BOMBAY HIGH COURT

Dharma Vijaya Agency

Vs.

Commissioner of Income-tax

Income-tax Ref. No. 59 of 1958

(Shah and S.T. Desai, JJ.)

29.06.1959

JUDGMENT

Shah, J.

1. This reference arises from proceedings for assessment of income-tax in respect of assessment years - 1951-52, 1952-53, 1953-54 and 1954-55. Four brothers Tulsidas Kilachand. Ramdas Kilachand, Ambalal Kilachand and Chinubhai Kilachand whom I will hereafter refer to collectively as 'Kilachand brothers' - entered into a partnership agreement for carrying on business the nature whereof is not clear on the record in the name and style of Dharma Vijaya Agency. There was no formal deed recording the terms of this partnership agreement. By an agreement, dated 28-9-1950, the firm was appointed as from 1-9-1950 the principal agents of the New Great Insurance Co. of India, Ltd. The appointment was made by a letter setting out certain terms and conditions addressed by the insurance company to the firm, and these terms and conditions were accepted by the firm. By the first condition of the letter the firm was to act as the principal agent on behalf of the Insurance company and was at all times to be the holder of a certificate from the Controller of Insurance to act as principal agent. By condition No. 6 the appointment was subject to termination at the will of either party by one party giving to the other one month''s notice in writing. By the seventh condition the company invited the attention of the firm to Sections 41 and 102(1) of the Insurance Act, 1938. On 17-2-1951, Kilachand brothers styling themselves as 'the founders' executed a deed of trust of the business carried on by them in the name of Dharma Vijaya Agency as principal agents of the New Great Insurance Co. of India Ltd. K was recited by the first paragraph of the deed that the 'founders' so long as they shall respectively remain trustees of the deed and all persons thereafter becoming trustees hold and shall hold the business of principal agency and all the benefits and profits to arise from the said business and the realization and proceeds thereof and all sums of money thereafter received by the trustees and all investments at any time representing the same or any part thereof and all monies arising there from upon trust 'to pay and apply the same for the relief of the poor,

education, medical relief and the advancement of any other subject of general public utility as the trustees shall from time to time think fit:' and by a parenthetical clause the 'founders' and the survivors or survivor of them were included in the expression 'trustees'. By paragraph 12 it was provided that 'all moneys received by the trustees on account of the said trust, except such sums as may be reasonably required to be kept for current expenses, shall be deposited forthwith on receipt thereof in the trustees'' banking account'. By paragraph 13 it was provided :

> 'A banking account for the purposes of the charity shall be opened with one or more scheduled banks. Such banking account shall be operated on by any one trustee unless the trustees otherwise decide. Every sum of money received on account of the charity shall be forthwith paid into the credit of that account unless otherwise expressly ordered by the trustees'.

There is no dispute that the trust was created for purposes exclusively charitable. On 21-7-1951, a banking account was opened with the Bank of Baroda, Ltd., in the name of 'Dharma Vijaya Agency' with a special instruction that the account will be operated upon by any one of the trustees according to clause 13 of the deed of trust, and under the specimen signature of each of the trustees the word 'trustee' was appended. On 21-8-1951, another account was opened also with the same bank under the name and style of 'Dharma Vijaya Agency Account No. 2'. This account was to be operated upon by any one of the Kilachand brothers who were described as 'attorneys', and the specimen signature was to be in the form of per pro Dharma Vijaya Agency.

2. The Income-tax Officer brought the income of the Dharma Vijaya Agency to tax on the footing that no valid trust was created by the deed, dated 17-2-1951. In the view of the Income-tax Officer, in order that the business may be vested in trust there should be a valid transfer of the business from Kilachand Brothers to the trust which 'transfer was not permissible as per the agreement' and accordingly there arose no trust and the title of the trustees was 'inchoate'. He also observed that the account opened on 21-8-1951 with the Bank of Baroda, Ltd., authorising any one of the four 'attorneys' to operate was opened by Kilachand brothers as Insurance Agents and not on behalf of a religious or charitable institution. Against the order refusing to grant to the income earned in the business of the Dharma Vijaya Agency exemption under Section 4 (3) (i) of the Income-tax Act Dharma Vijaya Agency preferred an appeal to the Appellate Assistant Commissioner. That officer held that in the first instance no valid trust was created, but because the insurance company had ratified the trust it must be regarded as valid. He further observed that the Controller of Insurance had been duly informed that the business of the Dharma Vijaya Agency was settled upon trust and no objection had been raised by the Controller in that behalf. He finally observed that if certain property was held under trust or a legal obligation wholly for religious or charitable purposes, all that was required for exemption under Section 4 (3) (i) was that the income should be applied or accumulated for application to such religious or charitable purposes: and in the case before him that condition was fulfilled, and the order passed by the Income-tax Officer could not be sustained. Against the order passed by the Appellate Assistant

Commissioner an appeal was preferred to the Income-tax Appellate Tribunal. The Tribunal set aside the order of the Appellate Assistant Commissioner holding that there was no transfer of the principal agency business with the consent of the Board of Directors of the company, that in any event the right, title and interest in a principal agency was not a business, as the appointment was terminable at one month''s notice on either side, and that the contract of general insurance being an annual contract, in substance the trust was sought to be made of the earnings of commission for rendering services. The Tribunal relied upon the fact that the cheques which were signed on behalf of Dharma Vijaya Agency were signed by one or more of the Kilachand brothers as 'per pro' and the word 'trustee' was omitted from the description. The Tribunal also held that before the income of a trust for charitable purposes is exempt from tax, it must satisfy the conditions laid down in Section 4(3)(i), i.e. 'the business income can only be exempt from taxation if the business was carried on in the course of the actual carrying out of the primary purpose of the institution:' and 'in the present case the business not being carried on in the course of carrying out the primary purpose of the trust', the income was not exempt from liability to pay tax. The Tribunal has, at the instance of the assessee the Dharma Vijaya Agency, referred the following question :

> 'Whether on the facts and circumstances of the case the income arising to the applicant as chief agent of the New Great Insurance Co. of India Ltd. is exempt from tax under the provisions of Section 4(3)(i) of the Income-tax Act?'

Implicit in this reference are two component branches of the questions :

> (i) Whether the business of Principal Agency conducted by the assesses is 'property' held upon charitable trust? and if it is property held upon charitable trust,
> (ii) Whether the case falls within the proviso to Section 4(3)(i) of the Indian Income-tax Act as amended by Act 25 of 1953?

We may observe that the second branch of the question falls to be determined only in respect of the assessment years 1952-53, 1953-54 and 1954-55.

3. Kilachand brothers had entered into a partnership to trade in the name of the assessees. After the partnership agreement the assessees were appointed by deed, dated 28-9-1950, principal agents of the New Great Insurance Co. of India Ltd: and this business conducted by the assessees as principal agents was settled on trust by the deed, dated 17-2-1951. It is now not disputed that within the meaning of the Income-tax Act the expression 'property' is a term of the widest import and, subject to any limitation or qualification which the context might require, signifies ever possible interest which a person can acquire, hold and enjoy. By the terms of appointment of the assessees as principal agents for conducting the business of the principal agency, remuneration was to be paid. In *J. K. Trust, Bombay v. Commissioner of Income-tax/Excess Profits Tax, Bombay*[1], their Lordships of the Supreme Court observed that 'business' will be property unless

there is something to the contrary in the enactment Mr. Joshi, who appears on behalf of the Depart merit, contends that principal agency is nothing but a 'right of service' conferred by an agreement by the insurance company upon a set of persons, and it cannot be regarded as a business. Mr. Joshi also contends that where the primary component of a principal agency agreement is the performance of service and in consideration of performance of service remuneration is paid, the principal agency under which the service is rendered will not be regarded as a business and, therefore not be property. In J. K. Trust''s case, (AIR 1957 Supreme Court 846) to which we have already referred, their Lordships of the Supreme Court held that the managing agency of a company is business.

4. By the Insurance Act, 1938, a 'principal agent' is defined as meaning

[1](1957) 32 ITR 535

> 'a person, who, not being a salaried employee of an insurer, in consideration of any commission, (i) performs any administrative and organizing functions for the insurer and (ii) procures general insurance business whether wholly or in part by employing or causing to foe employed insurance agents on behalf of the insurer'.

Evidently a principal agent by the description does not merely render personal service but is concerned with performing certain administrative and organizing functions and the procuring of general insurance business by employing or causing to be employed insurance agents. In our judgment, such an agent by the very definition will be regarded as carrying on the business of a principal agent. He is not merely an employee engaged for rendering services of a personal nature: he is invested with the right as an agent to perform the administrative and organising functions for the insurer and also to procure general insurance business by employing, directly or indirectly, insurance agents. By Section 24A of the Insurance Act principal agents are required to obtain a certificate from the Controller of Insurance or an officer authorized by him entitling them to conduct the business of principal agency, and the certificate remains in operation for a period of twelve months only from the date of issue but is liable to be renewed. It is also true that under Part A of the sixth schedule to the Insurance Act certain terms are deemed to be included in every contract between an insurer carrying on general insurance business and a principal agent. Under clause 2 of Part A of the sixth schedule the principal agent has to procure or cause to be procured through insurance agents such an amount of general insurance business as will yield a gross premium income of not less than Rs. 20,000/- in each calendar year. Under clause 4, in the event of the principal agent failing to comply with the requirements of clause 2 in any two successive calendar years, the contract shall without prejudice to the provisions of clause 3, terminate on the 31st day of March immediately following the second calendar year. Under clause 3 the agency is also liable to be forfeited in the events set out in sub-clauses (i) and (ii) thereof. By clause 5 certain restrictions are placed upon the principal agent.

5. But on account of these provisions, which impose certain restrictive conditions upon the principal agent, we are unable to hold that the appointment of a principal agent gives rise to a

bare service agreement and that the remuneration paid is not for the conduct of a business but for performance of personal service. The circumstance that the appointment was liable to be terminated at short notice and the agency was not permanent and was liable to be forfeited in the events set out hereinbefore will not, in our judgment, affect the character of the agency as business. We are also unable having regard to the definition of principal agent, to agree with the contention for the Revenue that in the case of a principal agent there is no organization asset or goodwill which can form the capital of the business. Under Section 2, clause (25), of the Companies Act, 'managing agent' means amongst others any firm or body corporate entitled, subject to the provisions of the Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company or by virtue of its memorandum or articles of association. If a managing agent in conducting the affairs of a company as such managing agent can be regarded as carrying on a business, we are unable to hold that a principal agent appointed under the Insurance Act is not conducting a business.

6. In J. K. Trust"s case, (AIR 1957 Supreme Court 846) their Lordships of the Supreme Court negatived the contention that a managing agency was merely an office which involved performance of services and discharge of certain obligation and was therefore not property which could be the subject-matter of a trust. It was observed that even an office of a trustee was property especially when emoluments were attached to it, and that must a fortiori be the position in the case of office of managing agency which was 'clearly one of profit and even alienable under certain circumstances'. They further observed :

> "The office requires no doubt the performance of services; but there is no antithesis between service and business, as there are several kinds of businesses which involve the performance of services, such as insurance and commission agency. The true test is whether the services are a regular source of income............Nor is it an accurate statement of the true position to describe trust of the managing agency as a trust of an obligation. It is in truth a trust of property, which carries with it certain obligations, and in law, there is no objection to creating a trust over property burdened with obligations, though, if it is onerous by reason of such obligations, the trustee may be entitled to disclaim it'.

Their Lordships also negatived the plea that because the agency was liable to be terminated at short notice no trust could be created in respect thereof, observing that the plea proceeded upon a confusion between charity and properties devoted to charity. In their Lordships" opinion a public charity was perpetual in character even though some of the objects may become incapable of performance or the trust property itself may be destroyed by reason of operation of law and that the circumstance that the trustees had the option at any time to throw up the agency was not a legal impediment to its being property which could be held on trust.

7. Following the observations made by their Lordships of the Supreme Court in J. K. Trust"s case, (AIR 1957 Supreme Court 846) we are of the view that the principal agency conducted by

the assessees was a business and, therefore, 'property' within the meaning of Section 4(3)(i) of the Income-tax Act. Being property which is capable of being settled upon trust, by the deed of trust, dated 17-2-1951, it was lawfully settled upon trust for charitable purposes.

8. But Mr. Joshi for the Revenue contends that by the agreement dated 28-9-1950 the partnership of Kilachand brothers was appointed the principal agents, and that at some time after the appointment of Kilachand brothers as principal agents there was a change in the constitution of the firm Dharma Vijaya Agency and certain partners dropped out of the management of the principal agency business and certain other persons entered the agency and that in the absence of any evidence to show that the persons, who had been newly introduced in the Dharma Vijaya Agency and upon whom the right to conduct the principal agency business was conferred, were introduced with the consent of the company, it cannot be said that the same business continued or that the trust in respect of the business enured after the alteration in the constitution of the agency. Indisputably in the Dharma Vijaya Agency, of which Kilachand brothers were originally the partners at some time after its appointment as principal agents two of the original partners ceased to be interested and an outsider was inducted into the agency. It appears, however, clear from the record that intimation was given to the company about the alteration in the constitution of the firm. and the company approved of the same. There is on the record a letter dated 6-2-1953 addressed by the company to the Income-tax Officer in answer to the latter"s letter, dated 20-1-1953, by which the General. Manager of the Company informed the Income-tax Officer that the principal agency in the name of Dharma Vijaya Agency was applied for by Messrs. Tulsidas Kilachand, Ramdas Kilachand, Ambalal. Kilachand and Chinubhai Kilachand as partners, that the principal agency was given to Dharma Vijaya Agency and that the agency could not be transferred to other persons. Thereafter by letter dated 13-7-1954, in reply to the Income-tax Officer"s letter dated 8-7-1954, the General Manager of the company informed the Income-tax Officer that the company was aware of the creation of a trust and it did not consider the formation of the trust as a violation of the agreement as it was not a transfer of the agency. The General Manager also stated that the company was not aware of the internal working, of the agency, but papers were being signed from time to time on behalf of the Dharma Vijaya Agency by one or the other of the trustees who was in charge of the administrative functions. The Assistant Controller of Insurance also by his letter, dated 11-8-1954, informed the Income-tax Officer that he had been informed by the company that the Dharma Vijaya Agency had been converted into a trust and that the company had forwarded a copy of the trust deed, dated 17-2-1951. On the record there is no. clear evidence as to whether at the time of renewal of the principal agency certificate, intimation was given to the authorities concerned about the alteration in the constitution of the agency. But evidently neither the company nor the Assistant Controller of Insurance raised any objection to the conduct of the trust business of principal agents by the Dharma Vijaya Agency from which some of the original trustees had ceased to function and in which another trustee was introduced. Even assuming that there arose some irregularity by the alteration in the constitution of the Dharma Vijaya Agency, we are unable to hold that this circumstance affects the character of the income received as remuneration for , conducting the

business of the agency as income received from property held for a public charitable trust. The taxing authorities are primarily concerned with the question whether the income sought to be taxed is income from property which is held on trust for a religious or charitable purpose. If the business of the principal agency was transferred to the trustees under a deed of settlement, and from that business income was received, the income will fall within Section 4(3)(i) of the Act and be exempt from tax in the hands of the trustees. We are, therefore, of the view that under the terms of appointment made with the company Dharma Vijaya Agency became the principal agents conducting a business and that business was property within the meaning of Section 4(3)(i) of the Income-tax Act, and that the alteration sometime after their appointment as principal agents, in the constitution of the Dharma Vijaya Agency does not alter the character of the income earned in the course of the business.

9. Clause (i) of Section 4(3) of the Indian Income-tax Act was amended by Act 25 of 1953. Section 4(3), as it originally stood, provided in so far as it is material :

> 'Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them : (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,
> (ia) any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and
> (a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or
> (b) the work in connection with the business is mainly carried on by beneficiaries of the institution', it is undisputed that under Section 4(3) before it was amended by Act 25 of 1953, clause (i-a) was not intended to derogate from clause (i); i.e. the two clauses were independent of each other and if a certain income fell within either clause (i) or clause (i-a) it was entitled to exemption. It was observed in *Charitable Gadodia Swadeshi Stores v. Commissioner of Income Tax, Punjab*[2],
> 'Clause (i-a) as it stands cannot in any way derogate or subtract anything from clause (i). It rather adds to the list of exceptions and provides immunity for a certain kind of business which in the view of the Legislature had not already been provided for. A new clause inserted by the Legislature cannot be presumed to be inconsistent with or repugnant to a foregoing clause in the same sub-section unless it is so expressly provided. Viewed in its proper perspective, therefore, clause (ia) can be taken to apply only to such business as is carried on on behalf of religious or charitable institutions which were not held under trust and not to such business as was itself held under trust or was conducted by or on behalf of such charitable or religious institutions as were held under trust'.

These observations were approved of by this Court in *J. K. Trust Bombay v. Commissioner of*

Income Tax, Excess Profits Tax, Bombay City[3], after it was remanded by the Supreme Court. The income from the trust in the present case clearly falls within the terms of clause (i) of Section 4 (3) before it was amended by Act 25 of 1953, and it was, therefore, exempt from payment of tax.

10. By Act 25 of 1953, Section 4(3)(i) was substantially altered. In so far as it is material, that section (as it stands now) provides :

> 'Any income profits or gains falling within the following clauses shall not be included in the total income of the person receiving them :
> (i) .... any income derived from property held under trust or other legal obligation wholly for religious 9r charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories ....
> Provided that such income shall be included in the total income -
> (a).............
> (b) in the case of income derived from business carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either -
> (i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or
> (ii). the work in connection with the business is mainly carried on by beneficiaries of the institution;
> (c) if it is applied to purposes other than religious or charitable purposes or ceases to be accumulated or set apart for application thereto in which case it shall be deemed to be the income of the year in which it is so applied or ceases to be so

[2](1944) 12 ITR 385 : AIR 1944 Lah 465
[3]59 Bom LR 1255

> accumulated or set apart'.

Clause (i-a) of Section 4(3) of the Act, as it stood before it was amended by Act 25 of 1953, was deleted by the amendment as a substantive provision under which exemption could be claimed, and the Legislature incorporated a proviso to clause (i) of Section 4(3) whereby any income from property held under trust or other legal obligation wholly for religious or charitable purposes was liable to be included in the total income of the assessee (i) if it was applied to religious or charitable purposes without the taxable territories, and (ii) in the case of income derived from business carried on on behalf of a religious or charitable institution, unless the income was applied wholly for the purposes of the institution and one of the two conditions prescribed therein was fulfilled. By the amendment income received from property held under trust for a religious or charitable purpose is not exempt from taxation if such income is to be applied outside the taxable territories. Similarly, income received from a business conducted by a religious or charitable institution is liable to be included in the total income of the assessee unless the income is applied wholly for the purposes of the institution and the business is carried on in the course of

the actual carrying out of a primary purpose of the institution or the work in connection with the business is mainly carried on by beneficiaries of the institution.

11. Mr. Joshi for the Revenue contends that the Legislature intended by the proviso merely to incorporate certain conditions cumulative with those prescribed by the operative part of clause (i), and not to prescribe an executed category. Mr. Joshi says that where property held under trust is a business, the income derived from that business is exempt from tax only if the business is carried on on behalf of a religious or charitable institution and the income thereof is applied wholly for the purposes of the institution and one of the two conditions prescribed by clause (b) of the proviso is fulfilled. In asking us to accept this interpretation, Mr. Joshi is asking us substantially to re-write the material provision. The Legislature has attempted to carve out certain categories of income from the operative part of the exception and has made them liable to tax despite the fact that they are derived from property held under a trust created for religious or charitable purposes. Mr. Joshi"s argument is that if business is property within the meaning of Section 4(3)(i), and that business is held on trust, the business in clause (b) of the proviso must also be held on trust, and if it is not so held on trust the income thereof will not be exempted as income derived from property held under a trust for religious or charitable purposes. But we do not think that there is any warrant for this submission on the plain language used by the Legislature. The income which is liable to be included in the total income of the assessee, is income derived from business carried on on behalf of a religious or charitable institution, unless that income fulfils the conditions prescribed by clause (b). The expression 'such income"" in the proviso refers to the income derived from property (which expression includes a business) held for religious or charitable purposes. But that does not, in our view, justify the submission that the business which is referred to in clause (b) of the proviso must be business which is held for charitable or religious purposes. In our view, the business referred to in clause (b) of the proviso need not be business which is held for religious or charitable able purposes, provided it is business carried on on behalf of a religious or charitable institution.

12. Mr. Joshi invited our attention to the objects and reasons and to the notes on the clauses of the bill which was enacted as Act 25 of 1953 and submitted that it was the intention of the Legislature to provide that income derived from business is exempt under the amended Act only if the business is carried on on behalf of a religious or charitable institution and it is carried on in the course of implementation of a primary purpose of the institution or the work in connection with the business is mainly done by beneficiaries of the institution. It is not possible for us to interpret the words of the section by reference to the objects and reasons or to the notes on clauses of the Act, especially when the words are plain and we are not confronted with any ambiguity in their interpretation. It may also be pertinent to observe that the clause as finally enacted by the Legislature is not in the same form in which it was presented as a Bill. In any event, we do not think that where the Legislature has by using definite phraseology expressed its intention clearly it will be open to us to fall back upon the objects and reasons for enacting legislation and to construe the provisions of the Act in the light of the objects and reasons.

13. We are, therefore, of the view that the business of the assessee, not being one which is carried on on behalf of a religious or charitable institution, is not governed by the proviso to Section 4(3)(i) of the Income-tax Act as amended by Act 25 of 1953 and that the income is governed by the operative part of Section 4(3)(i). On that view of the case, the answer to the question submitted by the Tribunal will be in the affirmative in respect of all the four assessment years. The Commissioner of Income-tax to pay the costs of the assessee.

Desai, J.

14. A question of construction, rather fine and not without some difficulty, arises for our determination in this reference. The facts leading up to this reference have been stated by my learned brother and I need not refer to the same. The question submitted to us has invited rather elaborate arguments on either side, and the arguments really fall to be considered under two heads : firstly, whether the insurance agency business which was carried on by the assessee firm and in respect of which a charitable trust was created is 'property' within the meaning of that expression to be found in section 4(3)(i) of the Income-tax Act; and secondly, what is the exclusion in respect of income derived from property held under trust wholly for religious or charitable purposes enacted by the Legislature in Section 4(3)(i)?

15. The first head need not detain me at any length. A Division Bench of this Court had to interpret clauses (i) and (ii) of Section 4(3) as they stood prior to the amending Act of 1953. The language of those two clauses of sub-sec. (3) of Section 4 was, if not wholly in pari materia, very similar to the provisions which we are called upon to interpret on this reference. But we are not concerned in this reference with the interpretation of those provisions which have now been amended. One question which arose in that case was whether the managing agency of a textile concern was property within the ambit of the expression 'property' used in Section 4(3)(i). The decision of the Bombay High Court did not directly touch that point : but the point was canvassed at great length before their Lordships of the Supreme Court, and the decision of their Lordships is reported in 1957-32 ITR 535 . Mr. Justice Venkatarama Aiyar examined the question at some length, and it was laid down in that case :

> ' "Property" is a term of the widest import, and subject to any limitation or qualification which the context might require, it signifies every possible interest which a person can acquire, hold and enjoy. Business would undoubtedly be property, unless there is something to the contrary in the enactment'.

At page 543 of the report (ITR) Mr. Justice Venkatarama Aiyar after referring to some cases observed :

> '...........even an office of trusteeship was held to be property especially when emoluments

> were attached to it, and that must a fortiori be the position in the case of office of managing agency, which is clearly one of profit and even alienable under certain circumstances. The office requires no doubt the performance of services; but there is no antithesis between service and business, as there are several kinds of business, which involve the performance of services, such as insurance and commission agency'.

Of course, it was not necessary for their Lordships to decide whether the business of commission agency was property within the meaning of that expression in Section 4(3)(i). But here is a very clear and weighty observation of the Supreme Court, and there is every reason why I should find myself in respectful and dutiful agreement with that observation of the Supreme Court. A valiant attempt was made by Mr. Joshi, learned Counsel for the department, to persuade us to take a view different from the view expressed in the passage just quoted by me. The distinction sought to be drawn was rather fine and not permissible in the context of the expressions 'business' and 'property' which have a very wide connotation in income-tax law. Therefore, the conclusion seems inescapable to me that the business of insurance agency carried on by the assessee-firm is property within the meaning of that expression in the relevant provision before us.

16. To turn to the other head on which considerable arguments have been urged before us on either side. It will be convenient to set out the relevant and material part of sub-section (3) of Section 4. Section 4(3) of the Income-tax Act, as amended by Act 25 of 1953, provides, in so far as it is material :

> 'Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :
> (i) ....any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories .... Provided that such income shall be included in the total income -
> (a) ....
> (b) in the case of income derived from business carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either -
> (i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or
> (ii) the work in connection with the business is mainly carried on by beneficiaries of the institution;
> (c) if it is applied to purposes other than religious or charitable purposes or ceases to be accumulated or set apart for application thereto in which case it shall be deemed to be the income of the year in which it is so applied or ceases to be so accumulated or set apart'.

It has been argued before us by Mr. Palkhivala, learned counsel for the assessee, that the language of clause (i) of Section 4(3) in terms applies to the facts of this case, if once the conclusion is reached that the insurance agency business, of which a trust was created, is property within this enactment. The argument proceeded that the proviso to section 4(3)(i), which relates to income derived from business carried on on behalf of a religious or charitable institution, is restricted to income derived from business carried on by or on behalf of a religious or charitable institution, and that in the case before us there is no religious or charitable institution : and the conclusion based on this premise pressed for our acceptance has been that the case is not touched by the proviso and clearly falls within the purview of clause (i) of Section 4(3) read without the proviso. It seems convenient to refer briefly to the scheme of Section 4. Sub-section (1) of Section 4 lays down that subject to the provisions of the Act the total income of a person includes all his income, profits and gains from whatever source derived. Then follow words which are not material for our present purpose. Sub-section (2) is not material. Then comes sub-section (3) which is a very important provision. It lays down that income, profits or gains falling within the classes enumerated in that sub-section are not to be included in the total income of the person receiving them. That is clearly an exclusion from the total income of an assessee to be computed in accordance with the provisions of the Act. A perusal of Section 4, which follows upon Section 3 (which is the charging section) and itself defines the gamut of total income, shows that its arrangement is not logical and its provisions have no lucidity of expression. It was for this reason that we permitted ourselves to be taken to the history of the legislation contained in sub-sec. (3), though I propose to be very brief in examining it. Before, however, I do so. I should prefer to examine the language of the section as it stands today.

17. It is now established law that business itself may be held on trust. If a business itself may be held on trust, as, for instance, in the present case, where a trust is created of property which consists of a business, it is abundantly clear and not now disputable that income derived from property consisting of business held on trust for religious or charitable purposes is within the ambit of the exclusion contained in clause (i) of Section 4(3). As I have already pointed out, the decision of their Lordships of the Supreme Court leads to the inescapable conclusion that an insurance agency business must be treated as a business within the ambit of this section. Therefore, the short question that remains for consideration is, is there any qualification, any modification or any exception to that exclusion? The contention of the assessee, as I have already mentioned, is that there is nothing in the section which prevents the application of clause (i) to the present case. On the other hand, it has been strenuously urged before us by Mr. Joshi that the proviso, if properly and carefully scrutinized, confines the exclusion, so far as it relates to income derived from business, only to the cases of religious or charitable institutions and where the conditions stipulated in proviso (b) are fulfilled. To put it differently, the argument of Mr. Joshi is that income of a business held on trust is primarily liable to tax and the only exception to that rule is the case of a religious or charitable institution for which provision is made in proviso (b). Ultimately the learned counsel had to agree that the argument urged on behalf of the Department could only succeed if an equation could be established between 'income derived from business

carried on on behalf of a religious or charitable institution' referred to in proviso (b) to clause (i) and 'income derived from property (consisting of business) held under trust .... wholly for religious or charitable purposes' to be found in clause (i). The words in bracket have been added by me since the argument has been pressed before us in the context of a business which, in our view, is property. The question I put to myself is, are the words 'income derived from business carried on on behalf of a religious or charitable institution' in proviso (b) wide enough to carve out from clause (i) all such property as consists of business? A business which falls within the ambit of clause (i) may be carried on by persons in whom it is vested under a trust, and the trustees may still not be carrying on the business on behalf of any religious or charitable institution. Of this, there seems to be little doubt. Therefore, it is impossible to equate the scope of proviso (b) with the scope of property consisting of business held under trust wholly for religious or charitable purposes. It must of necessity mean that we have in clause (i) a very wide category of business which is trust property, and we have in proviso (b) a restricted and a lesser category of business which is carried on by or on behalf of a religious or charitable institution. This, to my mind, is the plain reading of clause (i) of Section 4(3) read with the proviso : and if this be the position, it is extremely difficult to accede to the argument pressed before us on behalf of the Department that although the insurance agency business, of which a trust was created, is within the operation of clause (i) of Section 4(3), it is yet hit by the initial words of proviso (b) to clause (i).

18. I have stated that the observation which I have made followed from a plain reading of Section 4(3)(i) read with the relevant proviso. I have also mentioned that there was an amendment in Section 4(3)(i) in 1953, and it is on the language of Section 4(3)(i) as it stood before the amendment that the learned Counsel for the Department has very strongly relied. Learned Counsel has also relied on a decision of the Lahore High Court in a case to which I shall presently refer. He has also relied on certain observations in a judgment reported in (1958) 33 ITR 32 to which I was a party. Now, I must confess that there are some observations in that judgment which do lend some support to some part of the argument urged before us by Mr. Joshi : but, as I shall presently point out, those observations were made in a rather distinct and different context and cannot have any real bearing on the interpretation of the provisions after their amendment. Our attention was also drawn to the decision of the Punjab High Court in the case of (1944) 12 ITR 385 : AIR 1944 Lahore 465 and in J.K. Trust''s case (AIR 1958 Bombay 191) decided by my brother Tendolkar and myself we quoted a passage from that judgment.

19. In (1958) 33 ITR 32 after referring the case of Gadodia Swadeshi Stores, AIR 1944 Lahore 465 and to a decision of the Allahabad High Court, to which also our attention was drawn in that case, we pointed out that the words in Section 4(3)(i-a) as it stood before the amendment did not refer to business which fell within the ambit of clause (i) of Section 4(3) as it then stood. We observed in that case that Section 4(3)(i-a) was not intended to be an exclusion to Section 4(3)(i) and that it dealt with a different class of income, viz., income from business carried on on behalf of a religious or charitable institution. We observed :

'.........since the requirement that the business should be held on trust does not appear in clause (ia), would it not be reasonable so to interpret clause (ia) as to restrict it to a business carried on on behalf of a religious or charitable institution which is not held on trust? Such a construction leads to the result that whilst section 4(3)(i) includes within its scope income from business held under trust, the true scope of Section 4(3)(ia) is to include within its scope business carried on on behalf of a religious or charitable institution, which business is itself not held under trust, although the words used in clause (ia) are prima facie capable of including within its scope business which may be held under trust'. Now, these observations were made by us in an attempt to reconcile the two clauses of Section 4(3) and I may emphasize that we were not examining the language of any proviso in that case, though, it is true, the language of the two clauses is, it not identical, almost in pari materia with the language of clause (i) of Section 4(3) and the proviso with which we are here concerned. The passage from the decision of the Lahore High Court which we quoted is as follows :

'Clause (ia) as it stands cannot in any way derogate or subtract anything from clause (i). It rather adds to the list of exceptions and provides immunity for a certain kind of business which in the view of the Legislature had not already been provided for. A new clause inserted by the Legislature cannot be presumed to be inconsistent with or repugnant to a foregoing clause in the same subsection unless it is so expressly provided. Viewed in its proper perspective, therefore, clause (ia) can be taken to apply only to such business as is carried on on behalf of religious or charitable institutions which were not held under trust and not to such business as was itself held under trust or was conducted by or on behalf of such charitable or religious institutions as were held under trust. If it was intended to narrow down the scope of clause (i) so as to withdraw the exemption enjoyed by a business held in trust or conducted by or on behalf of a religious or charitable trust, the new clause should have been added as a proviso to the old clause. It would then have mentioned that the scope of the original clause was being restricted to that extent. But this not being the case here, it cannot reasonably be urged that something that was already included in clause (i) has been removed by the insertion of an additional clause'.

Now, it is true that it would appear from the passage just quoted that Mr. Justice Din Muhammad seemed inclined to take the view that the scope of clause (i) had been narrowed down by inserting similar words in the form of a proviso, and that since they were in the form of a separate clause that would make a difference in interpretation. The argument of Mr. Joshi before us has been that by inserting proviso (b) in section 4(3)(i) the scope of clause (i) has been considerably narrowed down, and the exemption from inclusion of such income from the total income of an assessee is restricted only to such business as is carried on by or on behalf of a religious or charitable institution : and in the case of other business which may be trust property and the income of which may be applied to religious or charitable purposes there would be the liability to pay tax as it would be included in the total income of the trustees. I am unable to

accede to this argument, and I am unable to agree that the effect of the amendment and the proviso is as urged on behalf of the Department. It does not seem necessary to examine at any length the provisions which were considered in the decisions to which I have made a reference. A reference to those decisions, as I have already pointed out, was made in drawing our attention to the history of the legislation relating to this sub-section. There is nothing in the history of the legislation which lends support to the argument so strongly pressed for our acceptance by Mr. Joshi. In these cases, where the language is clear, we have to look merely at what is stated. As has often been said, there is no room for any intendment in such cases and it is not permissible to us to read in the relevant provisions something which is not there. We can only look at the language used and construe the provision on a fair reading of the same. On a fair reading of clause (i), it must be held, in my judgment, that there is nothing in proviso (b) to clause (i) of Section 4(3) which in any manner touches the case of a business which is held under trust for religious or charitable purposes. The income derived from such business is not to be included in the total income of the person receiving it.

20. Our attention was sought to be drawn by Mr. Joshi to the statement of objects and reasons when amendments were made in Section 4(3) in 1953. It is not permissible to us to look at the same. It is rather difficult to see the reason or the object of permitting income derived from property consisting of business held under trust wholly for religious or charitable purposes being excluded from the total income of the person receiving it as enacted in clause (i) of Section 4(3) and not permitting such exclusion if the business is carried on on behalf of a religious or charitable institution and it does not satisfy the requirements which are inserted in the latter part of proviso (b) to clause (i). It does appear that income derived from business carried on on behalf of a religious or charitable institution can very well be income of a business which is itself the subject-matter of a religious or charitable trust : but it is not for us to enter into this enquiry or allow ourselves to speculate on the reasons.

21. The construction of the relevant provisions must be as already mentioned by me, and on that view the answer to the question referred to us will be in the affirmative.
Reference answered in the affirmative.