

## YOGIRAJ CHARITY TRUST

v.

COMMISSIONER OF INCOME-TAX, NEW DELHI

March 30, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

*Exemption from Income-tax—Religious and charitable purposes—Indian Income-tax Act, 1922—Section 4(3)(i)—Intent—Test for treating a Trust income as of a charitable nature and for entitlement to exemption under s. 4(3)(i) ibid.*

Charitable purposes under s. 4(3) of the Income Act includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in clause (i) and (ii) of s. 4(3) applies and shall operate to exempt from the provisions of the Act that part of the income from property held under a trust or other legal obligation for private religious purposes which does not ensure for the benefit of the public.

All the six income-tax references made by the Income-tax Appellate Tribunal, Delhi Bench under s. 66(1) of the Indian Income-tax Act, 1922 as to "whether on the facts and in the circumstances of the case the income of the trust which was spent on the religious and charitable purposes within the taxable territories was exempt under s. 4(3)(i) of the Indian Income Tax Act, 1922" were answered in the negative and in favour of Revenue, by the Division Bench of the Delhi High Court holding "that the property of the trust cannot be held to be wholly for religious or charitable purposes". The terms of the trust deeds in all the cases are similar and the pattern of financial dealing of the various trusts is also the same as could be seen from the objects of the trusts particularly clauses (5)(a), which are, *inter alia*, as follows :—

- (i) To open, found, construct, establish takes over, equip, promote, conduct, maintain, support, subsidise, grant aids and make donations to schools, colleges, Pathshalas, boarding houses, reading clubs, libraries, art, music or literary societies and other institutions, educational or otherwise, associations, printing presses, journals, newspapers, periodicals, and other religious, commercial, industrial, legal, medical, engineering scientific or other knowledge or training.
- (ii) To give stipends, scholarships, travelling expenses allowances and monetary aids to students and scholars in India and abroad engaged in any of the pursuits referred to in sub-clause (i).
- (iii) To found, construct, maintain, support, assist or grant aids or subscriptions to temples, prayer or congregational halls or other buildings for cultural, social or religious discourses.
- (iv) To open, found conduct, maintain, or contribute to the opening and maintaining of such institutions where work at living wages can be provided to poor and deserving people and also be conducive to the development of industries and benefit of the poor.
- (v) To open, found, establish, equip, finance assist, maintain or contribute to religious commercial technical industrial or commercial concerns, institutions, associations or bodies imparting any type of training or providing employment to persons.
- (vi) To give donations, subscriptions or contributions to any other Charitable Trust in Jaipur State or outside.

Clauses 11 and 16 of the deed give an uncontrolled discretion to the trustees to spend the whole of the trust fund on any of the non-charitable objects of the trust. The non-charitable objects authorise the opening and maintaining of commercial institutions where work at living wages can be provided to the

- A** poor and also to contribute to commercial, technical, industrial or commercial concerns, institutions associations or bodies imparting any type of training or providing employment to persons.

Dismissing the appeals by Special Leave, the Court held :—

- B** (1) In order to claim the benefit of exemption under s. 4(3)(i) of the Act the property must be held under trust or other legal obligation wholly for religious or charitable purposes. The only relaxation is that all the primary objects of the trust must be of religious and charitable nature and the existence of any ancillary or secondary object which is not of a religious or charitable nature but which is intended to subserve the religious and charitable objects may not prevent the grant of an exemption. This is because such an ancillary or secondary object even though not of a religious or charitable nature is intended to effectuate the main and primary objects of the trust. A clear distinction must be drawn between the object of a trust and the powers conferred upon the trustees as incidental to the carrying out of the object. Mere application of income to charity on the other hand will not avail to secure exemption if under the terms of the will or deed the income is applicable in the first instance to non-charitable objects and only the residue will go to charity. [953-A-B, C, D]

*Commissioner of Income Tax v. Andhra Chamber of Commerce* (1965) 55 I.T.R. 722 applied.

- D** *Sole Trustee Loka Shikshana Trust v. Commissioner of Income-tax, Mysore* [1976] 1 SCR 461; *All India Spinner's Association v. Commissioner of Income-tax* (1944) 12 I.T.R. 482; *C.I.T. v. Krishna Warriar* [1964] 8 SCR 36; *Commissioner of Income Tax v. Bengal Home Industries Association* 48 I.T.R. 181; *Hyderabad Stock Exchange Ltd. v. C.I.T.* 66 I.T.R. 195; and *Commissioner of Income Tax v. Radhaswami Satsang Sabha* 25 I.T.R. 472, discussed and distinguished.

- E** (ii) The test is that if one of the objects of the trust deed is not of a religious or charitable nature and the trust deed confers full discretion on the trustees to spend the trust funds for an object other than of a religious or charitable nature, the exemption under s. 4(3)(i) of the Act is not available to the assessee. [955D]

*Lakshmi Narain Nath Trust v. Commissioner of Income Tax* (1969) 73 I.T.R. 402, followed.

- F** (iii) Where there are several objects of trusts some of which are charitable and some non-charitable and the trustees in their discretion are to apply the income to any of the objects, the whole trust fails and no part of the income is exempt from the tax. Where the objects are distributive, each and every one of the objects must be charitable in order that the trust might be upheld as a valid charity. If no definite part of the property or its income is allocated to charitable purposes and it would be open to the trustees to apply the whole income to any of the non-charitable objects no exemption can be claimed [952F-H]

- G** *East India Industries (Madras) Pvt. Ltd. v. Commissioner of Income Tax* (1967) 65 I.T.R. 611 and *Mohammed Ibrahim Riza v. C.I.T.* 57 I.A., 260 applied.

(iv) In the instant case the various industrial and commercial concerns were not started by Ram Krishna Dalmia in furtherance of the objects of trusts. The concerns were started for the purpose of earning profits which were to be distributed to the share holders who had invested share money in those concerns. The trust property could not be said to be wholly for religious or charitable purposes within the meaning of s. 4(3)(i) of the Act. [954G-H, 955C]

- H** *Arguments for the appellant :*

(1) The Trust is entitled to claim exemption under s. 4(3)(i) of the Act because the trust is for religious and charitable purposes only.

(2) As to clauses which confer power on the trustees to establish any business, undertaking or industry the income derived from such commercial concern is to be spent wholly for the religious and charitable purposes and therefore exemption is permissible under s. 4(3)(i) of the Act. A

(3) The dominant purpose of the founder of the trust as expressed in the forefront of the Deed is religious or charitable and even if money be spent on non-charitable purposes it should not be held that the trust is meant for non-charitable purposes and the founder has expressly provided in Clause 30 of the Trust deed that the deed should not become invalid for the reason that some object might be considered unlawful. B

(4) If any income from the trust is utilised and applied wholly in carrying out the primary purposes of the trust, the Trust is entitled to claim exemption under proviso (b) to section 4(3)(i) of the Act and there was no bar on the trust to carry on business under the Act provided the profits of business were utilised only for charitable purposes.

*Arguments for the respondents :* C

(1) The Trust was not entitled to claim exemption under s. 4(3)(i) of the Indian Income-tax Act, 1922 for the simple reason that some of the object of the Trust gave a discretion to the Trustees to apply the funds of the Trust to purposes which could not be regarded charitable in the eye of law.

(2) If out of several objects of the Trust some of them were found to be non-charitable, the whole trust would fail and no part of its income would be exempt from tax. D

(3) It was not a genuine charitable trust as claimed by the assessee but its creation and existence were a camouflage and were meant only as a device for the benefit of the settlor Shri Ram Krishna Dalmia and the industrial and commercial concerns controlled by him.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 937 to 966 of 1971 E

*Bishamber Lal, D. N. Banerjee, Pramod Dayal and M. Iyengar,* for the appellant.

*Hardyal Hardy* (In CA 937/71), *S. P. Nayar* (In CAs. 938-966) for the respondent.

The Judgment of the Court was delivered by

RAY, C.J. These appeals by special leave are from the judgment dated 26 May, 1970 of the High Court of Delhi. F

The question referred to the High Court under section 66(1) of the Income Tax Act, 1922 referred to as the Act was as follows :

“Whether on the facts and in the circumstances of the case the income of the trust which was spent on the religious and charitable purposes within the taxable territories was exempt under section 4 (3) (i) of the Indian Income Tax Act, 1922”. G

The main judgment was delivered in Income Tax Reference No. 40 of 1965.

The High Court answered the question in the negative. H

The trust in Income Tax Reference No. 40 of 1965 was taken as typical of all the cases. The deed of trust dated 12 April, 1948

A was made by Ramkrishna Dalmia. The trust was called "Jaipur Charitable Trust". In Jaipur Charitable Trust Rs. 10,000 was given on trust on the terms and conditions set out in the deed.

The objects of the trust in clause 5(a) are, inter alia, as follows :

- B (i) To open, found, construct, establish, take over, equip, promote, conduct, maintain, support, subsidise, grant aids and make donations to schools, colleges, Pathshalas, boarding houses, reading clubs, libraries, art, music or literary societies and other institutions, educational or otherwise, associations, printing presses, journals, newspapers, periodicals, and other publications for imparting or developing religious, commercial, industrial, legal, medical, engineering scientific or other knowledge or training.
- C (ii) To give stipends, scholarships, travelling expenses allowances and monetary aids to students and scholars in India and abroad, engaged in any of the pursuits referred to in sub-clause (i).
- D (iii) To found, construct, maintain, support, assist or grant aids or subscriptions to temples, prayer or congregational halls or other buildings for cultural, social or religious discourses.
- E (iv) To open, found conduct, maintain, or contribute to the opening and maintaining of such institutions where work at living wages can be provided to poor and deserving people and also be conducive to the development of industries and benefit of the poor.
- F (v) To open, found, establish, equip, finance, assist, maintain or contribute to religious, commercial technical, industrial, or commercial concerns, institutions, associations or bodies imparting any type of training or providing employment to persons.
- F (vi) To give donations, subscriptions or contributions to any other Charitable Trust in Jaipur State or outside.

G There are other objects to help widows, orphans, lunatics, indigent persons and to give relief to the poor and distressed, to build, equip, take over, conduct, maintain and grant aids to dispensaries, maternity homes, hospitals, lunatic asylums, to construct, erect and maintain bridges, ghats, to give relief by subscription or otherwise during famines, flood, earthquake, pestilence, to help or maintain institutions for the cultural, social or economic advancement of any country or countries.

H For the purpose of carrying out the trust the trustees are empowered in clause 5(b), inter alia, (a) to purchase or otherwise acquire any property, rights leases, concession; (b) to purchase or acquire, start establish, equip or close any business undertaking or industry; (c) purchase, acquire or undertake the whole or any part of property and liabilities on any person, firm or company.

The property of the Trust is vested in the trustees. Clause (9) of the Trust Deed provides that the Trustees shall carry out the aforesaid objects from out of the net income of the Trust left after meeting the expenses of management and all charges and outgoings so far as such income shall permit, and shall not utilize the income or any portion thereof for any other objects or purpose.

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

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

(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 :

Provided that such income shall be included in the total income.

(a) xx                      xx                      xx

(b) in the case of income derived from business, carried on behalf of a religious or charitable institution, unless the income is applied wholly for the purpose of the institutions and either —

- (i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or
- (ii) the work in connection with the business is mainly carried on by beneficiaries of the institution.
- (iii) any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.”

Charitable purpose under section 4(3) of the Act includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in clause (i) or clause (ii) of section 4(3) applies and shall operate to exempt from the provisions of the Act that part of the income from property held under trust or other legal obligation for private religious purposes which does not ensure for the benefit of the public.

The terms of the Trust Deeds in all the cases are similar. The pattern of financial dealings of the various Trusts is also the same.

The appellant contends that Trust is entitled to claim exemption under section 4(3) (i) of the Act because the trust is for religious and charitable purposes only. As to clauses which confer power on trustees to establish any business, undertaking or industry it is said by

- A** the appellant that the income derived from such commercial concern is to be spent wholly for the religious and charitable purposes and therefore exemption is permissible. The appellant contends that the dominant purpose of the founder of the trust as expressed in the forefront of the Deed is religious or charitable and even if money be spent on non-charitable purposes it should not be held that the trust is meant for non-charitable purpose. The appellant also relies on clause **B** 30 of the trust deed where it is said that the deed should not become invalid for the reason that some object might be considered unlawful.

- The Revenue denies the claim for exemption on the ground that some objects are non-charitable and the trustees are given an unfettered discretion with regard to the utilisation of the income. Some of the objects of the Trust according to the Revenue give absolute discretion **C** to the Trustees to apply the funds of the Trust for purposes which cannot be regarded charitable in the eye of law. The Revenue contends that if out of several objects of the Trust some are found to be non-charitable, the whole trust will fail. The Revenue also contends that it is not a genuine charitable trust but its creation and existence are a camouflage and are meant only as a device for the benefit of the settlor and the industrial and commercial concerns controlled by him.

- D** Clauses 11 and 16 of the deed give an uncontrolled discretion to the trustees to spend the whole of the trust fund on any of the non-charitable objects of the trust. The non-charitable objects authorise the opening and maintaining of commercial institutions where work at living wages can be provided to the poor and also to contribute to commercial, technical, industrial or commercial concerns, institutions, **E** associations or bodies imparting any type of training or providing employment to persons. The Revenue contends that these clauses are clearly non-charitable. Each clause is independent and distinct. According to the Revenue it is neither ancillary nor secondary to the primary dominant purpose of the trust nor can it be said that these clauses subserve the main object of the trust. Engagement in commercial institutions giving employment on wages cannot be said to be **F** charitable object. Some of the objects of the trust are non-charitable. The trustees have been authorised to utilize the income of the trust for any purpose mentioned in the Trust Deed.

- The question is whether exemption can be granted where some objects are charitable and some non-charitable. Where there are several objects of a trust, some of which are charitable and some non-charitable, and the trustees in their discretion are to apply the income to any of the objects, the whole trust fails and no part of the income is exempt from tax. Where the objects are distributive, each and every one of the objects must be charitable in order that the trust might be upheld as a valid charity. If no definite part of the property or of its income is allocated to charitable purposes and it would be open to the trustees to apply the whole income to any of the non-charitable objects no exemption can be claimed. (See *East India Industries (Madras) Pvt Ltd. v. Commissioner of Income tax*<sup>(1)</sup> and *Mohammad Ibrahim Riza v. C.I.T.*<sup>(2)</sup>)

(1) (1967) 65 I.T.R. 611.

(2) 57 I.A. 260.

In order to claim the benefit of the exemption under section 4(3) (i) of the Act the property must be held under trust or other legal obligation wholly for religious or charitable purposes. The only relaxation which may arise in some cases is that all the primary objects of the trust must be of a religious and charitable nature and the existence of any ancillary or secondary object which is not of a religious or charitable nature but which is intended to subserve the religious and charitable objects may not prevent the grant of an exemption. This is because such an ancillary or secondary object even though not of a religious or charitable nature is intended to effectuate the main and primary objects of the trust.

If the primary or dominant purpose of a trust is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust from being a valid charity. A clear distinction must be drawn between the object of a trust and the powers conferred upon the trustees as incidental to the carrying out of the object. If the only object of a trust is the construction and maintenance of a swimming bath which is a purpose of general public utility, the fact that the trustees are given the power to supply or sell refreshments to persons who resort to the bath would not make the trust any of the less charitable. Mere application of income to charity on the other hand will not avail to secure exemption if under the terms of the will or deed the income is applicable in the first instance to non-charitable objects and only the residue will go to charity. (See *Commissioner of Income Tax v. Andhra Chamber of Commerce* (1)).

The appellant contended that if any income from the Trust is utilised and applied wholly in carrying out the primary purposes of the Trust, the Trust is entitled to claim exemption under proviso (b) to section 4(3) (i) of the Act. The appellant relied on the recent decision of this Court in *Sole Trustee Loka Shikshana Trust v. Commissioner of Income Tax, Mysore* (2). The Loka Shikshana Trust was engaged in the business of printing and publication of newspaper and journals and the further fact that the activity yielded profit and there were no restrictions on the trust earning profits in the course of its business went to show that the purpose of the trust did not satisfy the requirement that it was one not involving the carrying on of any activity for profit. This Court relied on the decision in *All India Spinners' Association v. Commissioner of Income Tax* (3) namely, that the charitable purposes exclude objects of private gain.

The appellant contended that there was no bar on the trust to carry on business under the Act provided the profits of business were utilized only for charitable purpose. The appellant relied on the decision of this Court in *C.I.T. v. Krishna Warriar* (4). In *Krishna Warriar's* case the trustees were directed to apply 60 per cent of the income of the business vested in the trustees to charitable purposes and 40 per cent for the benefit of the family. The question was whether 60 per cent of the

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

(2) (1944) 12 I.T.R. 482.

(3) [1976] 1 SCR 461.

(4) [1964] 8 S.C.R. 36.

- A** income was liable to tax under proviso (b) to section 4(3) (i) of the Act on the ground that the entire income was not applied for charitable purposes. The question that arose in that case dealt with the meaning of the expression "part" as used in section 4(3) (i) of the Act that "in the case of profit so held in part only for such purposes the income applied or finally set apart for application thereto shall not be included in the total income of the person receiving". *Krishna Warriar's*
- B** (supra) case does not deal with the effect of a deed which has charitable as well as non-charitable objects and the trustees have been given the power to apply the whole of the trust fund for non-charitable objects excluding charitable objects.

- The decision in *C.I.T. v. Bengal Home Industries Association*<sup>(1)</sup>
- C** *Hyderabad Stock Exchange Ltd. v. C.I.T.*<sup>(2)</sup> *C.I.T. v. Radhaswami Satsang Sabha*<sup>(3)</sup> on which the appellant relied are all applications of the ruling in *All India Spinners' Association* (supra) case that what has to be found out is whether the object clause has any non-charitable object. In the *Bengal Home Industries* (supra) case, the object was to promote and develop home industries, arts and crafts. The income of the Association was to be applied solely towards the promotion of and
- D** carrying out of its objects. No portion of the income could be paid or transferred directly or indirectly by way of dividends to the members. In the case of winding up the surplus could not be distributed to the members but were to be transferred to the institution.

- In the *Hyderabad Stock Exchange* (supra) case, the aims and objects were not only to further the interests of brokers and dealers but also to assist, regulate and control the trade in securities, to maintain high standards of commercial honour and integrity, to discharge and suppress mal-practices to settle disputes and decide all question of usage, custom or courtesy in the conduct of trade or business. The objects were found beneficial to a section of the public and of general public utility. The profit were not to be distributed to the members but were to be utilized for the promotion of the objects of the Exchange.
- F** Therefore, the object was charitable and the income was applied wholly for charitable purposes.

- In *Radhaswami Satsang Sabha* (supra), case several industrial and commercial concerns were started for the benefit of the Satsanghis. Those were not run for individual profits nor were the profits distributed among the members. The concerns were started in furtherance of its objects of religious and charitable nature.
- G**

- In the present case, the Income Tax Authorities found that the various industrial and commercial concerns were not started by Ram Krishna Dalmia in furtherance of the objects of the trusts. The concerns were started for the purpose of earning profits which were to be distributed to the share-holders who had invested share money in those concerns.
- H**

(1) 48 I.T.R. 181.

(2) 51 I.T.R. 472.

(3) 66 I.T.R. 195.



This Court in *East India Industries (Madras) Private Limited v. C.I.T.*<sup>(1)</sup> found that one of the objects of the trust was not for charitable or religious purposes. The object was to manufacture, buy, sell and distribute a pharmaceutical medicinal, chemical and other preparations. The other objects were charitable in nature. The Trust Deed in *East India Industries (Madras) Pvt. Limited* (supra) case conferred power on the trustees to apply the whole or any part of the trust property or fund for all or any other purposes of the trust. This Court found that there was no special trust and no particular item of property had been burdened with the performance of any specific object of the trust. It was open to the trustees to utilize the income for any one of the objects of the trust to the exclusion of all other objects. 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. This Court held that the trust property could not be said to be wholly for religious or charitable purposes within the meaning of section 4(3) (i) of the Act. The present appeals are all of the type of *East India Industries (Madras) Private Limited* (supra) case and fall within the ruling in that case.

The test is that if one of the objects of the trust deed is not of a religious or charitable nature and the trust deed confers full discretion on the trustees to spend the trust funds for an object other than of a religious or charitable nature, the exemption under section 4(3) (i) of the Act is not available to the assessee. (See *Lakshmi Narain Nath Trust v. Commissioner of Income Tax*<sup>(2)</sup>).

For these reasons the appeals are dismissed. In view of the fact that the High Court directed that the parties will bear their own costs, the same order is made as to costs.

S.R.

*Appeals dismissed.*

(1) (1967) 65 I.T.R. 611.

(2) (1969) 73 I.T.R. 402.