

# **BOMBAY HIGH COURT**

Commissioner of Income-Tax

Vs

Trustees of Seth Meghji

(S Desai, C.J. Shah, J.)

17.06.1959

## **JUDGMENT**

**Shah, J.**

1. One Seth Meghji Mathuradas executed a deed of trust on 4th May, 1943, in respect of a sum of Rs. 3,50,000 to be held by the trustees for purposes which were religious or charitable in character. By clause 1(d) of the deed of trust it was directed that after setting apart certain sums by way of depreciation and other expenses the balance of the income, interest, dividends, rents and profits of the trust properties was to be utilised for all or any or more of the following charitable purposes, in such shares and proportions and in such manner in every respect as the trustees shall, in their absolute and unfettered discretions, think fit :

"(i) In giving aid to deserving or poor Hindus of the three upper or twice-born classes in the shape of money, clothes, books, articles, food or otherwise howsoever as the trustees may in their absolute discretion think fit;

(ii) For the purpose of advancement of education (primary, secondary, technical or other) by the opening, starting, maintaining, and conducting schools, colleges or other educational institutions or by awarding scholarships or prizes or by giving donations to educational institutions or otherwise for educational purposes for the benefit of the members of the three upper or twice-born castes of the Hindu community;

(iii) For the purpose of founding, maintaining, conduction, or helping an institution or institutions for the benefit of the three upper or twice-born castes of the Hindu community for the teaching and practice of arts and crafts industries with a view to making the persons taking advantage of such institutions earn their livelihood at the institution or elsewhere;

(iv) In giving relief against distress or bodily ailment e.g., by opening, starting,

maintaining and conducting hospitals or dispensaries, convalescent or nursing homes sanatoriums or like institutions or by giving donations to other hospitals, dispensaries, convalescent or nursing homes, sanatoriums or like institutions or by other means for relieving distress and ailment among the members of the three upper of twice-born castes of the Hindu Community."

(v) For the purpose of founding, maintaining, conducting or helping charitable institutions like orphanages, boarding schools, anathashrams for the residence, maintenance and education of poor and destitute infants and children of the said three upper or twice-born castes of the Hindu community."

2. Then followed a proviso which stated :

"Provided however that in carrying out one of the above charitable intentions the trustees shall always prefer the members of my caste, viz., the Bhatia caste, to the members of any other caste in the Hindu community and shall further prefer members of my family and relative to those who are not such members or relatives..."

3. Pursuant to the trust deed the trustees entered upon management of the trust properties. The Income-tax authorities sought to tax the income of the trust properties in the hands of the trustees on the view that the trust was, in view of the proviso which enable the trustees to utilise even the whole of the income for the benefit of the members of the community of the settlor and particularly for the benefit of the members of the family and relatives of the settlor, a trust not falling within section 4, sub-section (3) (i), of the Income-tax Act. The Income-tax Appellant Tribunal was of the view that the proviso contained in the deed of trust relating to the preference of members of the community of the settlor, and in particular of the members of the family and relatives of the settlor, to those who were not such members, became operative only where the necessary conditions applicable were equal, i.e., the claimants being poor and the object of help being religious or charitable in character. The Tribunal accordingly held that the income from the trust properties was liable to exemption from tax under section 4(3) (i) of the Income-tax Act.

4. In this reference, Mr. Joshi, who appears on behalf of the Department, has very fairly invited our attention to a recent judgment of their Lordships of the Supreme Court in Civil Appeal No. 396 of 1957, Trustees of the Charity Fund v. Commissioner of Income-tax decided on 5th May, 1959. Before we refer to that judgment it may be pertinent to observe that by clause 1(d) of the deed of trust, after applying the income to certain purposes, the trustees were directed to utilise the balance for purposes which were charitable in such shares and proportions as the trustees in their absolute and unfettered discretion thought fit and such balance was to be utilise for any one or more of the five purposes specified therein. Evidently there was a dominant charitable

intention expressed by the settlor. That the five purposes which are set out in the deed of trust are charitable in character cannot, in our judgment, be disputed; and even before the taxing authorities and the Tribunal the only contention sought to be raised was that the dominant charitable intention was affected by reasons of the obligation which was cast upon the trustees to prefer the members of the community of the settlor and in particular the members of the family and relatives of the settlor to others. In our view, this proviso only requires the trustees, in utilising the funds for charitable purposes to prefer certain beneficiaries (application of the funds to whom being also for a charitable purpose) on the ground that they belonged to the community of the settlor and in particular because they were members of the family or relatives of the settlor. It cannot be said that by reason of this proviso the dominant charitable intention expressed by the settlor, which authorised the trustees to selected that the question of preference arose.

5. In the case of the Trustees of the Charity Fund, Esplanade Road, Fort, Bombay the settlor, after setting out the charitable purposes, had directed in the deed of trust that in applying the income of the trust properties the trustees shall give preference to the "poor and indigent relations or members of the family of Sir Season David, including therein distant and collateral relations" : and their Lordships of the Supreme Court held that the provision relating to the giving of preference to the poor and indigent relations or members of the family of Sir Season David could not affect the public charitable trust constituted under sub-clause (a) of clause 13 of the trust deed. In our view, this judgment is decisive of the question which is sought to be raised before us.

6. We, therefore, answer the question referred for decision in the affirmative. The Commissioner of Income-tax to pay the costs of the assessee.

7. Question answered in the affirmative.

