

A DHARMADEEPTI, ALWAYE, KERALA

v.

THE COMMISSIONER OF INCOME TAX, KERALA

July 24, 1978

B [Y. V. CHANDRACHUD, C.J., D. A. DESAI AND R. S. PATHAK, JJ.]

C *Income Tax Act 1961—Sections 2(15) and 11(1)(a)—Main objects to be pursued by the company which has been granted a licence under s. 25 of the Companies Act were (i) to give charity and (ii) to promote education and (iii) to establish or aid in the establishment of associations institutions, funds, trusts with the object of promoting charity and/or education and the objects incidental or ancillary to the attainment of the said objects was “to run Chitties (Kuries)—Whether the said objects identifiable with the first two heads ‘relief of the poor’ and “education” in the definition of ‘charitable purpose’ in Section 2(15) of the Income Tax Act and whether the income derived from running Chitties (Kuries) is exempt under Section 11(1)(a) of the Act.*

D The appellant Association carries on the business of conducting ‘Kuries’ which was one of the ancillary object in furtherance of its main objects. Clause 3(a) of the Memorandum of Association declares the main objects to be : (1) to give charity (ii) to promote education and (iii) to establish or aid in the establishment of associations, institutions, funds, trusts with the object of promoting charity and/or education. In respect of the income during the calendar year 1968 from that business i.e. during assessment year 1969-70 the claim by the appellant for exemption under S. 11(1)(a) of the Income Tax Act, 1961 was rejected by the Income Tax Officer. The Appellate Assistant Commissioner reversed the order in appeal and held that ‘education’ constituted the main object of the appellant, and therefore, the income from the Kurie business even though a profit making activity being in aid of or incidental to the main object was entitled to exemption. The appeal of the Revenue before the Income Tax Appellate Tribunal failed and therefore at the instance of the respondent, the question whether on the facts and in the circumstances of the case, the assessee is entitled to exemption under s. 11 of the Income Tax Act, 1961 for the assessment year 1969-70 ?” Was referred to the High Court of Kerala which answered it against the appellant. The present appeal was then lodged in this Court.

E Allowing the appeal, the Court

F HELD : (1) The words “not involving the carrying on of any activity for profit” govern the words “the advancement of any other object of general public utility” and not the words “relief of the poor, education and medical relief” in section 2(15). The heads “relief of the poor, education and medical relief” remained unqualified by any express statutory restriction, and income arising from a profit making activity linked with those heads enjoyed exemption without express limitation until section 13(1)(bb) was inserted in the Act by the Taxation Laws (Amendment) Act, 1975 with effect from April 1, 1977.

[1042 B-D]

G The specific heads ‘relief to the poor, education and medical relief’ in s. 2(15) define well known charitable purposes. But the residual general head “the advancement of any other object of general public utility” is of wide comprehension, and Parliament when framing the Income Tax Act, 1961 considered it appropriate to cut down the wide scope of these words by qualifying them with the restrictive words “not involving the carrying on of any activity for profit”, thereby emphasising that the residual general head was to be confined to objects which were essentially charitable in nature. [1041 E, 1042A]

H *Morice v. Bishop of Burham*, [1805] 10 Ves 522, 532; *William’s Trust v. I.R.*, 27 T.C. 409 referred to.

(2) In the instant case :

(a) According to sub-clause (a) of clause (3) of the Memorandum of Association, the main objects for which the appellant was formed are "to give charity" and "to promote education". The third sub-clause merely confers power to establish associations and other bodies with the object of promoting the two main objects. Having regard to the language used and the context in which the two main objects are set forth, it would be reasonable to identify the expression "to give charity" and "to promote education" with the first two heads "relief of the poor" and "education" in the definition of "charitable purpose" in section 2(15) of the Income Tax Act. If the Memorandum of Association had referred to "charity" as the sole object without any limitations, including those prescribed by the context, it may have been possible to extend it to all the four heads mentioned in section 2(15) as was done in *Chaturbhuj Vallabhai v. Commissioner of Income-tax*, (14 I.T.R. 144). But the words are "to give charity"; and then "to promote education" is also specified. Obviously, the former must bear a limited meaning and therefore, the most appropriate seems to be "relief of the poor". That being so, neither of the main objects can be classed under the residual general head "the advancement of any other object of general public utility." [1041 B-D]

(b) The power to run the kurie business stems from the provision "to run chitties (kuries)" mentioned in sub-clause (b) of clause (3) of the Memorandum. From the description prefacing the enumeration of the objects, it is plain that the objects are really in the nature of powers incidental or ancillary to the attainment of the main objects mentioned in sub-clause (a) of clause (3). The income from the kurie business is intended to be applied only to the charitable purposes of giving to charity or the promotion of education. That is the basis on which the licence was granted under section 25 of the Companies Act to the appellant. No question arises of applying the income from the kurie business to the other objects for which the appellant has been established, that is to say, the objects set forth in sub-clause (c) of clause (3) of the Memorandum of Association. [1042 D-E]

(c) The business of conducting kuries is held under trust. The income from that business is income derived from property held under trust for charitable purposes. The appellant, therefore, is entitled to exemption on the income from the kurie business for the assessment year 1969-70 under section 11(1)(a) of the Income-tax Act, 1961. [1042 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 82 of 1975.

From the Judgment and Order dated 12-6-1974 of the Kerala High Court in Income Tax Reference No. 77/72.

*Y. S. Chitale, V. J. Francis and Mukul Mudgal* for the Appellant.

*B. B. Ahuja and A. Subhashini* for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J. This appeal, by certificate under section 261 of the Income-Tax Act, 1961, is directed against the judgment of the High Court of Kerala disposing of a reference made to it by the Income-Tax Appellate Tribunal under section 256(1) of the Act.

The appellant is an association constituted under a licence granted under section 25 of the Companies Act, 1956 on January 5, 1967. The relevant provisions of its Memorandum of Association are :

"3. (a) : The main objects to be pursued by the Company on its incorporation are :

(i) To give charity.

- A** (ii) To promote education.
- (iii) To establish or aid in the establishment of associations, institutions, funds, trusts with the object of promoting charity and/or education provided that the Company shall not support its funds or endeavour to impose on, or procure to be observed by, its members or others any regulation or restriction which if an object of the company, would make it a trade union.
- B**
- (b) The objects incidental or ancillary to the attainment of the above main objects are :
- (i) To receive donations, subscriptions, or gifts for the furtherance of the purpose of the Company, and to do all such other things as may be considered to be incidental or conducive to the attainment of its objects or any of them, by the Directors.
- C**
- (ii) ..... ..
- (iii) ..... ..
- (iv) To run Chitties (Kuries).
- D**
- (v) ..... ..
- (vi) ..... ..
- (vii) ..... ..
- (c) The other objects for which the Company is established are :
- E** (i) To establish, promote and carry on any other business which may seem to the company profitable or advantageous and to establish offices and other places of business in this State or anywhere in India, as the Directors deem necessary."

**F** The appellant carries on the business of conducting Kuries, and in respect of the income during the calendar year 1968 from that business, it was assessed to tax for the assessment year 1969-70. The Income-Tax Officer, rejected the claim that the Kurie business was incidental to the main objects of charity and education and that the income proceeding from it was exempt under section 11(1)(a) of the Income-Tax Act. The Appellate Assistant Commissioner reversed the order of the Income-Tax Officer and held that education constituted the main object of the appellant and, therefore, the income from the Kurie business, even though a profit making activity, being in aid of or incidental to the main object was entitled to exemption. The Income Tax Appellate Tribunal, on further appeal, upheld the view taken by the Appellate Assistant Commissioner. At the instance of the Commissioner of Income Tax, the Tribunal referred the following question to the High Court of Kerala for its opinion :—

**G**

**H** "Whether on the facts and in the circumstances of the case, the assessee is entitled to exemption under section 11 of the Income-Tax Act, 1961 for the assessment year 1969-70?"

The High Court answered the question in the negative and in favour of the Income-Tax Department by its judgment dated June 12, 1974.

According to sub-clause (a) of clause (3) of the Memorandum of Association, the main objects for which the appellant was formed are "to give charity" and "to promote education". The third sub-clause merely confers power to establish associations and other bodies with the object of promoting the two main objects. Having regard to the language used and the context in which the two main objects are set forth, it would be reasonable to identify the expression "to give charity" and "to promote education" with the first two heads "relief of the poor" and "education" in the definition of "charitable purpose" in section 2(15) of the Income Tax Act. If the Memorandum of Association had referred to "charity" as the sole object without any limitations, including those prescribed by the context, it may have been possible to extend it to all the four heads mentioned in section 2(15), as was done in *Chaturbhuj Vallabhdas v. Commissioner of Income-Tax*(<sup>1</sup>). But the words are "to give charity"; and then "to promote education" is also specified. Obviously, the former must bear a limited meaning. To our mind, the most appropriate seems to be "relief of the poor". That being so, neither of the main objects can be classed under the residual general head "the advancement of any other object of general public utility". Now, those words are followed by the words "not involving the carrying on of any activity for profit". Do these restrictive words govern the residual general head only or also the preceding specific heads "relief of the poor, education, and medical relief"? The specific heads "relief of the poor, education and medical relief" define well known charitable purposes. But the residual general head "the advancement of any other object of general public utility" is of wide comprehension. This head was defined in the same terms in the definition of "charitable purpose" in section 4(3) of the Indian Income-Tax Act, 1922. The same words were used in English law to describe one of the heads of charitable purpose in *Morice v. Bishop of Durham*(<sup>2</sup>). Under the English law, they were regarded as words of sufficiently extensive import to warrant the observation by the House of Lords in *William's Trust v. I.R.*(<sup>3</sup>) that all objects of general public utility were not necessarily charitable, and that while some may be so others may not. The law in India under the Indian Income-Tax Act, 1922 was not in congruency with the English law of charity inasmuch as by including those words in its statutory definition the Indian law extended the expression "charitable purpose" to an area beyond that covered by the English law. In other words, while the words "any other object of general public utility" in the Indian enactment included the purposes recognised as charitable purposes under the English law, they ex-

(1) 14 I.T.R. 144.

(2) (1805) 10 Ves 522, 532.

(3) 27 T.C. 409.

A tended also to objects which were not accepted as charitable under the English law. Apparently, when framing the Income-Tax Act, 1961, Parliament considered it appropriate to cut down the wide scope of these words by qualifying them with the restrictive words "not involving the carrying on of any activity for profit". This was done to emphasise that the residual general head was to be confined to objects which were essentially charitable in nature. It is, therefore, clear that the words "not involving the carrying on of any activity for profit" govern the words "the advancement of any other object of general public utility" and not the words "relief of the poor, education and medical relief" in section 2(15). The heads "relief of the poor, education and medical relief" remained unqualified by any express statutory restriction, and income arising from a profit making activity linked with those heads enjoyed exemption without express limitation until section 13(1)(bb) was inserted in the Act by the Taxation Laws (Amendment) Act, 1975 with effect from April 1, 1977.

D Now, the power to run the kurie business stems from the provision "to run chitties (kuries)" mentioned in sub-clause (b) of clause (3) of the Memorandum. From the description prefacing the enumeration of the objects, it is plain that the objects are really in the nature of powers incidental or ancillary to the attainment of the main objects mentioned in sub-clause (a) of clause (3). Accordingly, we hold that the income from the kurie business is intended to be applied only to the charitable purposes of giving to charity or the promotion of education. That is the basis on which the licence was granted under section 25 of the Companies Act to the appellant. No question arises of applying the income from the kurie business to the other objects for which the appellant has been established, that is to say, the object set forth in sub-clause (c) of clause (3) of the Memorandum of Association. In the circumstances, it is not necessary to consider the effect of the inclusion of those other objects in the Memorandum and whether the appellant can embark on the realisation of those objects without complying with the statutory formalities mentioned under section 149 of the Companies Act.

G It is not disputed that the business of conducting kuries is held under trust. We are, therefore, of opinion that the income from that business is income derived from property held under trust for charitable purposes. In the circumstances, the appellant is entitled to exemption on the income from the kurie business for the assessment year 1969-70 under section 11(1)(a) of the Income-Tax Act. We are unable to agree with the opinion expressed by the High Court which, it seems, omitted to consider the significance of the fact that the business of conducting kuries is covered by a power conferred expressly only for the purpose of attainment of the main objects of giving charity and promoting education.

The appeal is allowed, the judgment dated June 12, 1974 of the High Court is set aside and the question referred by the Income-Tax Appellate Tribunal is answered in the affirmative, in favour of the appellant and against the Commissioner of Income-Tax. The appellant is entitled to his costs of this appeal.

**A**

S.R.

*Appeal allowed.***B**