

INDIAN CHAMBERS OF COMMERCE

v.

C.I.T., WEST BENGAL-II, CALCUTTA

September 17, 1975

[V. R. KRISHNA IYER, A. C. GUPTA AND S. MURTAZA FAZAL ALI, JJ.]

Income Tax Act (43 of 1961), s.2 (xv)—Charitable purpose, scope of—Burden of proof—Activity for profit what is.

Under the Income-tax Act, 1961 one of the items not included in the total income of an assessee for purposes of tax is, under s.11 income derived from property held under trust wholly for charitable purpose. Charitable purpose is defined in s.2 (xv). Chambers of commerce, promoting the trade interest of the commercial community, have been regarded as pursuing charitable purposes within the meaning of s.2 (xv). But, under cover of charitable purposes they have been indulging in various activities and deriving tax free profit. Therefore, s. 2 (xv) was amended by adding a clause at the end. Under the amended definition, unless the context otherwise requires, charitable purpose includes the advancement of any object of general public utility not involving the carrying on of any activity for profit.

HELD: The income of the assessee, which are chambers of commerce, from three sources, namely, (a) arbitration fees levied by them; (b) fees collected for issuing certificates of origin; and (c) share of profit in another company for issue of certificates of weightment and measurement, which services are extended to members and non-members, that is, to be trade generally, is not entitled to the exemption, and is liable to tax. [845E-G]

(1) The test is to ask for answers to the following questions:—(a) Is the object of the assessee one of general public utility; (b) Does the advancement of the object involve activities bringing in money? (c) If so, are such activities undertaken (i) for profit or (ii) without profit. Even if (a) and (b) are answered affirmatively, if (c) (i) is also answered affirmatively the claim for exemption collapses. [844B-C]

(2) Section 2 (xv) must be interpreted in such a manner that every word is given a meaning and not to treat any expression as redundant or miss the accent of the amendatory phrase. So viewed, an institution which carries out charitable purposes out of income 'derived from property held under trust wholly for charitable purposes' may still forfeit the claim to exemption in respect of such takings or incomes as may come to it from pursuing any activity for profit. By the new definition the benefit of exclusion from total income is taken away where, in accomplishing a charitable purpose, the institution engages itself in activities for profit. If it wants immunity from taxation the means of fulfilling charitable purposes must be unsullied by profit-making ventures. The advancement of the object of general public utility must not involve the carrying on of any activity for profit. Otherwise, it will lead to the absurd conclusion that a Chamber of Commerce may run a printing press, advertisement business, market exploration activity or even export promotion business and levy huge sums from its customers, whether they are members of the organisation or not, and still claim a blanket exemption from tax on the score that the objects of general public utility which it had set forth for itself implied these activities even though profits or surpluses may arise therefrom. If it runs special types of services for the benefit of manufacturers and charges remuneration from them, it is undoubtedly an activity which, if carried on by private agencies, would be taxable, and there is no reason why a Chamber of Commerce should be exempt. The policy of the statute is to give tax relief for charitable purposes. An undertaking by a business organisation is ordinarily assumed to be for profit unless expressly or by necessary implication, or by eloquent surrounding circumstances, the making of profit stands clearly negated. For example, if there is a restrictive provision in the bye-laws which insists that the charges levied for services of public utility rendered are to be on a 'no profit' basis, that is, that it shall not charge more

- A than is actually needed for the rendering of the services, then it earns the benefit of s.2(xv). It may not be an exact equivalent—such mathematical precision being impossible in such cases—and there may be little surplus at the end of the year; but the broad inhibition against making profit is a good guarantee that the carrying on of the activity is not *for* profit. [839F-840D, G-841C]
- B (3) The answer to the question whether an activity is *one for* or *not for* profit depends on the facts. An activity which yields profit or gain in the ordinary course must be presumed to have been done *for* profit or gain. There may be activities, where, without intent or purpose the activity may yield profit. Even then it may legitimately be said that the activity is *for* profit in the sense that it is "appropriate or adapted to" such profit. [844C, E-F]
- C (4) If the activity is prone to yielding income and in fact results in profit the Revenue will examine the reality or pretence of the condition that the activity is not for profit: But, if the broad basis that the activity is *not* for profit is made out, by the assessee, the Revenue will not be meticulous and charge every chance excess or random surplus. [844G-845A]
- (5) The assessee's contention that the Revenue should only look at the 'dominant intent' or 'real object' of the assessee and that if its activity is wrapped up, entangled or intertwined with a public utility object, then any 'incidental profit' arising from it is not taxable, does not afford a valid or satisfactory test. [841D-E]
- D (6) Equally, the contention of the Revenue that all activities which are prone to produce profits should be excluded, is not correct. [840E-F]
- (7) In the present case the issuance of weighment and measurement certificates, the issuance of certificates of origin, and the settlement of disputes by arbitration are great facilities for traders of general public utility. There is however, nothing in the memorandum or articles of association of the assessee which provides for only nominal fees and sets a limit on making large profits from the services. [845B-E, G-H]
- E *Loka Shikshana Trust v. C.I.T., Mysore*, [1976] 1 S.C.R. 471; *C.I.T. v. Andhra Chamber of Commerce* [1965] 55 I.T.R. 722 applied.
C.I.T. v. Dharmodayam Co. [1974] 94 I.T.R. 113, overruled.

ARGUMENTS

F For the appellants:—

1. The primary or dominant or real objects of the Indian Chamber of Commerce are to promote, protect, aid and stimulate trade, commerce and industry in India. (Clause 3 of the Memorandum of Association). The Income received was to be applied solely for the promotion of the objects and upon dissolution no property was to be paid or distributed among the members but was to be given or transferred to some other institution having similar objects. (Clauses 4 and 8 of the Memorandum of Association). It is well settled that these objects which lead to economic prosperity and enure for the benefit of the entire community are objects of general public utility and as such, charitable.

See [1965] SC 55 ITR 722—*Commissioner of Income-tax v. Andhra Chamber of Commerce*.

2. The Indian Chamber of Commerce provides, *inter alia* for arbitration facilities so that trade disputes may be speedily and efficiently settled. It further provides for certificates of origin and certificates of weighment and measurement to be issued under the Commercial Documents Evidence Act, 1939 under Entry 18 Part I and Entry 6 Part II of the Schedule to the said Act respectively. These certificates can only be issued by certain bodies such as recognised chambers of commerce. The certificates are necessary for facilitating trade.

The carrying on of the activities of granting certificates of origin and/or weighing and measurement and arbitration are not activities for profit but are in the nature of services and/or facilities provided to the commercial community. As fees are charged the result at the end of the year is sometimes a loss and sometimes a surplus. The dominant purpose for these services is not profit making but rendering a statutory service for trade and commerce generally. The services cannot be gratuitous as the Chamber cannot be expected to be a charitable institution like a Dharamsala. The fees charged are related to the services rendered by way of *quid pro quo*. *Quid pro quo* does not mean an equivalent mathematically. If incidental to the advancement of the objects of general public utility some services are rendered for fees as a result of which income results it does not mean that the objects of the Chamber involves carrying on any activity "for profit" in the sense of that being the dominant object. The dominant or real purpose is not to earn profit or income but to serve trade and help the commercial community. As such the abovementioned activities carried on by the Chamber will not be activities "for profit" involving in the dominant object of the Chamber. In order to be activities "for profit" the involvement of profit making should be by the objects and must be of such a degree or to such an extent as to lead to the inference that profit making is the real object. Since the real or dominant objects of the Chamber are not for profit and profit is not an essential ingredient but a mere by-product of the activities of the Chamber, the income must be held to be exempt under S. 11(1) read with S. 2(15) of the Act.

See [1976] 1 S.C.R. 471—*The Sole Trustee Loka Shikshana Trust v. Commissioner of Income-tax, Mysore.*

3. The purpose and/or dominant object must be distinguished from the powers which are incidental to the carrying out of the objects of the Trust.

See 27 ITR 279—*Commissioner of Income-tax v. Breach Candy Swimming Bath Trust.*

[1918] Appeal Cases 514—*Cotman v. Brougham* [1970] 1 Ch. 199.

4. Under S. 2(15) of the Act the words "carrying on of any activity for profit" must mean an activity whose dominant object is profit making and not an activity which may incidentally result in some profit as a by-product. If this meaning is not given then there will be no activity of any institution, doing work of general public utility which will be exempt including activities like those of All India Spinners Association.

5. If the primary and dominant purpose is charitable then even if there are some incidental powers which are not charitable it will not prevent the trust from being a valid charity. The intention will have to be gleaned from the Constitution of the Trust or the Memorandum of Association.

See 7 ITR 415—*In Re : Trustees of the Tribune.*

12 ITR 482—*All India Spinners Association v. Commissioner of Income-tax*

55 ITR 722—*Commissioner of Income-tax v. Andhra Chamber of Commerce*

100 ITR 392—*Andhra Pradesh State Transport Corporation v. Commissioner of Income-tax*

6. Under Section 11 of the Income-tax Act, 1961 it is the income derived from property held, under trust wholly for charitable purposes which is not to be included in the total income. The word property is of wide import and can include a business or an undertaking or fees and restaurant charges etc.

12 ITR 482—*All India Spinners Association v. Commissioner of Income-tax*

- A 27 ITR 279—*Commissioner of Income-tax, Bombay City v. Breach Candy Swimming Bath Trust*
32 ITR 535—*J K Trust, Bombay v. Commissioner of Income-tax, Excess Profit Tax, Bombay*
53 ITR 176—*Commissioner of Income-tax, Kerala & Coimbatore v. P. Krishna Warriar*

B 7. In any event, the activities of arbitration and granting certificates of origin and weighing and/or measurement are not activities "for profit".

80 ITR 645—*Commissioner of Income-tax, Kerala v. Indian Chamber of Commerce*

87 ITR 83—*Commissioner of Income-tax v. Kochin Chamber of Commerce*

C [1975] 40 Taxation (III) 15—*Commissioner of Income-tax, Kerala v. Ernakulam Chamber of Commerce.*

As such the Chamber is entitled to exemption under section 11 read with 2(15) of the Income-tax Act.

For the Respondent.—

D 1. The Appellant/Chamber of commerce was deriving income by performing three kinds of services namely, providing arbitration facilities, for standard weights and measurements to traders in general. This was in furtherance of its objects clause 2(a); 2(b); 2(c); 2(d); 2(z); 3(h); 3(i); 3(p); 2(q); 3(v). The performance of such services for remuneration clearly was an activity for profit and the said activity was closely linked with, or involved with the advancement of the aforesaid objects of the Chamber. Such close-linking and involvement, by itself, rendered the object non-charitable within the meaning of s. 2(15) of the Income-tax Act, 1961.

E 2. If the Chamber of Commerce performed the same kind of services for its members for remuneration the income so derived was certainly liable to tax under s. 28(iii) of the Income-tax Act, 1961. The position became worse if the income was so derived by rendering such services to non-member traders in general.

F 3. It was assumed by the Tribunal and by the High Court, for which there was no warrant, that the income from the said three sources was income derived from property held under trust and the case proceeded on such assumption although the High Court doubted the validity of such an assumption as is clear from the text of their judgment at pp. 76-77 of the Paper Book. The High Court, therefore, proceeded to consider only whether the production of the income from the aforesaid three sources was involved with the advancement of any object of general public utility. The Tribunal had held that such income was derived by carrying out the ancillary object of the Trust and not the main object, although it found as a fact that the income was derived from carrying on an activity for profit. The High Court did not recognise such a distinction and it was urged that the High Court was right.

G 4. No valid reason could be found for making a distinction between any "individual" or any "association of persons" on the one hand, and the appellant on the other hand in respect of producing taxable income by carrying on identical activities for profit. It was beyond any doubt that if an Individual or an "association of persons" had carried on similar activities for profit, they would not be entitled to any exemption from tax. The appellant, therefore, could not be placed at a better level, especially when the words of Statute themselves had debarred it from getting the exemption. Prior to the introduction of the qualifying clause in s. 2(15) of the Current Act such bodies or

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organisations were undoubtedly enjoying exemption by virtue of the repealed Indian Income-tax Act, of 1922. The Legislature clearly intended to remove this unreasonable distinction by adding the qualifying clause as it is found in s. 2(15) of the Income-tax Act, 1961. The effect of such amendment of the definition was that the institutions otherwise regarded as charitable trusts have now been placed at par with any private organisation or individual who would render the same kind of services to the public for profit.

5. Unless the memorandum or articles governing a Trust or any Institution prohibited the making of profit by carrying on any activity or the earning of the profits was not ruled out and in fact profit resulted, the Court would assume that the activity was carried on for profit. In support of this the Revenue's counsel relied upon the judgment of the Supreme Court recently delivered in the case of *Sole Trustee Loke Shikshana Trust* [1976] 1 S.C.R. 471. There was no such prohibition in the regulations governing the activities of the Indian Chamber of Commerce and therefore, its case fell squarely within the principles laid by the Supreme Court in the case of *Loke Shikshana Trust*.

6. In order that an activity might be called a business-activity or any other activity for profit, it was not necessary to show that it was an organised activity or that it was indulged in with a motive of making profit; it was well established that it was not the motive of a person doing an act which decided whether the act done by him was carrying on an activity for profit. If any activity, business or otherwise, in fact, produced an income, that was taxable income and was none-the-less so because it was carried on without the motive of producing an income. Reference was invited in this connection to the observations of the Supreme Court in the case of *P. Krishna Menon v. Commissioner of Income-tax, Mysore* (35 I.T.R.—p. 48).

7. Even in the case of classical charities, such as promotion of education and giving of medical relief, no exemption is available if these two activities of charitable nature are carried on for purposes of profit. *A fortiori*, the exemption will be denied in the case of advancement of an object of general public utility, howsoever charitable it may otherwise be regarded in character, if the advancement involved the carrying on an activity for profit. The intention of Legislature was fully vindicated in the language employed in s. 2(15) of the Act.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2129 of 1970.

From the Judgment and Order dated the 29th May, 1970 of the Calcutta High Court in Income Tax Reference No. 1 of 1967 and

Civil Appeals Nos. 2455—2457 of 1972

Appeals by Special Leave from the Judgment and Order dated the 25th February, 1972 of the Kerala High Court in Income Tax Reference Nos. 9, 10 and 11 of 1970.

A. K. Sen, Mrs. Leila Seth, O. P. Khaitan and *B. P. Maheshwari* for the appellant in C.A. No. 2129 of 1970.

G. C. Sharma, B. B. Ahuja and *S. P. Nayar* for the respondents in C.A. 2129 of 1970.

J. Ramamurthy and *D. N. Gupta* for intervener No. 1, in C.A. No. 2129 of 1970.

A. K. Sen and *D. N. Gupta* for Intervener No. 2 in C.A. No. 2129 of 1970.

A *J. Ramamurthi and D. N. Gupta* for Intervener No. 3 in C.A. No. 2129 of 1970.

G. C. Sharma, B. B. Ahuja and S. P. Nayar for the appellants in C.As. Nos. 2455-2457/72.

B *A. K. Sen and D. N. Gupta* for respondent in C.As. Nos. 2455-57/72.

The Judgment of the Court was delivered by

C KRISHNA.IYER, J. These four appeals raise but one question, turning on the meaning of 'charitable purpose', as defined in s. 2(15) of the Income Tax Act, 1961 (Act No. XLIII of 1961) (for short, the Act). They may be disposed of by one common judgment, although the two High Courts (Calcutta and Kerala) from where the appeals have come have taken contrary views on the single point in issue.

D What are the words set for earning exemption by a combined application of s. 11(1) read with s. 2(15) of the Act? What is the parameter of the legal concept of charitable purpose? Are the triune activities, which have yielded income and have been assessed to tax, eligible for exemption as falling within the scope of s. 2(15) as it now stands? These points of law, in the conspectus of facts presented in the case, have been argued in the light of conflicting decisions of the High Courts and illumined in part by a very recent pronouncement of this Court in *Loka Shikshana Trust v. C.I.T., Mysore.*⁽¹⁾

E The assesseees are the Indian Chambers of Commerce and the Cochin Chambers of Commerce. Their memoranda and articles of association are substantially similar and so the facts in the first case alone need be stated and the question of law discussed with reference to that case only. Hardly any distinction on facts or law which desiderate a separate consideration exists.

F The Indian Chamber of Commerce is a company registered under s. 26 of the Indian Companies Act, 1913. Its memorandum and articles of association spell out the broad objects and there is no doubt that they fall within the sweep of the expression 'the advancement of any . . . object of general public utility' as set down in s. 2(15) of the Act. Briefly put, they are primarily promotional and protective of Indian trade interests and other allied service operations. A general concluding clause authorizes it 'to do all other things as may be conducive to the development of trade, commerce and industries or incidental to attainment of the above objects or any of them'. It is clear from clauses 4 and 8 of the Memorandum of Association that the Members of the Chamber do not and cannot stand to gain personally since no portion of 'income and property of the association' shall be paid . . . directly or indirectly, by way of dividend or bonus or otherwise howsoever by way of profit to the persons who at any time are . . . Members of the Association . . .'. Even on the dissolution of the Association the Members cannot claim any share in the assets. These highlight the fundamental fact that the Chamber, by and large, strives to advance the general trade interests of India and Indians without

(1) [1976] 1 S.C.R. 471

seeking to make profits for its Members. In the light of this Court's decision in *C.I.T. v. Andhra Chamber of Commerce*⁽¹⁾ one may readily state that the Chambers advance objects of general public utility and, *prima facie* move into the exclusionary area of charitable purpose. However, the bone of contention in this case is as to whether the three sources of income, *viz.*, (a) arbitration fees levied by the Chamber; (b) fees collected for the certificates of origin; and (c) share of profit in M/s. Calcutta Licensed Measures for issue of certificates of weightment and measurement fall within the exclusion. It may be mentioned that all these three services were extended to Members and non-Members or, rather, to the trade generally. Had the law bearing on 'charitable purpose' been what it was prior to 1961, the Chamber would have won, hands down may be. But then there is a significant change in the definition of 'charitable purpose' by the addition of nine new words which cut back on the amplitude of the expression in the prior Act. The straight question to be answered here is whether in plain English the three activities which have yielded profits to the Chamber involve 'the carrying on of any activity for profit', uncomplicated by casuistic niceties, semantic nuances and case-law conflicts. Unfortunately, legislative simplicity has not been accomplished by the draftsman in the amended definition and, consequently, interpretative complexity persists. The Judges of the Andhra Pradesh High Court in *A. P. State Road Transport Corporation v. C.I.T.*⁽²⁾ observed, while considering the import of s. 2(15) of the 1961 Act :

"It is one of the fundamental principles in legislation and the drafting of statutes that the provisions contained therein should be clear and cogent and, more so, with regard to the fiscal statutes which impose a burden on the public. But, in this case, what we find is that the amendment, instead of being clear and cogent, is complicated and courts have taken different views in interpreting the same."

We dare say that achieving greater simplicity and clarity in statute law will be taken up by the draftsmen of the legislative bills to avoid playing linguistic games in Court and promotion of interpretative litigation. Lawyers and legislators must stop confusing each other and start talking to their real audience—the people—so that communication problems may not lead to prolific forensic battles. We must confess to having been hard put to it to get at the controlling distinction between activities which fall on one side or the other of 'charitable purpose'. The assessee the Indian Chamber of Commerce, was assessed for the accounting year 1963-64 on the income which arose from the three heads of arbitration fees, fees for certificates of origin and the share of profits in the firm M/s. Calcutta Licensed Measurers which issued weightment and measurement certificates charging a fee therefor. The return for the assessment year showed a profit of Rs. 1,58,690/- made up of a small amount from arbitration fees, and a similar sum from fees for issue of certificates of origin but a substantial sum by way of share of income from the fees charged for weightment and measurement. Although the Income-tax Officer repelled the claim of

(1) [1965] 55 I.T. R. 722.

(2) [1975] 100 I.T.R. 392, 397.

A 'charitable purpose' on the view that these activities were for profit the Appellate Tribunal took a contrary view reversing the concurrent findings of the Income-tax Officer and the Appellate Assistant Commissioner. The conclusion of the Tribunal was that s. 2(15) applied but the High Court on a reference under s. 256(1) of the Act, answered the question in favour of the Revenue.

B We have indicated earlier that the various High Courts have taken contrary views. Kerala has consistently held on facts substantially identical that s. 2(15) is attracted. Andhra Pradesh has concurred, while Calcutta and Mysore have ranged themselves on the opposite side. A recent decision of this Court earlier mentioned has given some telling guidelines although the precise facet pressed before us may not be said to have been wholly covered by it.

C The scheme of the Act may be briefly indicated to the extent it is relevant, before entering on the discussion. 'Income' is taxable, but certain incomes shall not be included in the total incomes of the previous years of the person in receipt of the income. Section 11 excludes from the computation income derived from property held under trust wholly for charitable purpose. The Chamber of Commerce is a trade association which renders specific services to its members and therefore s. 28 will ordinarily apply to its income, unless s. 11 read with s. 2(15) excludes it from taxability. The income drawn from non-members by the Chamber will clearly be taxable unless s. 2(15) comes to its rescue. Thus the pivotal issue is as to whether the three channels of income may be treated as charitable purposes and therefore eschewed by s. 11 from the charging provision.

E At this stage we may read s. 2(15) :

"2(15) In this Act, unless the context otherwise requires,—

F 'charitable purpose' includes relief of the poor, education medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.'

G The obvious change as between the old and the new definitions is the exclusionary provision introduced in the last few words. The history which compelled this definitional modification was the abuse to which the charitable disposition of the statute to charitable purposes was subjected by exploiting businessmen. You create a charity, earn exemption from the taxing provision and run big industries virtually enjoying the profits with a seeming veneer of charity a situation which exsuscitated Parliament and constrained it to engraft a clause deprivatory of the exemption if the institution fulfilling charitable purposes undertook activities for profit and thus sought to hoodwink the statute. The Finance Minister's speech in the House explicates the reason for the restrictive condition. He stated in the House;(1)

(1) Lok Sabha Dabates, Vol. LVI, 1961, p. 3073 (Aug. 18, 1961) .

"The definition of 'charitable purpose' in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them, namely, the newspaper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit' should be added to the definition."

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Beg J., in *Lok Shikshana Trust* (supra) has adverted to this statement as throwing light on the new provision. The evil sought to be abolished is thus clear. The interpretation of the provision must naturally fall in line with the advancement of the object. Of course, there are borderline cases where it becomes difficult to decide at first sight whether the undertaking which yields profit is a deceptive device or a bonafide adventure which results in nominal surplus although substantially intended only to advance the charitable object.

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Chambers of Commerce dot this country and, by and large, they have the same complex of objects. They exist to promote the trading interests of the commercial community and, after the *Andhra Chamber of Commerce Case* (supra) have been regarded as pursuing charitable purposes. This expression, defined in s. 2(15), is a term of art and embraces objects of general public utility. But, under cover of charitable purposes, a crop of camouflaged organisations sprung up. The mask was charitable, but the heart was hunger for tax free profit. When Parliament found this dubious growth of charitable chameleons, the definition in s. 2(15) was altered to suppress the mischief by qualifying the broad object of 'general public utility' with the additive 'not involving the carrying on of any activity for profit'. The core of the dispute before us is whether this intentional addition of a 'cut back' clause expels the Chamber from the tax exemption zone in respect of the triune profit-fetching sub-enterprises undertaken by way of service or facility for the trading community.

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The rival constructions put forward by counsel at the bar may now be noticed. Shri A. K. Sen's argument for the Chamber is that the controlling distinction between what is 'charitable purpose' and what is not lies in discovering the dominant intent as distinguished from the subsidiary consequence, the principal object, not the incidental inflow, the profit motive of the operation as against the service-oriented activity which may or may not *en passant* yield an income. His stress, *a la* the Kerala cases, is on whether the activity is wrapped up, entangled and intertwined with the public utility object. If it is, the resultant surplus is not an exigible income. Such, certainly, are the passwords and touch-stones used in several Kerala decisions. If this be the parameter, he argues, the three activities are saved because

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A they render service, promote trade and facilitate the wheels of business to move. They do not form activities for making profit; they are in fulfilment of the objects of the Chamber.

B Shri Sharma for the Revenue reads into the amended definition a total exclusion from the charmed circle of charitable purposes all activities which are prone to produce profits. The telling test, according to this view, is to see that the means, like the ends, are charitable, untainted by gainful stimulus and purged of the potential for profit in reality. By this canon the Chamber's desire to serve businessmen by offering arbitral or certificate facilities in return for a price is *prima facie* an 'activity for profit' unless the circumstances, express or necessarily implicit, eloquently proclaim a 'no profit' foundation for the undertaking. The linkage is not between object of public utility and the challenged activity, but between the methodology adopted for the advancement of such objects and proneness for profit flowing from such method or activity. If this standpoint be sound, the three services which have yielded profits, although wrapped in, entangled or inter-twined with the object of promoting trade interests, are still liable to tax, there being no visible limitation on the revenues that may arise from them and these precise activities could be carried on by private individuals for profit.

E The legal break-through lies along a realistic line of reasoning, taking care to avoid the extreme position of Shri Sharma which will render the last limb of s. 2(15) illusory or ineffectual and as serviceable for tax exemption of charities as the appendix to the human physiology. In our view the key to the problem is furnished not merely by a careful look at the history of the evil and the Parliamentary debate—at least the Finance Minister's speech on the new change—but the language of s. 2(15) itself read in the light of the guidelines in *Lok Shikshana Trust.*(supra).

F Taking a close-up of s. 2(15) with special emphasis on the last concluding words, we have to interpret 'charitable purpose' in such manner that we do not burke any word, treat any expression as redundant or miss the accent of the amendatory phrase. So viewed, an institution which carries out charitable purposes out of income 'derived from property held under trust wholly for charitable purposes' may still forfeit the claim to exemption in respect of such takings or incomes as may come to it from pursuing any activity for profit. Notwithstanding the possibility of obscurity and of dual meanings when the emphasis is shifted from 'advancement' to 'object' used in s. 2(15), we are clear in our minds that by the new definition the benefit of exclusion from total income is taken away where in accomplishing a charitable purpose the institution engages itself in activities for profit. The Calcutta decisions are right in linking activities for profit with *advancement* of the object. If you want immunity from taxation, your means of fulfilling charitable purposes must be unsullied by profit-making ventures. The advancement of the object of general public utility must not involve the carrying on of any activity for profit. If it does, you forfeit. The Kerala decisions fall into the fallacy of emphasizing the linkage between the objects of public utility and the activity carried on.

According to that view, whatever the activity, if it is intertwined with, wrapped in or entangled with the object of charitable purpose even if profit results therefrom, the immunity from taxation is still available. This will result in absurd conclusions. Let us take this very case of a Chamber of Commerce which strives to promote the general interests of the trading community. If it runs certain special types of services for the benefit of manufacturers and charges remuneration from them, it is undoubtedly an activity which, if carried on by private agencies, would be taxable. Why should the Chamber be granted exemption for making income by methods which in the hands of other people would have been exigible to tax? This would end up in the conclusion that a Chamber of Commerce may run a printing press, advertisement business, market exploration activity or even export promotion business and levy huge sums from its customers whether they are members of the organisation or not and still claim a blanket exemption from tax on the score that the objects of general public utility which it has set for itself implied these activities even though profits or surpluses may arise therefrom. Therefore, the emphasis is not on the object of public utility and the carrying on of related activity for profit. On the other hand, if in the advancement of these objects the Chamber resorts to carrying on of activities for profit, then necessarily s. 2(15) cannot confer cover. The advancement of charitable objects must not involve profit making activities. That is the mandate of the new amendment.

The opposite position in its extreme form is equally untenable. While Shri Sharma is right that merely because service is rendered to traders escapement from tax liability does not follow. Every type of service-oriented activity, where some charge is levied from the beneficiary and at the end of the year some surplus is left behind, does not lose the benefit of s. 2(15). For, then, one cannot conceive of any object of general public utility which can be advanced by the Chamber of Commerce. For every such activity some fee will have to be levied if the Chamber is not to turn bankrupt and merely because a fee is levied one cannot castigate the activity as one for profit. Therefore it is a false dilemma to talk of activity for profit as against activity rendered free. The true demarcating line lies in between.

In our view, the ingredients essential to earn freedom from tax are discernible from the definition, if insightfully read against the brooding presence of the evil to be suppressed and the beneficial object to be served. The policy of the statute is to give tax relief for charitable purpose, but what falls outside the pale of charitable purpose? The institution must confine itself to the carrying on of activities which are not for profit. It is not enough if the object be one of general public utility. The attainment of that object shall not involve activities for profit. What then is an activity for profit? An undertaking by a business organisation is ordinarily assumed to be for profit unless expressly or by necessary implication or by eloquent surrounding circumstances the making of profit stands loudly negatived. We will illustrate to illumine. If there is a restrictive provision in the bye-laws of

- A the charitable organisation which insists that the charges levied for services of public utility rendered are to be on a 'no profit' basis, it clearly earns the benefit of s. 2(15). For instance, a funeral home, an S.P.C.A. or a cooperative may render services to the public but write a condition into its constitution that it shall not charge more than is actually needed for the rendering of the services,—may be it may not be an exact equivalent, such mathematical precision being impossible in the case of variables,—may be a little surplus is left over at the end of the year—the broad inhibition against making profit is a good guarantee that the carrying on of the activity is not for profit. As an antithesis, take a funeral home or an animal welfare organisation or a super bazar run for general public utility by an institution which charges large sums and makes huge profits. Indubitably they render services of general public utility. Their objects are charitable but their activities are for profit. Take the case of a blood bank which collects blood on payment and supplies blood for a higher price thereby making profit. Undoubtedly the blood bank may be said to be a general public utility but if it advances its public utility by sale of blood as an activity for (making) profit, it is difficult to call its purposes charitable. It is just blood business!

- D In the United States, for instance, there are many funeral homes which make considerable profits. There are super bazars and animal welfare institutions in many countries which may be run on a profit motive. Inevitably these activities are caught in the meshes of the tax law. Readymade nostrums like 'dominant intent', 'incidental profits', 'real object' as against 'ostensible purpose', 'entangled', 'wrapped in', 'inter-twined' and the like fail as criteria in critical cases, although they have been liberally used in judicial vocabulary. In this branch of law verbal labels are convenient but not infallible. We have to be careful not to be victimised by adjectives and appellations which mislead, if pressed too far, although they may loosely serve in the ordinary run of cases.

- F To sum up, s. 2(15) excludes from exemption the carrying on of activities for profit even if they are linked with the objectives of general public utility, because the statute interdicts, for purposes of tax relief, the advancement of such objects by involvement in the carrying on of activities for profit. We appreciate the involved language we use, but when legislative draftsmanship declines to be simple, interpretative complexity becomes a judicial necessity.

- G *Lok Shikshana Trust* (supra) is the latest—perhaps the only case of this Court—dealing directly with s. 2(15) of the Act. Khanna J., speaking on behalf of himself and Gupta J., observed :

- H "As a result of the addition of the words 'not involving the carrying on of any activity for profit' at the end of the definition in section 2(15) of the Act even if the purpose of the trust is 'advancement of any other object of general public utility', it would not be considered to be 'charitable purpose' unless it is shown that the above purpose does not involve the carrying on of any activity for profit. The result

thus of the change in the definition is that in order to bring a case within the fourth category of charitable purpose, it would be necessary to show that (1) the purpose of the trust is the advancement of any other object of general public utility, and (2) the above purpose does not involve the carrying on of any activity for profit. Both the above conditions must be fulfilled before the purpose of the trust can be held to be charitable purpose.”

A

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* * * *

“It is true that there are some business activities like mutual insurance and cooperative stores of which profit making is not an essential ingredient, but that is so because of a self imposed and innate restriction on making profit in the carrying on of that particular type of business. *Ordinarily profit motive is a normal incidence of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit.*”

C

D

(emphasis, ours)

* * * *

“By the use of the expression ‘profit motive’ it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity.”

E

* * * *

“We are not impressed by the submission of the learned counsel for the appellant that profit under section 2(15) of the Act means private profit. The word used in the definition given in the above provision is profit and not private profit and it would not be permissible to read in the above definition the word ‘private’ as qualifying profit even though such word is not there.”

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Beg J., spoke on the subject with different accent but drew pointed attention to one aspect :

G

“*The deed puts no condition upon the conduct of the newspaper and publishing business from which we could infer that it was to be on ‘no profit and no loss’ basis. I mention this as learned counsel for the appellant repeatedly asserted that this was the really basic purpose and principle for the conduct of the business of the trust before us. This assertion seems to be based on nothing more substantial than that the trust deed itself does not expressly make profit*”

H

A making the object of the trust. But, as I have already indicated, the absence of such a condition from the trust deed would not determine its true character. *That character is determined for more certainly and convincingly by the absence of terms which could eliminate or prevent profit making from becoming the real or dominant purpose of the trust. It is what the provisions of the trust make possible or permit*

B *coupled with what had been actually done without any illegality in the way of profit making, in the case before us, under the cover of the provisions of the deed, which enable us to decipher the meaning and determine the predominantly profit making character of the trust."*

(emphasis, ours)

C We do not think it necessary to discuss the various decisions of the High Courts cited before us nor need we seek light from the English Cases either. After all, Indian law must bear Indian impress derived from Indian life.

D In *All India Spinners' Association v. Commr. of Income-tax, Bombay*,⁽¹⁾ Lord Wright, speaking for the Judicial Committee, and considering the subject of 'charitable purposes' as justifying exemption from Income-tax, observed :

"It is now recognised that the Indian Act must be construed on its actual words and is not to be governed by English decisions on the topic."

E * * * * *

"The Indian Act gives a clear and succinct definition which must be construed according to its actual language and meaning. English decisions have no binding authority on its construction and though they may sometimes afford help or guidance, cannot relieve the Indian Courts from their responsibility of applying the language of the Act to the particular circumstances that emerge under conditions of Indian life."

F * * * * *

G Crypto-colonial inclinations have sometimes induced Indian draftsmen and jurists to draw inspiration from English law but, for reasons felicitously expressed by Lord Wright, we are adopting interpretation of s. 2(15) according to the language used there and against the background of Indian life.

Coming to the facts of the present case, the criteria we have evolved have to be applied.

H Among the Kerala Cases which went on the wrong test we wish to mention one, *Dharmodayam*.⁽²⁾ The assessee company was conducting a profitable business of running *chit funds* and its memorandum

(1) [1944] 12 I. T. R. 482, 486.

(2) C. I. T. v. Dharmodayam Co.—[1974] 94 I. T. R. 113.

of association had as one of its objects 'to do the needful for the promotion of charity, education and *industry*. The court found it possible on these facts to grant the benefit of s. 2(15) by a recondite reasoning. If this ratio were to hold good businessmen have a highroad to tax avoidance. *Dharmodayam* (supra) shows how dangerous the consequence can be if the provisions were misconstrued.

The true test is to ask for answers to the following questions : (a) Is the object of the assessee one of general public utility? (b) Does the advancement of the object involve activities bringing in moneys? (c) If so, are such activities undertaken (i) for profit or (ii) without profit? Even if (a) and (b) are answered affirmatively, if (c) (i) is answered affirmatively, the claim for exemption collapses. The solution to the problem of an activity being one *for* or irrespective of profit is gathered on a footing of facts. What is the real nature of the activity? One which is ordinarily carried on by ordinary people for gain? Is there a built-in prescription in the constitution against making a profit? Has there been in practice, profit from this venture? Although this last is a weak test. The mere fact that a service is rendered is no answer to chargeability because all income is often derived by rendering some service or other.

Further, what is an activity *for* profit depends on the correct connotation of the preposition. 'For' used with the active participle of a verb means 'for the purpose of' (See judgment of Westbury C., 1127) 'For' has many shades of meaning. It connotes the end with reference to which anything is done. It also bears the sense of 'appropriate' or 'adopted to' : 'suitable to purpose'—*vide* Black's Legal Dictionary. An activity which yields a profit or gain in the ordinary course must be presumed to have been done for profit or gain. Of course, an extreme case could be imagined where without intent or purpose an activity may yield profit. Even so, it may legitimately be said that the activity is 'appropriate or adapted to such profit'.

We may wind up with a brief rounding off and indication on the approach. A pragmatic condition, written or un-written, proved by a prescription of profits or by long years of invariable practice or spelt from strong surrounding circumstances indicative of anti-profit motivation—such a condition will qualify for 'charitable purposes' and legitimately get round the fiscal hook. Short of it, the tax tackle holds you fast. A word about the burden of proof is necessary here. Income, ordinarily chargeable, can be free from exigibility only if the assessee discharges the onus of bringing himself within s. 2(15). In so doing, he has to attract and repel—attract the condition that his objects are of 'general public utility' and repel the charge that he is advancing these objects by involvement in activities for profit. Once this broad dual basis is made out, the Revenue will not go into meticulous mathematics and charge every chance excess or random surplus. If the activity is prone to yielding income and in fact results in profits, the

A Revenue will examine the *reality* or *pretence* of the condition, that the activity is not *for profit*. Here, one may well say: 'Suit the action to the word, the word to the action'.

If such be the legal criteria for fixing charitable purpose, how does the Indian Chamber fare? The substantial item of income comes from the share of profits in the firm called M/s. Calcutta Licensed Measurers. True, the issuance of weight and measurement certificates is a great facility for traders and under the Commercial Documents Evidence Act only recognised institutions are permitted to issue such certificates. Recognition speaks the status, integrity and efficiency of the institution but does not transmute a service for profit into non-profitable activity. It is irrelevant whether this service is in implementation of or interwoven with trade promotion. What is pertinent is whether the advancement of trade promotion by issuing such certificates is done for a nominal fee conditioned by the cost of the operation, and profit-making by this means is tabooed. For there is nothing in the memorandum or articles of association which sets any limit on making a large profit this way. And, after all, any institution or individual may set up a weight and measurement business as a source of income and if it is of sufficient probity and competence recognition may well be accorded under the Commercial Documents Evidence Act. We cannot mix up or confuse the two concepts. The activity of charging fees and issuing certificates of origin, valuable as a service though it be, is in no different position. Both these activities are amenable to tax as being carried on for profit, there being nothing to show that the Chamber was undertaking this job on a 'no profit' basis. The presumption, if at all, is that a businessman's association does a business of it, more so when the facility is available to members and non-members. Not infrequently one comes across weight stations where loaded trucks are weighed for payment as a business. So also approved valuers value property as business and charge for that service. Merely because it is carried on by a Chamber of Commerce no difference in incidents arises and tax incidence can be repelled only if the work is done explicitly on a 'no profit' basis. Such is not shown to be the case here.

The objects of the Chamber include settlement of disputes among traders by arbitration. This is undoubtedly a service of general public utility—preventing protracted commercial litigation. If the fee charged for doing so is more or less commensurate with the expense the Chamber has to incur, a minor surplus will not attract tax. But no such restriction is written into the rules governing the Chamber. It may charge a heavy sum and spend much less for hiring experts to decide the dispute. There is no *magna carta* binding the Indian or Cochin or Bengal Chamber of Commerce not to sell arbitral justice. Suppose a specialist in mercantile law and practice of reputable integrity offers himself regularly for arbitration of commercial disputes for a high fee, is he not making an income? The difference between the two is as between Tweedledum and Tweedledee. Surely, if an innate, articulated, restraint on the levy for these undoubted services to Trade existed as a fact, so as to remove the slur of activity for profit, then the umbrella of charitable purpose would protect small surpluses.

We hold that the incomes of the Chambers sought to be taxed are taxable. Civil Appeal No. 2129 of 1970 is dismissed and Civil Appeals Nos. 2455 to 2457 of 1972 are allowed. Parties will bear their respective costs. A

Before parting with the case we may as well make it clear that our conclusion would have been the same even without reference to or reliance on the speech of the Finance Minister we have excerpted earlier. B

V.P.S.

Appeals partly allowed.