

**SARDAR BAHADUR S. INDRA SINGH TRUST**

v.

**COMMISSIONER OF INCOME TAX, BENGAL**

August 25, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

*Gift made to charitable trust—If valid.**Income-tax Act, s. 4(3)(i)—If the income of charitable trust arising from a gift will augment the assessee trust.*

The assessee is a charitable trust created under two trusts deeds. One of the trustees, gifted certain fully paid up equity shares to the trust. On the said shares dividend accrued on which tax was deducted at source. The trustees claimed that the said income of the assessee was exempt from payment of Income-tax in view of s. 4(3)(i) of the Act and hence they claimed refund of the tax deducted at source. The Income-tax Officer refused to grant the refund on the ground that the trust deed did not contain any provision for receipts of gifts from outsiders and so the gift in question was not a valid gift.

The Appellate Assistant Commissioner and the Tribunal held the gift valid and decided against the revenue. On reference, High Court held that the gift was a valid gift, but it did not have the effect of augmenting the assessee trust and the assessee was not entitled to get the refund of the tax.

**HELD :** (i) That the gift was a valid gift. The trustees had accepted the gift. The trust deed does not prohibit the trustees from accepting a new gift. The trustees can accept gift from third parties for the purpose of furthering the objectives of the trust. So long as the trust deed did not prohibit from receiving such gifts and so long as the gift made did not in any manner impinge on the objects intended to be achieved by the Trust. In the present case, the shares gifted are vested in the appellant trust and therefore, the trust is entitled to the dividends received in respect of the gifted shares. Since the dividend is exempt from tax under s. 4(3)(i) the appellant is entitled to the refund claimed. [397 A—D]

**CIVIL APPELLATE JURISDICTION :** Civil Appeals Nos. 1885 of 1968 and 1084 of 1971.

Appeals from the judgment and order dated November 7, 1967 of the Calcutta High Court in Income-tax Reference No. 21 of 1964.

*S. R. Banerjee, P. C. Bhartari*, for the appellant (in both the appeals).

*V. S. Desai, P. L. Juneja, R. N. Sachthey and B. D. Sharma*, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

**Hegde, J.** Both these appeals arise from the decision of the Calcutta High Court in a Reference under s. 66(1) of the Indian Income-tax Act, 1922 (to be hereinafter referred to as 'the Act').

A The first of these two appeals was brought by the appellant Trust on the strength of a certificate granted by the High Court under s. 66(A)(2) of the Act. In that certificate all that we find is a bald statement by the High Court that the case is a fit one for appeal to this Court. This Court has ruled that such a certificate is an invalid one and an appeal brought on the strength of such a certificate is not maintainable. It is for that reason, the appellant filed the Special Leave application No. 2214 of 1971 seeking special leave from this Court to appeal against the very judgment which was the subject matter of the appeal in Civil Appeal No. 1885 of 1968. After hearing the parties, we came to the conclusion that the leave asked for should be granted. That Petition is now numbered as Civil Appeal No. 1084 of 1971.

C The two questions referred to the High Court are :

“(1). Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the gift made by Sardar Ajaib Singh was valid and complete in law ?

D (2) If the answer to the first question is in the affirmative then whether on the facts and in the circumstances of the case, the assessee was entitled to the refund of tax deducted at source on the dividends accruing on the shares gifted by Sardar Ajaib Singh ?”

E The High Court answered these questions as follows :

“1. The gift made by Sardar Ajaib Singh was a valid and complete gift but did not have the effect of augmenting the assessee trust, and

F 2. The assessee was not entitled to the refund of the tax deducted at source on dividends accrued on the shares gifted by Sardar Ajaib Singh ?”

G Now let us turn to the facts as set out in the Statement of case. The assessment years with which we are concerned in these appeals is 1960-61 for which the relevant previous year ended on March 31, 1960. The assessee is a charitable Trust constituted under a Trust Deed dated December 19, 1944. A supplementary Trust Deed was executed on January 10, 1951. In the first Trust Deed, the objects of the trust are mentioned as those that “Trustees may in their absolute discretion from time to time determine in and towards the attainment assistance or support of such charitable purpose or purposes as the Trustees may in their unfettered judgment deem to be the most deserving of support.”

H The objects mentioned in the first deed were further elaborated in the second Deed which requires the Trustees to spend the income “amongst others for the advancement of learning and education

and/or ameliorations of the sufferings of all citizens of the Indian Union, irrespective of caste, colour or creed for maintaining library or libraries for the free use of the public in general who are residents of the Indian Union for fostering encouraging and providing the means of healthy recreation including teaching or singing classes or choruses for the residents of the Indian Union and for the purpose of providing music and instruments for the town and in the premises hereinbefore mentioned for meeting the expenses wholly or in part of the Khalsa High School and A. V. Middle Schools to the extent and for and during such times as long as the trust continues and/or to apply such income in similar such objects as the trustees may in their absolute discretion from time to time determine in and towards the attainment assistance and support of such charitable purpose or purposes as the Trustees may in their unfettered judgment deem to be the most deserving of support."

Sardar Ajaib Singh one of the Trustees of the appellant Trust by his letter dated January 23, 1959 transferred 640 fully paid up equity shares of the face value of Rs. 6,40,000/- to the assessee reserving to himself the right to revoke and recall the transfer or either the entire 640 shares or any portion thereto but not until the expiry of clear full seven years from the date of the delivery of the shares to the Trust. The Trustees by their letter dated February 1, 1959 accepted the offer and also the terms and conditions upon which the offer had been made and ratified the same by the resolutions of the Trustees dated February 5, 1959 and March 4, 1959. The shares were transferred and given delivery of to the Trustees. On the said shares dividend amounting to Rs. 1,28,000/- accrued on which tax was deducted at the source. The Trustees claimed that the said income of the assessee was exempt from payment of income-tax in view of s. 4(3)(i) of the Act. Hence they claimed refund of the tax deducted at the source. The Income-tax Officer refused to grant the refund asked for on the ground that the Trust Deed under which the Trust was formed did not contain any provision for receipt of donations or gifts from outsiders and therefore the gift made by Sardar Ajaib Singh of the 640 shares was not a valid gift. He also observed that the transfer of the shares was revocable after seven years and accordingly was a conditional transfer; hence the assessee was precluded from claiming the refund of the tax deducted at the source.

The assessee appealed against that order to the Appellate Assistant Commissioner. That Officer upheld the assessee's right to the refund of tax on the ground that during the relevant year the shares did belong to the assessee and the dividend income accruing thereon was the income of the assessee and therefore refund of the tax deducted at the source was allowable.

**A** The Department went up in appeal to the Income-tax Appellate Tribunal as against that order. Before the Tribunal the Department contended that the Trust was not competent to receive gifts from outsiders. There being no clause in the Trust Deed empowering the receipt of such gifts. It was further contended that the gift being conditional and revocable was invalid in the eye of law. The Tribunal found that the assessee was a public charitable Trust and it was not limited in its scope of activities within the four corners of the Trust Deed by which it was created. A public charitable Trust, the Tribunal held, was entitled as of right to receive gifts and donations from the public and as such the gift of the shares made by Sardar Ajaib Singh had been validly received by the assessee. The Tribunal accordingly dismissed the first contention raised on behalf of the Department. It is not necessary for us to refer to the facts relating to the second contention as that matter is not in issue before us, now the same having been held against the Department by the Tribunal.

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**D** While dealing with the reference made by the Tribunal, as mentioned earlier, the High Court upheld the validity of the gift made by Ajaib Singh but strangely enough after holding that the gift in question was a valid one, it came to the conclusion that the said gift did not have the effect of augmenting the assessee's Trust and therefore the assessee was not entitled to the refund of the tax deducted at the source on the dividend accrued on the shares gifted by Ajaib Singh. To us these findings appear to be somewhat mutually conflicting. If the gift in question was a valid one then the Trust became the owner of the shares gifted. That being so it also became the owner of the dividends received. Hence those dividends will have to be considered as the income of the Trust.

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**F** The reason which persuaded the learned judges of the High Court for coming to the above conclusion are set out in their judgment at pp. 21 and 22 of the printed paper book. We shall quote that part of the High Court's judgment :

**G** "The question for our consideration, however, is whether the gift, as accepted by the trustee, had the effect of augmenting the assessee trust for taxation purposes, or whether the effect of it was that it remained a separate trust in the hands of the trustees of the assessee trust, with liberty to them to apply the income of the subsequent trust for the benefit of the assessee trust. Mr. Banerjee urged that it was not necessary expressly to empower the trust as of a public trust to accept gifts, donations or endowments. That, he submitted, was a power inherently vested in them. We have our doubts.

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Trust is a confidence reposed in a person or persons, with respect to property of which he had or they have legal possession or over which he or they can exercise power, to the intent that he or they may hold the property or exercise the power for the benefit of some other person or object. Now, this confidence may not necessarily include in itself the liberty that the trustees would go on accepting donations and try to augment the trust to such dimensions that the purpose for which the original trust was created may be swamped or modified or qualified. If a settlor wants to invest the trustees with such a power, it is but reasonable to expect that the power should be conferred by the deed which created trust. The trust that we have to consider does not appear to confer upon the trustees the further power to accept donations gifts or endowments. We, therefore, do not think that the trustees have the liberty or the right to accept further gifts, in the absence of specific authorisation, augment the original trust and then claim the benefit of section 4(3) (i) of the Indian Income-tax Act."

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It is somewhat difficult to follow the reasoning adopted by the learned judges of the High Court. Either the gift made by Ajaib Singh and accepted by the Trustees was a valid gift or it was not a valid gift. If it was a valid gift, the shares gifted became the property of the Trust. If it was not a valid gift, the shares still continued to be the property of Ajaib Singh. It is nobody's case that there was a Trust within a Trust. No such Trust is put forward either by the Department or pleaded by the assessee. The existence of a Trust is a fact and not a fiction. We fail to see how the learned judges were able to come to the conclusion that Ajaib Singh while gifting the shares created one more Trust without any writing and without any objective and appointed the Trustees of the assessee Trust to be the Trustees of the new Trust as well. These assumption have no basis either in fact or in law.

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At this stage we may mention that the very learned judges who decided this Reference had held in Wealth Tax Reference No. 444 of 1963 on the file of the High Court of Calcutta that the shares gifted by Ajaib Singh did not continue to be his property. If they are not Ajaib Singh's property, whose property are they? The only answer is that they are the property of the appellant Trust. Those shares cannot float in the mid air. They must be owned by someone.

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As seen earlier, the appellant is a public Trust. Its objects are charitable objects Ajaib Singh made over the shares to that

A Trust for effectuating the very objects of the Trust. He did not stipulate any other object to be attained. The Trustees had accepted the gift. The Trust Deed does not prohibit the Trustees from accepting a new gift. We fail to see what difficulty was there for the Trustees to accept gifts from third parties for the purpose of furthering the objectives of the Trust, so long as the Trust Deed did not prohibit them from receiving such gifts and so long as the gift made did not in any manner impinge on the objects intended to be achieved by the Trust. We fail to see why the Trustees could not accept that gift.

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C In our opinion the assumption of the High Court that the Trustees were incompetent to receive the gift made by Ajaib Singh is an erroneous one. On the other hand we agree with the Tribunal that the gift made by Ajaib Singh was a valid gift, the shares gifted are vested in the Trust and therefore the Trust is entitled to the dividends received in respect of those shares. In view of s. 4(3)(i), that dividend is exempt from tax. Hence the appellant is entitled to the refund claimed.

D In the result we allow Civil Appeal No. 1084 of 1971, discharge the answers given by the High Court and in their place, we answer the questions referred to the High Court in the affirmative and in favour of the assessee. The appellant is entitled to its costs in this appeal.

E We revoke the certificate produced in Civil Appeal No. 1885 of 1968. In view of our decision in Civil Appeal No. 1084 of 1971, there is no need to send that case back to the High Court for giving reasons in support of the certificate. That appeal is accordingly dismissed as being not maintainable—no costs.

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S.C.

*C.A. 1084 of 71 allowed.*

*C.A. 1885 of 68 dismissed.*