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COMMISSIONER OF INCOME-TAX
WEST BENGAL-III, CALCUTTA

v.

M/S. INDIAN SUGAR MILLS ASSOCIATION

November 5, 1974

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[H. R. KHANNA AND A. C. GUPTA, JJ.]

Income Tax Act; 1922—Section 4(3) (1)—Income held wholly for religious or charitable purposes meaning of Trade Association Rules and Regulations—Construction—Rules of construction of wills and deeds inapplicable.

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The Indian Sugar Mills Association is a trade union registered under the Trade Unions Act, 1926. Its objects are, *inter alia*, to promote and protect the trade, commerce and industries of India and in particular the trade, commerce and industries connected with sugar, to encourage friendly feeling and good relations amongst the sugar mills in general and the members in particular and also between producers of sugar and cane growers, distributors of sugar and other dealing with sugar mills and connected with sugar industries, to regulate terms and conditions of employment in the mills and factories, to promote good relations between the employers and the employees, to adjust controversies between members of the Association, and to establish just and equitable principles in trade and impose restrictive conditions on the conduct of sugar trade and business. Rule 4(a) of the Association provides that the income and property of the Association shall be applied solely towards the promotion of the Association and no portion thereof shall be paid by way of dividend bonus or otherwise to the members of the Association. Rule 64 provides that the profits of the Association shall be applied in such a manner as the Committee may think fit provided that no distribution of profits amongst members will be made without a resolution of the General Meeting of the Association. It was claimed on behalf of the Association that the business it carried on was in the nature of property held under trust or legal obligation to apply the income for charitable purposes within the meaning of cl. (1) sub-section (3) of section 4 of the Income Tax Act, 1922 and therefore was exempted from tax. The income tax authorities and the tribunal rejected the claim. On reference the High Court answered in favour of the assessee. The High Court held that the primary objects of the Association were objects of general public utility and that the Association was under a legal obligation to hold the income it derived from the business for charitable purposes. It was of the view that section 4(3)(1) was of wider amplitude than what was known as religious or charitable purposes in English law and a purpose of general public utility had to be ascertained with reference to conceptions prevailing in our country.

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Allowing the appeal,

HELD : (i) In the present case no conflict arises between the English and the Indian concept of charitable purposes.

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(ii) The exemption under s. 4(3)(1) can be claimed if the income is held wholly for religious or charitable purposes; this requirement is satisfied if the primary purpose is religious or charitable and the other purposes, not by themselves religious or charitable are ancillary and serve to achieve the main purpose. [609D-E]

Commissioner of Income-Tax, Madras v. Andhra Chamber of Commerce, 55 I.T.R. 722, followed.

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(iii) Under Rule 64 the Committee of the Association might decide to apportion the entire profits amongst the members of the Association leaving nothing to be applied towards charitable objects. Rule 64 introduces an element of private gain which is inconsistent with the object of general public utility. It is not possible to hold that all the objects of the Association are charitable. It cannot also be held that the primary purpose of the association is charitable and other objects are ancillary or incidental. Some of the stated objects of the Association cannot be treated as primary and others in apparent conflict with them as of no

effect. It is not therefore possible to agree that the Association held the income derived from its business wholly for charitable purposes. *All India Spinners Association and Commissioner of Income Tax, Bombay* 12 I.T.R. 482 followed: *Commissioner of Income Tax, Madras v. Andhra Chamber of Commerce* 55 I.T.R. 722, distinguished. [609G, 610D; 611C]

(iv) Undoubtedly Rule 4(a) and Rule 64 are repugnant to each other. But the rule of construction of deeds and wills that in case of repugnancy the first words in a deed and the last words in a will shall prevail, is not applicable to the rules and regulations of a registered trade union in order to find out its real object. [610D]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1225 to 1228 of 1970.

From the judgment and order dated the 11th July, 1969 of the Calcutta High Court in Income Tax Reference No. 213 of 1966.

S. T. Desai, J. Ramamurthi and *R. N. Sachthey*, for the appellant.

B. Sen and *D. Pal, R. S. Tahore, O. P. Khaitan, B. P. Mahesawari* and *Leila Seth*, for the respondent.

The Judgment of the Court was delivered by

GUPTA, J.—The common question arising for decision in these four appeals is whether the income derived by the respondent, Indian Sugar Mills Association, from its sugar export division is exempt from tax under sec. 4(3)(i) of the Income Tax Act, 1922. The assessment years are 1958-59, 1959-60, 1960-61 and 1961-62 for which the previous years are respectively the calendar years 1957, 1958, 1959 and 1960.

The Indian Sugar Mills Association, hereinafter referred to as the Association, which has its office in Calcutta is a Trade Union registered under the Trade Unions Act, 1926; any individual, firm or company owning or managing a sugar mill or factory is eligible for membership of the Association. Rule 3 of the Rules of the Association states the various objects for which the Association is established and, of them, the first two, namely Rules 3(a) and 3(b) are as follows :—

“(a) To promote and protect the trade, commerce and industries of India and in particular, the trade commerce and industries connected with sugar.

(b) To encourage friendly feeling and good relations amongst the sugar mills in general and the members in particular and also between producers of sugar and cane-growers, distributors of sugar and other dealing with sugar mills and connected with sugar industry.”

It was claimed on behalf of the Association that the business it carried on was in the nature of property held under trust or legal obligation to apply the income for charitable purposes within the meaning of clause (i), sub-section (3) of section 4 of the Income-Tax Act, 1922; the last paragraph of sub-section (3) defines “charitable purposes” as including relief of the poor, education, medical relief and advancement

A of any other object of general public utility. The claim for exemption appears to have been based on the objects mentioned in Rules 3(a) and 3(b) and on the first part of clause (a) of Rule 4. Clauses (a) and (b) of Rule 4 regulate the application of the funds of the Association. The first part of Rule 4(a) reads :

B "4. (a) Subject to such special rules as may be framed for the purpose, the income and property of the Association whensoever derived, shall be applied solely towards the promotion of the Association as set forth in these Rules and Regulations and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend or bonus or otherwise howsoever by way of profit, to the persons who at any time are, or have been members of the Association or to any of them or to any person claiming through any of them."

C Rule 4(a) has a proviso to which it is not necessary to refer for the present purpose. The Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal all rejected the claim though not exactly for the same reasons. At the instance of the Association the D Tribunal referred the following question to the High Court at Calcutta under sec. 66(1) of the Income Tax Act, 1922 :

E "Whether on the facts and circumstances of the case and on proper construction of the Rules and Regulations of the Association, the Tribunal was justified in holding that the income of the Association derived from the business of export of sugar and interest from current and fixed deposits were not exempt from tax under section 4(3)(i) of the Indian Income-tax Act, 1922?"

F The High Court answered the question in the negative and in favour of the assessee. These four appeals preferred by the Commissioner of Income Tax, West Bengal-III, Calcutta, with certificate granted by the High Court under section 66A(2) of the Income Tax Act, 1922 are directed against the judgment of the High Court disposing of the reference and relate to the assessment orders made in respect of the aforesaid four years.

G The High Court observed that the question referred to it should be decided upon the principles laid down by the Privy Council in *re The Trustees of the 'Tribune'*, 7 I.T.R. 415 and *All India Spinners' Association v. Commissioner of Income-tax, Bombay*, 12 I.T.R. 482 and by the Supreme Court in *Commissioner of Income-Tax, Madras v. Andhra Chamber of Commerce*, 55 I.T.R. 722. Of the several principles stated in the *Tribune* case (*supra*), the one to which the High Court made special reference is that in countries to which English ideas may be inapplicable, the courts must in general apply the standard of customary law and common opinion amongst the community to which the parties interested belong in deciding whether an object is of general public utility. Referring to this principle the High Court observed that "section 4(3)(i) is of wider amplitude than what is known as religious

or charitable purposes in English Law and a purpose of general public utility has to be ascertained with reference to conceptions prevailing in our country". We are afraid we do not see how this principle has relevance on the question under consideration in the present case because no conflict arises here between the English and the Indian conceptions of charitable purpose. In the *Spinners' Association* case (supra) the Privy Council found that the primary object of the Spinners Association was the relief of the poor which was a charitable purpose, that the objects of the said Association included the advancement of other purposes of general public utility, and held that as such the income of the Spinners' Association was exempt under section 4(3)(i). Their Lordships further observed that an object of general public utility "would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility". This observation, as will appear later, has a bearing on the question that arises for decision in the instant case.

The Judgment of the High Court is really based on the decision of this Court in *Commissioner of Income-Tax, Madras v. Andhra Chamber of Commerce*, 55 I.T.R. 722; the learned counsel for the respondent also relied almost entirely on this case. The Andhra Chamber of Commerce was a company incorporated under the Indian Companies Act (7 of 1913); it was permitted under sec. 26 of the Act to omit the word "limited" from its name by order of the Government of Madras. Of the findings recorded in the *Andhra Chamber of Commerce* case, the following are material for the purpose of the present appeal :

- (i) Advancement or promotion of trade, commerce and industry leading to economic prosperity enures for the benefit of the entire community. That prosperity would be shared also by those who engage in trade, commerce and industry but on that account the purpose is not rendered any the less an object of general public utility.
- (ii) The expression "object of general public utility" is not restricted to objects beneficial to the whole of mankind or even all persons living in a particular country or province. It is sufficient if the intention is to benefit a section of the public as distinguished from specified individuals. The section of the public sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature: where there is no common quality uniting the potential beneficiaries into a class, it may not be regarded as valid.
- (iii) If the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose is contemplated.

A On the facts of that case it was held that the principal objects of the Chamber of Commerce were to promote and protect trade, commerce and industries and to stimulate the development of trade, commerce and industries in India or any part thereof and one of the objects mentioned in the Memorandum of Association that the Chamber of Commerce might take steps to urge or oppose legislative or other measures affecting trade, commerce or manufactures was purely ancillary or subsidiary aimed at securing the primary objects. In the case before us the High Court held that clauses (a) and (b) of Rule 3 of the Rules of the Association, quoted above, set out the primary objects of the Association which were objects of general public utility, and the other objects appearing from the remaining clauses of Rule 3 were only ancillary. Relying further on a part of Rule 4(a), which we have reproduced above, providing that no part of the income and property of the Association was to be paid or transferred by way of dividend or bonus or otherwise by way of profit to the members of the Association, the High Court came to the conclusion that the Association was under a legal obligation to hold the income it derived from the business of export of sugar for charitable purposes.

D The exemption under section 4(3)(i) can be claimed if the income is held wholly for religious or charitable purposes; this requirement is satisfied, as held in the *Andhra Chamber of Commerce* case (supra), if the primary purpose is religious or charitable and the other purposes, not by themselves religious or charitable, are ancillary and serves to achieve the main purpose. Assuming clauses (a) and (b) of Rule 3 disclosed objects of general public utility, it is necessary to examine some of the other Rules of the Association to find out if it held the income derived from the business wholly for charitable purposes. The general prohibition contained in the first part of Rule 4(a) against sharing of profits by the members appears to have been made almost nugatory by Rule 64 which is as follows :

F “64. Subject to such rules as the General Meeting may frame or prescribe for declaration of dividend and distribution of profits, the profits of the Association shall be applied in such maner as the Committee may in their discretion think fit provided nevertheless that no distribution of profits amongst members will be made unless sanctioned by a Resolution at a General Meeting of the Association held for the purpose.”

G Rule 64 thus permits distribution of profits among the members on a resolution being passed for the purpose at a General Meeting of the Association. Under Rule 64 the Committee of the Association “may in their discretion” decide to apportion the entire profits among the members of the Association leaving nothing to be applied towards the alleged primary objects. We are not prepared to accept the submission made on behalf of the respondent that the power conferred on the Committee by Rule 64 to decide how the profits are to be applied is only incidental to the carrying out of the primary objects which are charitable. There is nothing in Rule 64 that suggests so; there is no

indication that the rules framed or the resolution passed at the general meeting must require a part at least of the profits to be set apart for the charitable purposes. Rule 64 introduces an element of private gain which is inconsistent with the object of general public utility and following the decision in *All India Spinners' Association v. Commissioner of Income-Tax, Bombay* (supra) it cannot be said that the Association in the instant case held the income it derived from its business of exporting of sugar wholly for charitable purposes. This is also what distinguishes the present case from the Andhra Chamber of Commerce case where it was found that the Chamber of Commerce had no profit motive, that its objects were to promote and protect the trade, commerce and industries and to stimulate their development and its other objects were ancillary and incidental to the principal objects.

Dr. Pal for the respondent also submitted that if Rule 64 appeared to be inconsistent with the primary objects, it should be treated as void and of no consequence. Undoubtedly Rule 4(a) and Rule 64 are repugnant to each other. But the rule of construction of deeds and wills on which Dr. Pal relied, that in case of repugnancy the first words in a deed and the last words in a will shall prevail, is not applicable to the rules and regulations of a registered trade union in order to find out its real object. We have no right to assume some of the stated objects of the Association as primary to declare others in apparent conflict with them as of no effect. Rules 3, 4 and 64, all framed by the Association as a Trade Union, co-exist. We have no right to rewrite the rules of a registered trade union by deleting any of them.

We also find it difficult to accept that only clauses (a) and (b) of Rule 3 represent the primary objects of the Association and the other Rules are all ancillary and incidental. The Association is a Trade Union. Section 2(h) of the Trade Unions Act, 1926 defines Trade Union as meaning "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relation between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions." There is a proviso to this definition which is not relevant on the question under consideration. The definition itself sets out the primary purposes for which a trade union can be formed. The objects of the Association listed under Rule 3 include the following :

"(c) To regulate terms and conditions of employment in the Mills and Factories.

(d) To promote good relations between the employers and the employees.

* * * * *

(1) To adjust controversies between members of this Association.

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- (n) To establish just and equitable principles in trade and impose restrictive conditions on the conduct of sugar trade and business.”

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These are all primary purposes of a Trade Union. Rule 3(b) also may possibly be taken as a trade union object. Assuming Rule 3(a) could be the primary object of a trade union, the other objects named in clauses (c), (d), (i) and (n) of Rule 3 also fall in the same category, and it is not possible to speak of one of them as ancillary or incidental to another. These other objects cannot also be called charitable purposes within the meaning of section 4(3)(i), even assuming that in some remote and indirect manner they might be of some public utility. It is not therefore possible to agree that the Association held the income derived from its business wholly for charitable purposes.

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For the reasons stated above we allow these appeals, discharge the answer given by the High Court to the question referred to it, and answer the question in the affirmative and in favour of the Revenue. The appellant will be entitled to his costs in this Court as well as in the High Court. One hearing fee.

Appeals allowed.