

THE EAST INDIA INDUSTRIES (MADRAS) PRIVATE LTD., A
MADRAS & ANR.

v.

THE COMMISSIONER OF INCOME TAX, MADRAS

April 3, 1967

[J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.] B

Indian Income-tax Act, 1922 (Act 11 of 1922), Ss. 4(3)(1) and 15-B—Donation to Trust—One object not charitable in nature, and income to be utilised for any one of the objects—If exempted.

The assessee claimed exemption from tax under s. 14-B of the Income-tax Act, 1922 for a sum donated to a Trust, whose most of the objects were charitable and religious in nature, but one was not, and it was open to the trustees to utilise the income of any one of the objects to the exclusion of all other objects. The Revenue rejected the claim for exemption, but the Appellate Tribunal allowed it as it had in relation to the previous assessment year held that the Trust was a public trust. On reference, the High Court answered the question against the assessee. In appeal to this Court, the assessee contended that (i) this particular object must not be read isolated from the other objects of the trust but having regard to the immediately preceding object which was to run hospitals and dispensaries, the impugned object, viz., the manufacture of pharmaceutical and medicinal preparations must be deemed to be for the purpose of carrying out the earlier object, and (ii) the High Court acted in excess of jurisdiction in raising a new question which was not raised by the Appellate Tribunal, namely, whether the trust itself was constituted for wholly religious or charitable purposes within the meaning of s. 4 (3) (i) of the Act. C
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HELD :—The appeal must fail.

(i) There was no connection between the two objects of the trust and upon an interpretation of the document as a whole, it could not be said that the earlier object was the dominant object of the trust and the latter was a subsidiary object. In view of the absolute power of selection granted to the trustees to select between charitable and non-charitable objects, the provision of s. 4 (3) (i) of the Act could not be applied to the Trust and no exemption could be granted to the assessee under s. 15-B of the Act. [360D-E, G] F

Mohammad Ibrahim Riza v. Commissioner of Income-tax, Nagpur, 57 I.A. 260; *Oxford Group v. Inland Revenue Commissioners* [1949] 2 All. E.R. 537 and *Keren Kayemeth Le Jisroel. Ltd. v. Inland Revenue Comrs.* 17 T.C. 27, 40 applied. G

(i) The High Court was within its jurisdiction in examining the question whether the Trust was eligible for exemption from income-tax under s. 4(3)(i) of the Act. Even where a question of law was not raised before the Tribunal but the Tribunal deals with it, it must be deemed to be one arising out of its order. [364B-D]

Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd. 42 I.T.R. 589, followed. H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1399 of 1966.

A Appeal by special leave from the judgment and order dated October 25, 1961 of the Madras High Court in Tax Case No. 62 of 1958 (Reference No. 37 of 1958).

S. Swaminathan and *R. Gopalkrishnan*, for the appellant.

Veda Vyasa, S. K. Aiyar, S. P. Nayyar and *R. N. Sachithy*,
B for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by special leave, from the judgment of the Madras High Court dated October 25, 1961 in T.C. No. 62 of 1958.

C The assessee, the East India Industries Limited, paid a donation of Rs. 7,500 to a trust called "the Agastyar Trust" and claimed exemption from tax under s. 14-B of the Income-tax Act, 1922, hereinafter called the 'Act'. The trust had been created by the partners of a business firm, K. Rajagopal and Company. This firm had been carrying on business in waste paper. Under the terms of the partnership it was setting apart 80 per cent of the profits for charitable and religious purposes. On July 1, 1944, a trust deed was executed by Venkatarama Chetti. The claim of the assessee to exemption from tax was rejected by the Income Tax Officer on the ground that the trust did not fulfil the conditions laid down under s. 15-B of the Act. The Appellate Assistant Commissioner to whom an appeal was preferred took the same view. The matter was taken up in further appeal to the Income-tax Appellate Tribunal which observed that in relation to the previous assessment year, it had held that the Agastyar Trust was a public trust and that any donation made to that trust was an allowable deduction under s. 15-B. At the instance of the Commissioner of Income-tax the Tribunal referred the following question of law for the determination of the High Court under s. 66(1) of the Act :

"Whether on the facts and in the circumstances of the case the assessee is entitled to claim deduction under Section 15-B in respect of the donation paid to the Agastyar Trust ?"

G The High Court answered the question against the assessee who has brought the present appeal to this Court by special leave.

Section 15-B of the Act provides for exemption from tax in respect of any sums paid by the assessee as donations to any institution or fund to which the section applies. Sub-section (2) reads as follows :

H "(2) This section applies to any institution or fund established in the taxable territories for a charitable purpose—

(i) the income whereof is exempt under clause (i) of sub-section (3) of section 4;

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Section 4(3)(i) of the Act states as follows :

“(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them;

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(i) Subject to the provisions of clause (c) of sub-section (1) of section 16, 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, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto :

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Paragraph 2 of the trust deed dated July 1, 1944 sets out the objects of the ‘Agastyar Trust’ as follows :

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“(a) to establish, conduct and maintain residential schools, colleges, workshops and other institutions for imparting general, technical, vocational, professional, industrial or other kind of education and training for the utility and welfare of the general public;

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(b) to make pecuniary grants by way of scholarship, donation, subscription, allowance, gratuity, guarantee or otherwise to and for the benefit of students, scholars and other persons;

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(c) to establish, maintain and conduct hospitals, clinics, dispensaries, maternity houses and other institutions for affording treatment, cure, rest, recuperation and other reliefs;

(d) to manufacture, buy, sell and distribute pharmaceutical, medicinal, chemical, and other preparations and articles such as medicines, drugs, medical and surgical articles, preparations and restoratives of food;

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(e) to establish and maintain choultries and rest-houses, to provide food, clothes, medicines and other articles of necessity free or at concessional rates and to make money grants to the poor, needy for celebration of marriages or ceremonies of, for other purposes, floods, famine, pestilence, and other causes;

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A (f) to collect, encourage, conduct research in, interpret and popularise Nadis (ancient manuscripts inscribed on palm leaves in Indian languages with authorship ascribed to Devas, rishis, saints, sages and seers);

(g) to promote and encourage the study of and research in religion and to propagate religious principles;

B (h) to buy, print, publish, sell for profit or distribute free or at concessional rate such literature as may be thought beneficial for the objects of the trust;

C (i) to conduct worship and festivals in temples, shrines and other places of worship, to build, maintain, administer and manage temples, shrines and other places of worship;

D (j) to do all such other things as may be necessary, incidental conducive or convenient to the attainment of the above objects or any of them and the decision of the trustees that any particular thing is necessary, incidental, conducive or convenient to the attainment of the above objects or any of them shall be conclusive."

The other clauses of the trust deed provide for the appointment of additional trustees, the administration and management of schools, colleges, etc., that may be set up, investment of the moneys, the power conferred on the trustees to alter the form of the properties and re-invest the funds, to grant leases, to borrow, and lastly to conduct or carry on any business or undertaking alone or in partnership with any other person for the benefit of the trust.

E The question to be considered is whether the property from which the income of the Agastyar trust is derived is held under trust or other legal obligation wholly for religious or charitable purposes within the meaning of s. 4(3)(i) of the Act. In the present case, it appears from the deed of trust that one of the objects of the trust, namely item 4, is not for charitable or religious purposes. Item No. 4 is "to manufacture, buy, sell and distribute pharmaceutical, medicinal, chemical, and other preparations and articles such as medicines, drugs, medical and surgical articles, preparations and restoratives of food". It may be that most of the other objects of the trust are religious and charitable in nature but if item 4 is not charitable, then the conditions envisaged by s. 4(3) (i) of the Act are not fulfilled and the exemption conferred by s. 15-B of the Act cannot be applied. Clause 5(i) of the trust deed states that "the trustee shall have power to apply the whole or any part of the trust property or fund whether capital or income in or towards payment of the expenses of the trust or for or towards all or any of the purposes of the trust provided any property or money held in special trust shall be applied only for that purpose and not otherwise". In the present case, there is no special trust,

that is to say, no particular item of property has been burdened with the performance of any specific object of the trust. It is therefore manifest that under cl. 5(i) of the trust deed it is open to the trustees to utilise the income for any one of the objects of the trust to the exclusion of all other objects. In other words, it would not be a violation of the trust if the trustees devoted the entire income to the carrying on of a business of manufacture, sale and distribution of pharmaceutical, medicinal and other preparations. In our opinion, this particular object of the trust is neither charitable nor religious in character. If the trustees can, under a trust held validly, spend the entire income of the trust on this non-charitable object, it is difficult to hold that the trust property is held under a trust or other legal obligation wholly for religious or charitable purposes within the meaning of s. 4(3)(i) of the Act.

It was argued by Mr. Swaminathan on behalf of the appellant that this particular object must not be read isolated from the other objects of the trust but having regard to the immediately preceding object which is to run hospitals and dispensaries, the impugned object, viz., the manufacture of pharmaceutical and medicinal preparations must be deemed to be for the purpose of carrying out the earlier object, viz., running of hospitals and dispensaries. We are unable to hold that there is any connection between the two objects of the trust and upon an interpretation of the document taken as a whole, it is impossible to accept the appellant's contention that cl. 2(c) is the dominant object of the trust and cl. 2(d) is a subsidiary object. The argument of the appellants is, in fact, contradictory of the last clause of para 2 of the trust deed which states that the objects shall be independent of each other, notwithstanding that any of the objects shall be void for any reason whatsoever, the trust shall be valid and operative with respect to the other objects. This clause expressly provides that the trustees shall have discretion "to apply the property of the trust in carrying out all or any of such objects of the trust as the trustees may deem fit". Having regard to the language of paragraph 2 of the trust deed in the context of other paragraphs of the document, we are of opinion that the trust deed, on a proper interpretation, gives an absolute power of selection to the trustees to choose between charitable and non-charitable objects of the trust for spending the entire income of the trust properties. It follows that the Agastyar trust does not fulfil the conditions imposed by s. 4(3)(i) of the Act and the donation made by the assessee to the Agastyar trust cannot therefore be exempted under s. 15-B of the Act.

The view that we have expressed is borne out by the decision of the Judicial Committee in *Mohammad Ibrahim Riza v. Commissioner of Income-tax, Nagpur*⁽¹⁾ in which it was held that if there

(1) 57 I.A. 260.

A are several objects of the trust, some of which are charitable and some non-charitable, and the trustees have unfettered discretion to apply the income to any of the object, the whole trust would fail and no part of the income would be exempt from tax. The same view has been expressed by the Court of Appeal in *Oxford Group v. Inland Revenue Commissioners*⁽¹⁾. In that case, the memorandum of association of the Oxford Group, a company limited by guarantee, set out the following as the objects of the company :

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“3(A) The advancement of the Christian religion, and, in particular, by the means and in accordance with the principles of the Oxford Group Movement, founded in or about the year 1921 by Frank Nathan Daniel Buchman. (B) The maintenance, support, development and assistance of the Oxford Group Movement in every way. (C) (9) To establish and support or aid in the establishment and support of any charitable or benevolent associations or institutions, and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes of the association or calculated to further its objects. (10) To do all such other things as are incidental, or the association may think conducive, to the attainment of the above objects or any of them.”

E The Oxford Group sought exemption from income tax on the ground that it was a body of persons established for charitable purposes only. It was admitted by the Crown that, if object A of the objects clause of the company's memorandum of association stood alone, the company would be established for charitable purposes only. It was, however, held by the Court of Appeal that the words in cl. 3(B) of the memorandum of association, “the maintenance, support, development and assistance of the Oxford Group Movement in every way,” extended beyond purely religious activities, permitted the company to engage in secular activities, and authorised the expenditure of its funds on matters which were not charitable, and, therefore, the company could not be said to be formed for charitable purposes only. It was also observed that although a religious body might, without losing its religious character, engage in a number of subsidiary activities which were not purely religious, a trust which was so worded as to permit the expenditure of income by such a body in such subsidiary activities was not a good charitable trust. It was further held that the objects set forth in cl. 3(C), paras (9), (10), of the memorandum of association were not merely ancillary to the main objects expressed in sub-cl. (A) and (B), but themselves conferred powers on the company which were so wide that they could not be regarded as charitable. The prin-

(1) [1949] 2 All. E.R. 537.

ciple has been clearly expressed by Lawrence, L.J. in *Keren Kayemeth Le Jisroel, Ltd. v. Inland Revenue Comrs.*⁽¹⁾ as follows :

“The instrument with which this case is concerned consists of the memorandum of association of the company and it is essential to bear in mind that in order to obtain exemption from income tax under the section it is not enough that the purposes described in the memorandum should include charitable purposes, the memorandum must be confined to those purposes so that any application by the company of its funds to non-charitable purposes would be *ultra vires*. . . . The extensive powers conferred on the company by sub-cl. (2) to (22) (to some of which I have referred in order to indicate their character), although purporting to be secondary to the object mentioned in sub-cl. (2), are nevertheless objects for which the company is established. The company can exercise any or all of these powers whenever in its opinion such an exercise would be conducive to the attainment of the so-called primary object which, from a practical point of view, means that it can exercise them whenever it is minded to do so, and whether such exercise is in fact conducive to the attainment of that object or not, as neither the court nor any one else can control the company’s opinion, or otherwise interfere with the manner in which it chooses to carry out its objects. It would be difficult in any case to determine whether any particular enterprise undertaken by the company under its wide powers was or was not in fact conducive to the attainment of the primary object, but when the question of whether it is or is not so conducive is left to the decision of the company itself, I cannot avoid the conclusion that the objects mentioned in sub-cl. (2) to (22) can be carried out by the company just as freely as the object mentioned in sub-cl. (1) and that there is no substantial difference in degree between them.”

As we have already stated, on a proper interpretation of the terms of the trust deed in the present case we are satisfied that paragraph 2(d) is not subsidiary in character to paragraph 2(c) and the trustees have been expressly granted the discretion to apply the income of the trust wholly to a non-charitable object to the exclusion of charitable objects. It follows therefore that in view of the absolute power of selection granted to the trustees to select between charitable and non-charitable objects, the provisions of s. 4(3)(i) of the Act cannot be applied to the Agastyar trust and no exemption can be granted to the assessee under s. 15-B of the Act. We

(1) 17 T.C. 27, 40.

A accordingly hold that the High Court rightly answered the question of law against the assessee and in favour of the Commissioner of Income-tax.

B It was, however, contended by Mr. Swaminathan on behalf of the assessee that the High Court had no jurisdiction to go into the question whether the Agastyar trust was held for a wholly religious or charitable purpose under s. 4(3)(i) of the Act. It was pointed out that the only question of law arising from the order of the Tribunal was with respect to the examination of the eligibility of the Agastyar trust for exemption under s. 4(3)(i)(b) of the Act. It was contended that the scope of the appeal from the order of the Tribunal was confined to the question whether the income from the business owned by the trust was entitled to exemption under s. 4(3)(i)(b) of the Act and whether the conditions of that proviso were satisfied. It was submitted that the High Court acted in excess of jurisdiction in raising a new question which was not raised by the Appellate Tribunal, namely, whether the trust itself was constituted for wholly religious or charitable purposes within the meaning of s. 4(3)(i) of the Act. We are unable to accept the argument put forward on behalf of the appellants as correct. It appears that before the Appellate Tribunal there was no detailed examination of the question of law. The Tribunal merely referred to an earlier case it had dealt with regarding the same assessee. The Tribunal apparently took the view in the earlier case that even if the income which the trust earned in business was not exempt from tax, the income derived from donations which was utilised for charitable purposes would be eligible for exemption. So far as the assessment for the year 1955-56 is concerned, the question was not considered by the Appellate Tribunal at any length. But the Income Tax Officer held that the trust did not fulfil the conditions laid down by s. 15-B of the Act. The Assistant Commissioner, however, in appeal specifically stated that one of the conditions was that the income of the institution or fund should be exempt under cl. (1) of sub-s. (3) of s. 4 and dealt with the argument relating to the business carried on by the trust and observed :

G “Property’ as used in section 4(3)(i) includes business also and unless the business also is exempt, donation to such an institution will not be eligible for concession given in Section 15-B.”

H The question therefore before the Tribunal was whether the trust income was exempt under s. 4(3)(i) of the Act. In the course of its order dated July 27, 1957 for the assessment year 1955-56 the Appellate Tribunal stated as follows :

“With reference to the first contention, we have held in I.T.A. No. 5707 of 1955-56 that the Agastyar Trust was a public trust and hence any donation made to the

said trust is an allowable concession under Section 15-B. Therefore, the claim of the assessee is allowed on this contention.”

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We are therefore unable to accept the contention of the appellants that the question whether s. 4(3)(i) of the Act applies to the Agastyar trust was not within the scope of the question referred to the High Court by the Appellate Tribunal or that the High Court went beyond its jurisdiction in answering that question. In *Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd.*⁽¹⁾ this Court examined the scope of the jurisdiction of the High Court in a reference under s. 66(1) and it was pointed out that even where a question of law was not raised before the Tribunal but the Tribunal deals with it, it must be deemed to be one arising out of its order. Applying the principle to the present case, we hold that the High Court was within its jurisdiction in examining the question whether the Agastyar trust was eligible for exemption from income-tax under s. 4(3)(i) of the Act. We accordingly reject the argument of the appellants on this aspect of the case.

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For these reasons we hold that this appeal is without merit and must be dismissed with costs.

Y.P.

Appeal dismissed.

(1) 42 I.T.R. 589.