entirely untenable, in our opinion, to suggest that a

direction with regard to investment can be looked upon as an object of the trust. An object of the trust is something definite and unvarying; it is the intention that the Settlor has for settling his property; it is an object with which the Court can rarely interfere. Except when a question of the cypres doctrine comes in, the Court exercising charitable jurisdiction must always respect the charitable intention disclosed by the Settlor and help the Trustees to carry out the charitable intention. But the direction with regard to its investment is entirely different. No Court exercising equity jurisdiction - and the Charity Commissioner to-day is exercising his jurisdiction under the Bombay Public Trusts Act under which this trust is registered - is ever tied down by the directions of the Settlor with regard to investments. If at any time within the 18 years the Court or the Charity Commissioner is satisfied that the investments directed by the Settlor are not prudent investments and are not beneficial to the trust, it is perfectly competent to the Charity Commissioner or the Court to direct that the investments should be made in a different manner. This clearly explains the dividing line between what are strictly the objects of the trust and the procedural matters, if one might say so, contained in the trust-deed which may deal with details like the accumulation of income, the investment of income and so on. Mr. Joshi says that there would have been no objection if the Settlor had given directions for the accumulation of income if ultimately the whole of that income was directed to be spent on charitable objects., But Mr. Joshi's quarrel is that, at the end of 18 years, the trust fund that is constituted is not merely the trust fund as originally set up, but the trust fund plus all the income which has arisen to that trust fund in the course of 18 years. In other words, the direction is to capitalize income for a period of 18 years. It is difficult to understand what possible objection in principle there can be to that direction in a trust-deed. Illustrations will immediately come to mind of many charitable schemes which it may not be possible to give effect to immediately and where a settlor may well provide, having laid apart a certain amount for a charitable purpose, that the charitable purpose should only be carried out after a period of 10 or 20 years when the fund has grown sufficiently to make it possible for that scheme to be carried out. If Mr. Joshi were right, no such trust could be set up or if it were set up, the income from such a trust would have to pay tax. What has to be looked at is the dominant intention disclosed in the trust-deed. It is not necessary that that intention must be immediately carried out. So long as the income from the trust property is not spent on any non-charitable object and it is saved, as it were or set apart or accumulated for the ultimate object of carrying out the charitable purpose, then even in the intervening period the trust continues to be a charitable trust, the property is held on a charitable trust and the income from that trust is exempt from tax.

4. The second objection that is raised by Mr. Joshi is as regards the power conferred upon the Trustees to prefer the employees of the Premier Construction Co., Ltd. for being the object of the Settlor's bounty; and it is said that, when the whole scheme of the trust-deed is looked at, it is nothing more than a trust to help the employees of the Premier Construction Co., Ltd. Mr. Joshi is perfectly right that, if we take the view that the trust is to benefit the employees, even though they are to be benefited for purposes which are charitable the trust would not come within the ambit of Section 4(3)(i). What Section 4(3)(i) has in view is not merely a religious or charitable

purpose, but also that the object of the trust must be an object of general public utility. In other words, the bounty of the Settlor must be directed towards the public as a whole or a section of the public. If the object of his bounty is neither the public nor a section of the public but merely a conglomeration of men who constitute a mere group and the nexus which ties them is not a nexus which constitutes them a section of the public, then the trust would not be a trust which would fall within the ambit of Section 4(3)(i). Now, there is a very interesting English decision to which our attention was drawn by Mr. Joshi and that is *Oppenheim v. Tobacco Securities Trust Co. Ltd.*¹. In this case a group of numerous persons was the object of the settlor's bounty, but the nexus between them was employment by particular employers; and the House of Lords held that the trust did not satisfy the test of public benefit requisite to establish it as charity. As has been very happily put by Lord Normand

¹(1951) AC 297

at p. S10, if the object of the bounty is an aggregate of persons without public significance, then that aggregate of persons, however, numerous does not constitute a section of the public. Therefore, it cannot be disputed - and Mr. Palkhivala does not dispute it - that if the object of the trust was to benefit the employees of a particular concern or the children of the employees, then the trust would not be a charitable trust within the meaning of Section 4(3)(i)

5. But the question is whether on a fair reading of this trust it could be said that the objects of the Settlor's bounty were only the employees of the Premier Construction Co., Ltd. In this connection Mr. Joshi puts emphasis upon the proviso which gives the power to the Trustees to give preference to the employees of the Premier Construction Co., Ltd. Now, undoubtedly we could have taken a different view of this trust if there was an obligation upon the Trustees to prefer the employees. In other words, if the other members of the public were postponed to the employees of the Premier Construction Co. Ltd., then, looking to the other provisions of the deed, we might easily have taken the view that the main purpose of the trust was to benefit the employees and the charity to the public was merely illusory. But there is no obligation cast upon the Trustees by this proviso to prefer the employees of the Premier Construction Co., Ltd. It is for the Trustees to exercise their discretion. In the first place, they have to utilize the income for carrying out the four objects and any member of the public who comes within these four objects would be qualified to receive the bounty of the settlor if a member of the public also happens to be an employee of the Premier Construction Co., Ltd., it is open to the Trustees to give him preference. Therefore, the Trustees would not be guilty of committing any breach of trust if they selected for the bounty of the Settlor such members of the public as did not fall in the category of employees of the Premier Construction Co. Ltd. That is the real test which we have got to apply. We must not assume that the Trustees will exercise their discretion dishonestly or improperly. The test is whether the exercise of the discretion of the trustees is so fettered that they are bound to select particular persons in preference to others. That is clearly not the case here. They may or they may not give preference to the employees. They may say, that other things being equal, an

employee of the Premier Construction Co., Ltd., may be preferred. On the other hand they may say that there is a member of the public who is more deserving than the employee and they would prefer him to receive the bounty. With regard to the other provisions in the trust-deed to which reference has been made about the anxiety of the Settlor to control the voting power, to see that the concern in which he was vitally interested and which he helped to build up should be conducted in a particular manner, those are all side issues which do not affect the question of property or income. They undoubtedly help us to understand what the intention of the Settlor was and although it may be conceded that he was greatly interested in the employees of Premier Construction Co., Ltd., the trust-deed, as drafted, in so far as it does not compel the Trustees to make the employees the sole beneficiaries of the bounty of the Settlor, the trust-deed cannot be struck down as a trust-deed for a purpose other than a charitable purpose the income from which is not entitled to exemption under Section 4(3)(i).

6. We must, therefore, answer the question submitted to us in the affirmative.

7. The Commissioner to pay the costs.

Reference answered.