J. K. Trust, Bombay vs The Commissioner Of ... on 22 May, 1957

Equivalent citations: 1957 AIR 846, 1958 SCR 65, AIR 1957 SUPREME COURT 846

Bench: Natwarlal H. Bhagwati, J.L. Kapur

PETITIONER:
J. K. TRUST, BOMBAY

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME-TAX/EXCESSPROFITS TAX, BOMBAY

DATE OF JUDGMENT:
22/05/1957

BENCH:
AIYYAR, T.L. VENKATARAMA
BENCH:
AIYYAR, T.L. VENKATARAMA
BHAGWATI, NATWARLAL H.
KAPUR, J.L.

CITATION:
1957 AIR 846 1958 SCR 65

ACT:
Income Tax-Trust-Exemption from taxation-Trustees conducting business of Managing Agency for the Trust-Business, whether "Property"-Income from Managing Agency, whether income derived from Property held on trust-Indian Income-tax Act, 1922 (XI Of 1922), S. 4(3)(i) and (ia).

HEADNOTE:
A deed of trust whereby a sum of Rs. 1 lac was settled on various charities specified therein provided for the acquisition of the business of managing agency on behalf of the trust and with the help of the trust fund. The trustees of the said trust (appellant) became the managing agents of a public company. The agreement for the agency provided, inter alia, that the agency was for a period of twenty years but that it was open to the trustees to give up the agency on giving three months' notice and that the managing agents were to get a remuneration of 10 per cent.' of the net annual profits subject to a minimum of Rs. 50000 and an office allowance of Rs. 1,000 per mensem. The appellant

claimed that the income derived from the managing agency was income from property held under trust to be applied wholly for charitable purposes, and was, in consequence, exempt from taxation under S. 4(3)(i) of the Indian Income-tax Act, 1922. It was contended on behalf of the Income-tax authorities (1) that the income in question was remuneration for services rendered and was not derived from any property, as a managing agency could -not be considered to be property, and that, therefore, it did not fall within s. 4(3)(i) of the Act, (2) that on the terms of the deed of trust the managing agency could not be property held on trust, as no part of the sum of Rs. 1 lac was utilised in the acquisition of the business so as to impress it with the character of accretion, and (3) that even if the managing agency business could be regarded as property within S. 4(3)(i), it was governed by the special provision contained in S. 4(3)(ia), and as the conditions laid down therein had not been satisfied, no exemption could be claimed.

Held: (1) A managing agency is business which would be property within s. 4(3)(i) of the Act.

Lakshminarayan Ram Gopal and Son Ltd. v. The Government of Hyderabad, (1955) I.S.C.R. 393, followed.

All India Spinners' Association v. Commissioner of Income-tax,, Bombay [1944] 12 I.T.R. 482, relied on,

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(2)Though the office of managing agency carries with it certain obligations, in law there can be no objection to creating a trust over property burdened with obligations, though, if it is onerous by reason of such obligations, the trustee may be entitled to disclaim it.

(3)When trustees carry on business with the aid of trust fund the position in law is the same as if they actually employed it in the business, though, in fact, it be not actually invested therein and, taking the provisions of the deed of trust and the agreement of agency together, the managing agency must be held to be property held on trust.

Rocke v. Hart, (1805) 32 E.R. 1009 and Moons v. De Bernales, (1826) 38 E.R. 117, relied on.

The case was remanded to the High Court for a decision on the question whether profits from business would be exempt from taxation under S. 4(3)(i) of the Act when the conditions laid down in S. 4(3)(ia) were not satisfied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 246 of 1954. Appeal by special leave from the judgment an order dated October 6, 1952, of the Bombay High Court in Income-tax Reference No. 1 of 1952.

N. A. Palkhivala, J. B. Dadachanji, S. N. Andley Rameshwar Nath and P. L. Vohra, for the appellant.

O. N. Joshi and R. H. Dhebar, for the respondent. 1957. May 22. The Judgment of the Court was delivered by VENKATARAMA AIYAR J.-'This is an appeal by special leave against the judgment of the Bombay High Court passed in a reference under s. 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as the Act) and ss. 21 and 19 of the Excess Profits Tax Act, 1940, and of the Business Profits Tax Act, 1947, respectively read with s. 66(1) of the Act. The dispute between the parties relates to the assessment of income-tax for the assessment years 1946-47, 1947-48 and 1948-49 and of excess profits tax for the chargeable accounting periods, September 3, 1945, to March 31, 1946, April 1, 1946, to March 31, 1947 and April 1, 1947, to March 31, 1948, and it arises out of the same facts and involves the same points for determination, On June 15, 1945, three brothers Sir Padampat Singhania, Lala Kailashpat Singhania and Lala Lakshmipat Singhania who were carrying on business under the name of Juggilal Kamlapat, executed a deed of trust, Ex. A, whereby they settled a sum of Rs. 1,00,000 on various charities specified therein and called the J. K. Trust, Bombay, and appointed themselves and two other persons Lala Ramdeo Podar and Sir Chunnilal Mehta as its trustees. The trust deed provided inter alia that "the trustees may with the help of the trust fund, for and on behalf of and for the benefit of the trust, carry on such business including the taking up and conducting the managing agency or selling agency of any company in such name or names as they in their absolute discretion may think fit and proper and may close and re- start such business and utilise the profits for all or any of the objects aforesaid.". Large powers were conferred on them in the conduct of the business, and they were also authorised to "raise or borrow money required for the purpose of the trust".

At this time, Messrs. E. D. Sassoon and Co., Ltd. were the managing agents of a public Company called the Raymond Woollen Mills Ltd. The firm of Juggilal Kamlapat of which the three Singhania brothers were the partners, acquired a controlling interest in the said Mills by purchase of the shares of Messrs. E. D. Sassoon and Co. therein; and following on this, the shareholders passed a special resolution on September 3, 1945, appointing the trustees of the J. K. Trust as managing agents of the Company in the place of Messrs. E. D. Sassoon and Co', Lid., who resigned. On September 10, 1945, a memorandum of agreement, Ex. B, was duly executed by the Company constituting the trustees of the J. K. Trust, Bombay, as its managing agents on the terms and conditions set out therein. It is to be noted that the five persons named as trustees under Ex. A were appointed as managing agents in their character as trustees, and it is expressly provided therein that the expression 'managing agents', "unless excluded by or repugnant to the context shall include the Trustees for the time being of the said Trust or any other Trust with which the same may be amalgamated". The agency was to be for a period of 20 years; but it was open to the trustees to throw it up on giving three months' notice. The managing agents were to get a remuneration of 10 per cent. of the net annual profits subject to a minimum of Rs. 50,000 and an office allowance of Rs. 1,000 per mensem. Clause 7 of the agreement provided that, " During the continuance of this agreement, the Managing Agents shall maintain with the Company a deposit of Rs. 1,00,000 (Rupees one lack only) in cash by way of security for due fulfilment of their obligations as specified therein and shall be entitled to charge interest at 3 1/2 per cent. per annum on the amount of such deposit in addition to their remuneration."

Clause 8 laid an obligation on the managing agents "to arrange loans and advances to the Company as and when required up to and not exceeding Rs. 10 lacs at any time and if necessary to guarantee

such loans or advances from time to time". Under el. 14, "Notwithstanding anything herein contained, all the terms and conditions of this Agreement including the period of appointment of the Managing Agents may be varied or abrogated by mutual agreement."

The trustees entered on their duties as managing agents under this agreement, and by an agreement dated May 14, 1946, they appointed one Tej Narain Khaitan, son-in-law of one of the three Singhania brothers as their representative to carry on the managing agency work on a remuneration of 30 per cent. of the annual income which would be payable to them under Ex. B. Before the Income-tax authorities, the appellant claimed that the income derived from the managing agency was income derived from property held under trust to be applied wholly for charitable purposes, and was, in consequence, exempt from taxation under s. 4 (3) (i) of the Act. The Income-tax authorities held that the income in question was remuneration for services rendered, and was not derived from any property, and that, therefore, it did not fall within s. 4 (3) (i) of the Act. They further held that even if the managing agency business could be regarded as property within s. 4 (3) (i), it was governed by the special provision contained in s. 4 (3) (ia), and as the conditions laid down therein had not been satisfied, no exemption could be claimed. In this view, they allowed a sum of Rs. 30,000 per annum for remuneration of Mr. Khaitan as a deduction under s. 10 (2) (x) of the Act, and held that the balance of the income, Rs. 23,287 in 1946-47, Rs. 36,786 in 1947-48 and Rs. 2,16,460 in 1948-49 was liable to be taxed under the provisions of the taxing statutes. On applications made by the assessee under a. 66(1) of the Act and the corresponding provisions in the Excess Profits Tax Act and the Business Profits Tax Act, the Tribunal referred the following questions for the decision of the High Court of Bombay:

> 1. " Whether on the facts of the case the commission earned by the managing agents for managing. the Raymond Woollen Mills was income earned by the managing agents for services rendered and not income derived from property held under trust or for other legal obligations and therefore not exempt under s. 4 (3) (i) of the Income-tax Act?
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> 2. Whether on the facts of the case the business carried on by the Trustees falls to be considered under s. 4 (3) (i) or s. 4 (3) (ia) of the Income-tax Act?"
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> The reference was heard by Chagla, C.J., and Tendolkar, J., who held that no part of the sum of Rs. 1,00,000 which was the only property settled on trust under Ex. A was actually invested in the managing agency business, which could not, therefore, be regarded as trust property, and that the income received from that business was 'not within the exemption enacted in s. 4 (3) (i). They accordingly answered the first question against the appellant. As regards the second question, the learned Judges held that it was unnecessary to express any opinion thereon, as it was common ground that even if s. 4 (3) (ia) applied, neither of the conditions laid down in sub-cl. (a) or (b) had been fulfilled, and that accordingly no relief could be granted thereunder.

> The points that arise for determination in this appeal are (1) whether the income received by the trustees of J.K. Trust, Bombay, as managing agents of Raymond Woollen Mills, Ltd., is income derived from property held on trust or on an obligation in the nature of trust; and (2) whether the claim for exemption in respect of such income is to be determined under s. 4 (3) (i) or s. 4 (3) (ia).

With reference to the first question, the contention of Mr. Palkhivala is that managing agency is business and therefore it is property, and that it is property held on trust because it is conducted by the trustees on behalf of the trust with the help of trust properties and in accordance with the directions contained in the trust deed. He also contends that even if the business is not held on trust, it is at least held, on the principle laid down in s. 88 of the Trusts Act, on an obligation in the nature of trust, and that s. 4 (3) (ii) is, in consequence, attracted. For the respondent, Mr. Joshi does not dispute that managing agency is to be regarded as business, but he contends that there can be no trust of such agency, because it really involves rendering of services and cannot be said to be property in respect of which alone trust can be created, and further because managing agency is an office, and that again is not property. He also contends that, in any event, ,the managing agency created under Ex. B could not be held to be trust property, because it could be terminated at any time, if the trustees so desired, on three months' notice and that there could be no trust of' such a precarious, ephemeral or evanescent kind of property, if indeed it could be held to be property. He also contends that s. 88 was inapplicable, as there was no property which was held on an obligation in the nature of a trust.

Whether a managing agency could be regarded as business was considered by this Court in Lakshminarayan Ram Gopal and Son Ltd. v. The Government of Hyderabad (1), where the question arose with reference to assessment of excess profits tax on the remuneration received by managing agents, tax being leviable under (1) [1955] 11 S.C.R. 393.

that Act only on business income and it was held that it was business, and that the profits therefrom were rightly assessed to tax under the Act. The law must therefore be taken to be settled beyond controversy that managing agency is itself business.

Then the question is whether that business can be held to be property within s. 4(3)(i) of the Act. Now 'property' is a term of the widest import, and subject to any limitation or qualification which the context might require, it signifies every possible interest which a person can acquire, hold and enjoy. Business would undoubtedly be property, unless there is something to the contrary in the enactment. Section 4(3)(i) of the Act under which exemption is claimed runs as follows:

> "4. (3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them-
>
> (i) any income derived from property held under trust or other legal obligation wholly for religious or charitable purpose, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto."

Now, confining ourselves solely to the language of s. 4 (3)(i), there is nothing- in it which restricts in any manner the normal and accepted meaning of the word property', and excludes business from its connotation. There is also authority in support of the view that business is property within the intendment of s. 4(3)(i). In In re The Tribune (1), the question was whether a trust created over the Tribune press and newspaper was for a charitable purpose as defined in s. 4 (3) (i) of the Act. The majoritv of the learned Judges of the High Court took,the view that the object of the trust was not wholly religious or charitable, and that accordingly the exemption under that section could not be claimed. This decision was taken in appeal to the Privy Council, which held reversing the judgment of the High Court that the object of the trust was in its entirety charitable and that it came within the exemption enacted in s. 4 (3) (i). Vide In re The Trustees of the Tribune (2). That is a question with (1) [1035] 3 I.T. R. 246. (2) [1939] 7 I.T.R. 415; L.R. 66 I.A. which we are not concerned in this appeal, and the actual decision of the Privy Council does not bear on the present controversy. What is relevant to our purposes is that before the High Court, a contention was raised that the word 'property' must bear the same meaning both in ss. 9 and 4 (3) (i), that in s. 9 it was used in contradistinction to business which was dealt with under s. 10, and that therefore 'property' in s. 4 (3)(i) could not include business. This contention was repelled by the High Court, which held that the meaning of the word 'property' in s. 4 (3) (i) could not be controlled by the connotation of that word in s. 9. Vide In re The Tribune (1). Before the Privy Council, however, the question whether business of the Tribune press and newspaper was property was not raised, the Board merely observing that in the letter of reference there was "no suggestion that the income under assessment is not derived from property held under trust declared in the 20th and 21st paragraphs of the will".

The point, however, arose directly for decision in All India Spinners' Association v. Commissioner of Income-tax, Bombay (2). There, the assessee was an unregistered association called the All India Spinners' Association, and it was formed for the purpose of development of the village industries of handspinning and handweaving. -The Association collected subscriptions from its members and also donations and invested them in the purchase of raw cotton which was supplied to poor labourers for being spun into yarn, the yarn being. then supplied to them for being woven into cloth, which was then sold and the sale proceeds appropriated to the funds of the Association for the purposes aforesaid. The assessee claimed exemption under s. 4(3) (i) on the ground that its income was derived from property held under trust. The High Court was of the opinion that the yarn and the cloth the sale of which yielded the income, could not be regarded as property held in trust, and that, in consequence, s. 4(3) (i) did not apply. In reversing this judgment, the Privy Council held that "the property consisted of the Organisation and the undertaking as well as in the (1) [1935] 3 I.T.R. 246.

(2) [1944] 12 I.T.R. 482; L.R. 71 I.A. 159, fluctuating stock of yarn and cloth", and that the exemption in s. 4(3)(i) applied. This is direct authority in support of the contention of the appellant.

As against these authorities, the respondent relied on the decision in Eggar v. Commissioner of Incometax (1). There, a certain professor agreed to hand over the remuneration which would be payable to him by the University for lectures to be delivered by him, for certain charitable purposes, but, in fact, no deed of trust was executed. The question was whether the amounts actually paid to him by the University were exempt from taxation, and it was held that they were not, and that the income in question was at the time of the receipt the private property of the assessee being

remuneration for services rendered by him. There could be no question in this case of any source of income being dedicated to trust, and the decision accordingly has no bearing on the point, which falls to 'be decided here. The weight of authority is therefore clearly in favour of the view that business would be 'property' for purposes of s. 4(3)(i) of the Act.

It is next contended for the respondent that even if business could in general be held to be property within s. 4(3) (i), managing agency cannot be so regarded, because having regard to ss. 2(9A), 87A and 87B of the Indian Companies Act, it is merely an office which consists in the performance of services and discharge of certain obligations, and that that could not be regarded as property, which could be the subject-matter of trust. We are unable to accede to this contention. In Angurbala Mullick v. Debabrata Mullick (2), and The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur MUtt (3), even an office of trusteeship was held to be property especially when emoluments were attached to it, and that must a fortiori be the position in the case of office of managing agency, which is clearly one of profit and even alienable under certain circumstances. The office requires no doubt the performance of services; but there is no antithesis between service (1) (1926) 2 I.T.C. 286.

(2) [195I] S.C.R. 1125.

(3) [1954] S.C.R. 1005, 1019.

and business, as there are several kinds of business, which involve the performance of services, such as insurance and commission agency. The true test is whether the services are a regular source of income. And if managing agency is business, as was held in Lakshminarayan Ram Gopal and Son Ltd. v. The Government of Hyderabad (1), then there is no reason why it should not be property for purposes of s. 4(3)(i) of the Act. Nor is it an accurate statement of the true position to describe trust of the managing agency as a trust of an obligation. It is in truth a trust of property, which carries with it certain obligations, and in law, there is no objection to creating a trust over property burdened with obligations, though, if it is onerous by reason of such obligations, the trustee may be entitled to disclaim it. It is then contended that even if managing agency could be the subject of trust, the managing agency created by Ex. B must be held to be incapable of being held on trust because it is of the essence of public, as distinguished from private, charity that it must be permanent and incapable of being revoked or put an end to at the option of the trustee, whereas the managing agency created by Ex. B could be terminated by the trustees by giving three months' notice. This is to confuse charity with properties devoted to charity. It is true that a public charity is perpetual in character, and that means that it is capable of enforcement, so long as there is any property left which can be appropriated for its objects. And even if some or all of the objects become incapable of fulfilment, the trust properties will be devoted to the performance of similar or allied charitable purposes on the doctrine of cy pres. But so far as the trust properties themselves are concerned, they will be held only on the incidents to which they are subject under the law. Thus, if the property is a leasehold interest, it must cease on the termination of the lease. Likewise, if trust property is alienated under circumstances binding on the trust, it will go out of the trust. But that does not operate (1) [1955] I S.C.R. 393.

as an extinction of the trust, unless there is no property at all left, with which the trust could be carried out. That is the principle enacted in s. 77(c) of the Indian Trusts Act, 1882, which in terms, however, applies only to private trusts. We must therefore hold that the fact that the trustees have the option at any. time to throw up the managing agency is no legal' impediment to its being property which could be held on trust.

Lastly, it is contended that on the terms of Ex. A, the properties which the trustees are " to hold and stand possessed of " are " the sum of Rupees One Lao and any donations or contributions received by the Trustees and all accretions thereto and thereof and the investments in securities for the time being and from time to time representing the same ", that on the terms aforesaid, the managing agency cannot be held to be property held in trust, as no part of the sum of Rs. 1,00,000 was utilised in the acquisition of the business so as to impress it with the character of accretion. It is argued that though the sum of Rs. 1,00,000 was given as security by the trustees under Ex. B, that was only for the due performance of their obligations as managing agents, and that the amount itself was not actually thrown into the business. But it is to be observed that cl. 3 of the trust deed expressly provides for the acquisition of the business of managing agency on behalf of the trust and " with the help of the trust fund", and that precisely is what has happened and indeed, reading together Exs. A and B, it is impossible to resist the conclusion that both the documents formed part of an integral scheme, and that what the settlors had in view in cl. 3 of Ex. A is the very managing agency, which was acquired under Ex. B. There is considerable authority in England that when trustees carry on business with the aid of trust fund, the position in law is the same as if they actually employed it in the business, though, in fact, it be not actually invested therein. Thus, in Rocke v. Hart (1), Sir William Grant observed:

(1) (1805) 11 Ves. Jun, 58 ; 32 E.R. 1009, 1010.

a trader lodges money at his banker's, he has in effect a benefit from that. As he must generally keep a balance in his banker's, it answers the purpose of his credit; as if it was his own money; and I should hold that to be employment in his trade."

There are similar observations by Lord Gifford, in Moons v. De Bernales (1).

In the result, we are of opinion that the word I property' in s. 4(3)(i) of the Act is of sufficient amplitude to comprehend 'business', and if the question fell to be decided solely on the terms of that sub-section, the managing agency constituted under Ex. B must be treated as property held on trust within s. 4(3)(i) of the Act. This conclusion, however, is not sufficient to dispose of the appeal in favour of the appellant, because there is still the question raised by the respondent that even if under the general law, the word I property' is wide enough in its significance to include business, in its context in s. 4(3)(i) read along with s. 4(3)(ia) it bears a more restricted sense as meaning only property other than business. And it is this contention that forms the subject- matter of the second question under reference. In order to understand this question, it is necessary to state that in the Act as originally passed, the only provision for exemption from taxation of income derived from property dedicated to religious or, charitable trust was contained in s. 4(3)(i). On this section, the question arose whether when a business was carried on for and on behalf of a trust, the profits

derived therefrom were exempt from taxation. It was held in Commissioner of Income-tax, Madras v. Arunachalam Chettiar (2), following a decision of the House of Lords in Coman v. Governors of the Rotunda Hospital, Dublin(3), that they were not. That was also the view taken by the Allahabad High Court in Lachhman Das Narain Das, In re (4). Then came the decision in In re The Tribune (5) already referred to, wherein the Lahore High Court held that 'property' in s. 4(3)(i) was (1) (1826) 1 Russ. 301 ; 38 E.R. 117. (3) [1021] A.C. 1. (2) I.L.R. (1926) 49 Mad. 833. (4) I.L.R. (1925) 47 All.

68. (5) [1935] 3 I.T.R. 246.

sufficiently comprehensive to include business, and that profits from business carried on by trustees would be exempt from taxation. As already stated, though the matter was taken in appeal to the Privy Council this question was not raised. It was in this state of the law that the Legislature intervened, and enacted a new provision, s. 4(3)(ia), which is as follows:

> " 4(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:
>
> (ia) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and-
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> (a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or
>
> (b) the work in connection with the business is mainly carried on by beneficiaries of the institution." Under this provision, the profits of business would be exempt only if the conditions laid down therein are satisfied. It is the contention of the Department that as this is a special provision dealing with the topic of exemption in respect of business carried on for and on behalf of a trust, any claim for exemption as regards profits derived from any such business can be made only under that provision, and when the conditions laid down therein are not satisfied, it is not open to the assessee to fall back upon the general provision contained in s. 4(3)(i) and claim exemption thereunder on the ground that business is property. The basis of this contention is the well-known maxim, Generalia specialibus non derogant. In Charitable Gadodia Swadeshi Stores v.

Commissioner of Income-tax, Punjab(1), this question came up for consideration before the Lahore High Court. It was held by the learned Judges that the fact that the business failed to satisfy the two conditions laid down in s. 4(3)(ia) was no reason why it should not be exempt from taxation if it fell within

1) [1944] 12 I.T. R. 385.

s. 4(3) (i), and the main ground of the decision was that the two categories mentioned in s. 4(3) (i) and s. 4(3)

(i)(a) having been enacted as two different clauses, it must be taken that the one did not exclude the other. It was this decision that was relied upon by the appellant before the Tribunal, which, however, considered it distinguishable. A reading of its order, however, shows that it was not really satisfied about its correctness. Accordingly, when the appellant applied for reference under- s. 66 (1) of the Act, the Tribunal referred the second question also for the decision of the High Court. But in the view which the learned Judges of the Bombay High Court took that business was not property within s. 4(3)(i), it became unnecessary for them to express an opinion on that question. Now that we have held that the word property in s. 4 (3) (i), standing by itself, is susceptible of a wider connotation so as to include business, it becomes necessary to consider the second question under reference. Learned counsel on both sides agree that it would be more satisfactory that this question should be remitted to the High Court for determination.

In the result, we remand the case to the High Court of Bombay for a fresh disposal of the reference on a consideration of the second question. As for costs, we direct that the respondent do pay the appellant the costs of this appeal as also the costs of the hearing before the High Court. The costs of the further hearing which we have directed will be dealt with by the High Court on remand. Appeal allowed. Case remanded.