Commr. Of Income-Tax, U.P., Lucknow vs Radhaswami Satsang Sabha on 28 September, 1953

Equivalent citations: AIR1954ALL291, [1954]25ITR472(ALL), AIR 1954 ALLAHABAD 291

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66(1), Income-tax Act, made on behalf of the Commissioner of Income-tax against an order made by the Tribunal that the assessee was entitled to exemption under certain provisions of Section 4(3), Income-tax Act.

2. The assessee is the Dayalbagh Satsang Sabha (hereafter called the Sabha in this judgment). This Sabha is a body registered under the Charitable Societies Registration Act (Act No. 21 of 1860).

3. It may be necessary here to mention that in the year 1861 a new faith or religion was founded by Swami Shiv Dayal Singh, the followers of which were known as Satsangis to which Hindus, Mohamedans, Parsis or Christians could be initiated provided they were found to be fit and suitable by the spiritual head. The object of the religion, as described by their Lordships of the Judicial Committee in -- 'Chhotabhai v. Janan Chandra', AIR 1935 PC 97 at p. 99 (A) was to attain true and perfect salvation by the liberation of the spirit from the bondage of mind and matter which can only be achieved by following the practices prescribed by the religion.

The history of the growth of this new religion is described in the judgment of their Lordships of the Judicial Committee in Chhotabhai's case (A)', but that judgment is mostly concerned with the sect now known as Swamibagh sect. There was, however, a schism in the year 1907 when the sect with which we are concerned, i.e., Dayalbagh Sect, was founded with Babu Kamta Prasad Sinha as its Guru. The main difference between the Swamibagh and the Dayalbagh sects was in their conception of the position of the Guru. The followers of Swamibagh sect believed that the Sant Satguru was the personification of their deity Radhaswami Dayal (which is the name given to the Supreme Creator) and, consequently all offerings made were held by the Sant Satguru himself. The Dayalbagh sect did not identify the Sant Satguru as Radhaswami Dayal but revered him as a representative of the Supreme Creator on earth who received inspiration from the Creator so that the offerings, made

even through the Sant Satguru, did not vest in him personally but were held by him on behalf of the Supreme Creator. The Dayalbagh sect flourished as its Gurus were very capable men who commanded great respect and increased in many ways the activities of the Dayalbagh Satsang with the result that the property now in the possession of the Dayalbagh sect is said to be of considerable value.

After the decision of the Judicial Committee in 'Chhotabhai's case (A)', mentioned above, the Income-tax Department wanted to assess to income-tax the then Sant Satguru Sir Anand Sarup for the entire income of the properties whether vested in the Sabha or held by any other society or institution connected with Dayalbagh.

4. The Radhaswami Satsang Sabha, as plaintiff filed a suit in the court of the Additional Civil Judge of Agra against the Secretary of State for India in Council and the Commissioner of Income-tax for a declaration that the properties held by the Sabha were held as religious and charitable trust and were not the properties belonging to the Sant Satguru, and the Commissioner could not, therefore, assess him to Income-tax. The Sant Satguru, Sir Anand Sarup, was impleaded as a defendant to the suit and after his death his widow Lady Sohan Bai and his sons were impleaded as his legal representatives. This suit was decreed on 12-8-1938. A First Appeal was filed in this Court by the Secretary of State and the Commissioner of Income-tax which was dismissed and the decree of the lower court was affirmed.

5. After the decision of the suit by the lower court, the Income-tax Officer of Agra started proceedings against the Sabha for assessment for the year 1936-37 which was followed by assessment for the years 1937-38, 1938-39, 1939-40, 1940-41 and 1941-42. The assessee filed appeals against the assessments before the Appellate Assistant Commissioner who held that the assessee was not entitled to the exemption claimed under Section 4(3). Income-tax Act, though he made certain modifications in the amount assessed. There were appeals filed before the Income-tax Appellate Tribunal, which were dealt with by a common order dated 28-2-1948. The Tribunal held that the Sabha was not assessable to Income-tax and was entitled to claim exemption under Section 4 (3) (1), 4(3) (ia) and 4 (3) (ii) with the result that the orders of assessment passed in all the six years mentioned above were set aside.

6. The Commissioner thereupon asked for a reference under Section 66 (1), Income-tax Act, and the Tribunal decided to make a reference and has referred to this Court six questions for decision.

7. The questions referred for decision are set out in para. 20 of the 'Statement of the Case' and are as follows;

> "1. Whether the bhents (offerings) made by the followers of the Radhasoami faith of the Dayalbagh school to the deity (Radha Swami Dayal) in pursuance of the dictates of their faith and in accordance with the constitution of the Sabha vest in the Sabha under a legal obligation wholly for religious and charitable purposes within the meaning of Section 4 (3) (i), Income-tax Act?

2. Whether in the circumstances of the case set forth in the statement of case, the Income derived by the respondent Sabha from bhents and received by the Sabha under the circumstances mentioned in question No. 1 is also exempt from taxation under Section 4 (3) (ii) as being solely applicable to charitable and religious purposes?

3. Whether in the circumstances stated in the statement of case, the starting of industrial and commercial concerns by the Radha Swami Satsang Sabha of Dayalbagh, Agra, out of the funds can in view of its constitution and bye-laws and their origin and character and the conduct and creed of the followers of the Radhaswami faith be held to be in furtherance of its objects of a religious and charitable nature as contemplated by definition given in Explanation to Section 4 (3), Income-tax Act?

4. Whether the income derived from concerns mentioned in (3) above is income derived from property held under a legal obligation for religious and charitable purposes and as such exempt from taxation under. Section 4 (3) (i) of the Act?

5. Whether the income deprived from concerns mentioned in (3) above is income derived from business carried on by the Sabha as a charitable and religious body in the course of carrying out its primary purposes of a religious or charitable nature to be applied solely to those purposes and hence also exempt under Section 4 (3) (ia), Income-tax Act?

6. Whether as held by the Tribunal the income which was the subject matter of the assessments relating to the years 1939-40, 1940-41, 1941-42 was already exempt under Section 4 (3) (i) and the addition of Section 4(3) (ia) was only made by the Legislature by way of an amplification of the scope of the exemption under Section 4 (3) (i) and as such Section 4 (3) (ia) could retrospectively apply to the assessments relating to the aforesaid years?"

8. It would appear from these questions, and the fact has been admitted by Mr. Pathak, learned counsel for the Commissioner, & learned counsel for the assessee, that the questions relate only to the bhent income and the income from certain industrial and commercial concerns and do not relate to income from any other properties that the Sabha might possess. The first two questions relate to 'bhent' income. We shall deal with the question as to what this income is later in this judgment Questions 3 to 5 relate to income from industrial and commercial concerns. The sixth question is the general question as to the effect of the amendment made in the year 1939 and the addition of the provision (ia)(a) and (b) by the Amending Act of 1939 to Sub-section (3) of Section 4.

The question has been badly framed and it does not clearly bring out the meaning.

9. We have already said that the earlier history of the Radha Swami Satsang, before it broke into two sects known as the Swamibagh sect and the Dayalbagh sect, is given in the judgment of their

Lordships of the Judicial Committee in -- 'Chhotabhai's case (A)'. The later history and the way in which the Dayalbagh sect has grown up and developed and the ideas and tenets of the faith are given in the judgment of the High Court in the suit brought by the Sabha against the Secretary of State and the Commissioner of. Income-tax, the judgment being printed in our paper-book at page 202.

10. It is not necessary for us to go into the history of the growth of this sect in any detail, nor is it necessary to consider how far that judgment can be treated as having a binding effect in these proceedings, as both the Appellate Tribunal as well as learned counsel for the parties have relied on this judgment and have said that even though the judgment may not have a binding effect, it is entitled to great respect and they were prepared to accept the facts as found by this Court.

11. The Tribunal relied on this judgment for the purpose of finding that the properties vested in the Sabha. The finding recorded by them is in these words "We therefore in respectful agreement with the High Court hold that all the properties held by the Sabha vested in the Sabha and not in the Guru for the time being."

This finding is accepted now and is not challenged by any party though it might have been challenged before the Tribunal. The Tribunal also found that the Sabha is a religious and charitable body. This finding, though the matter has not been referred to us in any of the questions mentioned above, has been strenuously challenged by learned counsel for the Commissioner.

12. Learned counsel has urged that many of the objects of the Sabha do not come under the meaning of the word "charity", and the Satsangis are not a sect or community so that any charitable object for the benefit of the Satsangis cannot be deemed to be an object of general public utility. As a matter of fact greater part of the argument of learned counsel has centred round these two points.

13. It would probably be convenient to deal with these two points before we pass to the other points that arise in the case, but it may be useful at this stage to say that the Tribunal has summarised its findings in para 19 of the 'Statement of the Case', on the basis of which it wants our decision on the questions referred to us in para 20.

The first finding mentioned in para 19 is--"That the respondent Sabha is a religious and charitable society" and the sixth finding is-

> "That the activities were intended to ultimately ameliorate the condition and the welfare of the Satsangis a section of the public and to improve their mental, educational and economic conditions and as such were charitable purposes within the meaning of that term as defined at the end of Section 4, Income-tax Act."

14. Taking up the first question, whether a trust created for the benefit of the Satsangis can be deemed to be a trust for charitable objects in the sense that it is for the public benefit, the whole argument of learned counsel, though addressed at great length, centres round only one submission that no one can be a Satsangi who is not initiated by the Sant Satguru and he is, therefore, the nexus connecting' the Satsangis with one another and the Satsangis must, therefore, be deemed to be a

group of individuals selected by the Sant Satguru and not a cross section of the public. An attempt has been made to reinforce this argument by reference to various cases relating to charities created for the benefit of clubs, or employees of particular firms or companies or members of connected families, and the cases relating to religious sects and communities have been attempted to be distinguished on the ground that the conception of the Guru or the leader vitally differs between other sects and followers of the Radhaswami faith.

15. Before, however, we deal with this question we may mention, that in the assessment proceedings for the year 1936-37, which was the only year in which this aspect was discussed, as in the other following years after the first assessment the liability of the Sabha to assessment was assumed, the following matters were conceded at the outset: "(i) that the word 'Property' in Section 4(3)(i) as it then stood doe's not bear the restricted meaning that it bears in S. 9 of the Act but includes securities, a business or share in business and

(ii) that an object may be of 'general public utility' within the meaning of the said definition even though the benefit goes to a particular sect or community, viz., Satsangis only as against the general public."

When faced with these admissions and the fact that the point was not raised before the Tribunal, learned counsel for the Commissioner fell back on the argument that it was a pure question of law, and the burden of proving that the Satsangis were a sect or community and thus a part of the general public was still on the assessee, in Spite of the concession made before the Income-tax Officer which made it unnecessary for the assessee to prove any facts to establish that it was a body which could be called a cross section of the public.

16. It would be enough to reject this contention on the ground that the point does not arise out of the Appellate Order but we may briefly indicate that in our view the point has; no substance. The whole basis of the argument is the remark in 'Chhotabhai's case (A)', mentioned above at page 99 that--"All persons, whether Hindus, Mahomedans, Parsis or Christians, can be initiated into this religion provided they are found to be fit and suitable by the spiritual head or 'Guru', and when initiated, they are called 'Satsangis'". Learned counsel failed to see that these observations were made by their Lordships of the Judicial Committee only as regards fresh converts to the Satsangi faith. This faith or religion has now existed since 1861 and since its foundation there are many Satsangis who are not converts to this faith but they are Satsangis by birth. Their Lordships of the Judicial Committee did not Say that that was the only way in which one could become a Sat-

sangi and the passage occurs in the paragraph dealing with the foundation or the starting of the society in the year 1861. Had there been no concession it might have been possible for the assessee to give evidence on the point, and we are not in a position, therefore, to say that it is a pure question of law and give a decision in favour of the Commissioner.

The fact that people belonging to religious sects or communities have been treated as a cross section of the public is not disputed. Cases of this kind are given in Halsbury's Laws of England, Second Edition, Vol. 4, page 113, para 148.

17. In England the question whether a trust created for the benefit of a group of people can be treated as beneficial to the community has occupied the attention of the Courts for a large number of years and all the cases on the point are not easily reconcilable. The Courts have, however, for their guidance evolved certain tests. The tests deducible from Volume 4 of Halsbury's Laws of England are as follows: In para 146 dealing with the question that the purpose must be of public nature, it is said :

> "In ascertaining whether a purpose is public or private, the salient point to be considered is whether the class to be benefited, or from which the beneficiaries are to be selected, constitutes a substantial body of the public."

In para 170 negative test is also given that gifts for the benefit of particular individuals or a fluctuating body of particular individuals, whether named by the testator or to be selected by the trustees or by any other person, are not gifts beneficial to the community.

The law is summarised in the Footnote (i) at page 128, when after giving reference to various cases it is said that-

> "Both classes of cases deal with gifts to sections of the public, the former being held not pharitable and the latter charitable. It is submitted that a gift to a section of the public is not charitable if the section is so small that the gift amounts to a gift to specified individuals, even though the motive of the donor may be to accomplish a purpose -which would be legally charitable if the objects of his bounty had not been so restricted."

18. In 'Oppenheim v. Tobacco Securities Trust Co. Ltd.', 1951 AC 297 (B), Lord Simonds has laid down the test as follows : "Then the question is whether that class of persons can be regarded as such a "section of the community" as to satisfy the test of public benefit. These words "section of the community" have not special sanctity, but they conveniently indicate first, that the possible (I emphasise the word "possible) beneficiaries must not be numerically negligible, and secondly that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual ..... A group of persons may be numerous but, if the nexus between them is their personal relationship to a Single propositus or to several propositus they are neither the community nor a section of the community for charitable purposes." In the same judgment Lord MacDermott has laid down the test as follows :

> "The test thus propounded focuses upon the common,, quality which unites those within the class concerned and asks whether that quality is essentially impersonal or essentially personal. If the former, the class will rank as a section of the public and the trust will have the element common to and necessary for all legal charities; but, if the latter, the trust will be private and not charitable."

In the same case Lord Normand pointed out at page 309 the difficulty of defining the attribute or qualification which differentiates a section of the public from an aggregate of persons which is not a section of the public and has observed that by reason of the difficulty--"all attempts to define the public element in charitable trusts have foundered." He has pointed out that the definition depends entirely on the attribute by which the selection of the class is determined.

19. It is not necessary to multiply authorities on the point. On the observations made in this judgment the argument is based that all members of the Radhaswami faith must be deemed to be connected with the Sant Satguru and it must, therefore, be held that he is the nexus and the Satsangis are a group of Individuals who have been selected by him and are inter-connected through him. To some extant this would be true of every religious community or faith and the smaller or more recent the group the closer, probably, would be the connection. As we have already said, the argument of learned counsel is based on the method of initiation of fresh converts to the faith and does not take into account those who have already been converted since 1861 when the faith was found or of the descendants of such converts. We think, we can take judicial notice of the fact that there is a flourishing colony, of Satsangis at Agra and there are centres in most of the big cities in U.P. including Allahabad. As the point was not raised we have no idea as to the number of people who might be following this faith but there is nothing to indicate that the number is so limited that it can be said that the Satsangis are numerically negligible, nor does the fact that converts are initiated by the Guru show that the Satsangis, who are probably thousands, in number, can be said to be a group of persons Selected by the Guru and must, therefore, be deemed to be a group of individuals collected by him.

20. Great stress was laid by Mr. Pathak on the decision of the House of Lords in -- 'Gilmour v. Coats', 1949 AC 426 (C). There a trust was created for the benefit of the nuns of the Carmelite Priories in the County of London, who were a community of cloistered nuns who devoted their time to prayer, contemplation, penance and self-sanctification within their Convent with the object of gaining salvation for themselves. It was held that the trust created for their benefit could not be deemed to be a trust for charitable purposes in the sense that it was not for the benefit of the public. The members of the Radhaswami faith cannot fairly be compared with the nuns of a priory and they may more appropriately be compared with the members of the Roman Catholic faith, though they may be much less numerically than the Roman Catholics, inasmuch as Roman Catholics recognise as their religious head the Pope and owe allegiance to him just as Satsangis owe their allegiance to the Sant satguru and recognise him as their religious head.

21. The other cases cited by Mr. Pathak are the following: -- 'Cocks v. Manners', (1871) 12 Eq 574 (D) in which there was a trust created for the benefit of Domincan convent at C and it was held that it was a voluntary association of individuals and the trust was not for public benefit. The case is similar to the case of the nuns of Carmelite Priory.

22. In the 'Trustees of Wernher's Charitable Trust v. Commrs. of Inland Revenue', 1938-6 ITR 701 (E) a trust was created to provide a playground for the employees of Electrolux Company Limited, and it was held that it was not a trust for public benefit but only for the benefit of the employees of a particular company.

23. In 'Re Mercantile Bank of India (Agency) Ltd.', 1942-10 ITR 512 (Cal) (F), a trust for the benefit of persons who had been and were connected with Andrew Yule and Co., Ltd. was held by a bench of the Calcutta High Court not to be for public purposes. The bench followed certain English decisions relating to the cases of trust for the benefit of past or present employees of a company.

24. In 'Scottish Flying Club Ltd. v. Commrs. of Inland Revenue', (1935) 20 Tax Cas 1 at p. 11 (G) was a trust created for the benefit of the members of a flying club and it was not held to be a trust for public purposes.

25. None of these cases can be held to be applicable to the facts of the case before us where the only tie between the beneficiaries is that they are followers of a common religion.

26. Before we leave this point we may mention that stress has also been laid on the word "general" in the definition of the words "charitable purpose" at the end of Section 4, Indian Income-tax Act. Charitable purpose has been defined as "including relief of the poor, education, medical relief, and the advancement of any other object of general public utility". Stress is laid on the word "general" and the argument is that it defines the word "public" and a trust to be for charitable purposes is intended to be for the benefit of the general public and any trust which is not for the benefit of the general public is not a charitable purpose within the meaning of the Act.

Reliance was placed in this connection on the observations of Beaumont C. J. in the case of -- 'Commr. of Income-tax, Bombay v. Grain Merchants' Association, Bombay', AIR 1939 Bom 45 (H), which are--"In my opinion an object of general public utility means an object of public utility which is available to the general public as distinct from any section of the public." With great respect to the learned Chief Justice we find it difficult to accept this view.

A reference to Section 4, Income-tax Act, itself would show that by the words "general public utility" the legislature could not have meant that the trust must be for the benefit of the general public and not a section of the public. Section 4(3)(ia) (b) of this Act provides that 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 the work in connection with the business is mainly carried on by the beneficiaries of the institution shall be excluded from the total income of the assessee. It the words "general public" excluded a section of the public, then the words "carried on by the beneficiaries of the institution" would be meaningless as the general public would be the beneficiaries of the institution, and whoever carries it on would be part of the general public.

Trusts are generally created for the benefit of a section of community in which the creator of the trust feels interested and which he intends to benefit and the meaning given by learned counsel would mean that the income of no trust can be exempt from taxation unless it is a trust which is meant for the humanity as a whole and not for any section of that humanity howsoever numerous and by whatever classification it may be distinguished. Such a meaning, to our minds, was never intended by the words and the legislature probably intended, after having made provision for relief of the poor, education and medical relief, to provide a general head under which all charities, which are considered in this country to be of general utility to the public including a cross section of the

public, may also get the exemption.

That this submission of learned counsel has no force may also be deduced from the two latest decisions of the Privy Council relating to trusts which can by no means be said to be for the benefit of the public at large, as opposed to a section of the public. In -- 'Tribune Press, Lahore v. Commr. of Income-tax, Punjab', AIR 1939 PC 208 (I) their Lordships pointed out that the object of the paper may fairly be described as the object of supplying the Province with an organ of educated public opinion and it was held that that was an object of general public utility. Dealing with this case their Lordships observed in the -- 'All India Spinners' Association, Mirzapur, Ahmedabad v. Commr. of Income-tax', AIR 1944 PC 83 at p. 93 (J)' that-

> "These words, their Lordships think, would exclude the object of private gain, such as an undertaking for commercial profit, though all the same it would subserve general public utility."

It would appear from these remarks that the words "general public utility" were understood as "opposed to private gain."

27. In the 'All India Spinners' Association of Mirzapur, Ahmedabad's case (J), a trust was created for the weaving of khaddar by the use of handlooms and for popularising its manufacture and use and it was held that this was a general public purpose.

28. In 'Puran Atal v. Darshan Das', 34 All 468 (K), a bench of this Court held that a trust for the benefit of the fakirs of the Nanakshahi sect was a public trust and it was observed :

> "Even if we assume that the main purpose of the trust was to support 'Nanakshahi fakirs' and to spread the religion founded by Nanak, WG think that the trust was for a "public purpose" within the meaning of the section. (Section 539, Civil P. C., 1881, now S. 92, Civil P. C., 1908)".

29. In 'Farman Ali Khan v. Mohd. Raza Khan', AIR 1950 All 62 at p. 66 (L), an attempt was made to distinguish a private trust from a public trust and it was held that "A private trust has been defined as a trust only for the private convenience and support of individuals or families while a public trust may be for the benefit of the public at large or some portion of it answering a particular description, the object being to benefit an uncertain and fluctuating body and the trust being of a permanent and indefinite character."

30. Judged by the test laid down in the last case or the test laid down in English cases it must be held that the Satsangis are a cross section of the public, being followers of one religion, and a charitable trust for the benefit of Satsangis as such must be deemed to be a trust for an object of a general public utility.

31. The next question on which arguments have been advanced at some length is whether the properties held by the Sabha can be said to be held for a, religious and charitable object. Again, as

we have pointed out already, the finding on the point is against the Commissioner and one fact has not been doubted or disputed, and which has clearly been found by the Tribunal, that neither the income from 'bhent' nor the income derived from business is divisible among the Satsangis and no part of such income is payable either to them or to the Sant Satgurus. Even if at any time the Sabha happens to be dissolved the entire property must go under the Charitable and Religious Societies Act and under the Constitution of the Sabha itself to similar charitable objects.

The findings recorded by the Tribunal in its appellate order on the point are as follows:

> "The industrial and commercial concerns run by the Sabha are, as is admitted by him (Appellate Assistant Commissioner), not run for individual profit nor are these profits divided among the members."
>
> "The whole conduct of Sant Satgurus of the Dayalbagh School since the Sabha came into existence goes to show that they claimed no interest in the Sabha's properties or in the offerings made to the Sabha and never exercised any power of disposal or appropriation in respect of them." At another place the Tribunal has found that "All these institutions were established in the interest of the Satsangis of the Dayalbagh section and for the advancement of the objects of Radhaswami Satsang. No part of the earnings of the Sabha through such institutions has been applied for the purpose of the individual profit of any Satsangi. They have been all appropriated by the Sabha as a body. No division of profits amongst its members has taken place. No part of profits has even been paid to the Sant Satguru." And as regards the property and funds on the dissolution of the Sabha the Tribunal has held that--
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> "under the statutory provisions of Sections 13 and 14, Societies Registration Act (21 of 1360) the possibilities of a dissolution of the Sabha are rendered remote and even if dissolution takes place any property left after the satisfaction of the Sabha's debts and liabilities is not to be distributed amongst the members of the Sabha but is to be given to some other society to be determined by votes of not less than 3/5th of the members present personally or by proxy at the time of the dissolution or in default thereof by such courts as are constituted under the Act."

32. The fact, therefore, that all the properties that vest in the Sabha vest under an obligation cannot be doubted and has clearly been found. At one stage Mr. Pathak, learned counsel for the Commissioner, urged that the properties neither belong to the Sabha nor are vested in it and are all vested in the" Guru as-his personal property and he relied upon the decision of the Privy Council in 'Chhotabhai's case (A)' but, when faced with the finding of the Tribunal and the fact that if the entire income is of the Sant Satguru then the Sabha could not be made taxable, learned counsel dropped the point and conceded that for the purposes of this case it may be treated that the properties vested in the Sabha.

33. The argument, however, was that the objects for which the properties are held by the Sabha under an obligation are not all charitable and religious objects and in that connection learned

counsel cited a large number of English cases to show what charity means in England. The first case cited by him is --'Morice v. Bishop of Durham', (1804) 9 Ves Jun 399 (M).

That case is not very helpful. The point decided in that case was that a bequest for such objects of benevolence and liberality as the trustee in his own discretion shall most approve is not valid as the objects are uncertain but an exception is made in cases of a trust for charity where even if the particular objects of charity are not specified the trust will not fail. It may, however, be pointed out that in that case it was held that the list given in the preamble has not been considered to be exhaustive and even from the time of Elizabeth onwards the Court of Chancery included objects analogous to those enumerated within the term charitable. (See also Keeton's Law of Trusts. 4th edn., 133).

34. 'The Income-tax Commissioners v. Pemsel', 1891 AC 531 at p. 583 (N) is the famous decision by Lord Macnaghten in which charity was divided into four distinct heads. He said-

> ""Charity" in its legal sense comprises four principal divisions; trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."

This classification has been followed in almost all the cases in England since Lord Macnaghten's judgment, though there has been some difference of opinion as to what purposes can be considered to be beneficial to the community.

35. In another part of the judgment Lord Macnaghten pointed out that the Court off Chancery has always regarded with peculiar favour those trusts of a public nature which, according to the doctrine of the Court derived from the piety of early times, are considered to be charitable.

36. Lord Macnaghten said about this last head that "The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as, indeed, every charity that deserve the name must do either directly or indirectly."

37. In England the Judges had to be guided in their test as to what is beneficial to the community by the objects enumerated in the preamble to the Statute of Elizabeth (43 Eliz. c. 4). It is not necessary to quote here those words. They are quoted in Halsbury's Laws of England, Hailsham Edition, Vol. 4, page 109, paragraph 144. The Courts having considered themselves bound by this preamble were placed in a position of some difficulty and, as has been remarked by them, the law as to what is beneficial to the community is in England more historical and empirical than logical.

38. In 'Gilmour v. Coats', 1949 AC 426 (C) when discussing the various decisions as to what is charitable and what is not Lord "Simonds was forced to remark that "it is, I think, conspicuously true of the law of charity that it has been built up not logically but empirically."

And in 'Oppenheim' v. Tobacco Securities Trust 'Co. Ltd. (B)', cited above, Lord Normand said-

> "I remind your Lordships of the observations of Lord Simonds in 'Gilmour v. Coats (C)', that the law of charity has been built up not logically but empirically. It is this empirical development which has so often baffled efforts to reduce the law to systematized definitions."

39. The other cases cited by learned counsel are: -- 'Bowman v. Secular Society Ltd.', 1917 AC 406 (O) in which Lord Parker of Wadding-ton observed that benevolent purposes were not charitable purposes and a trust for charitable or benevolent purpose was vague for uncertainty.

40. In 'Re Town and Country Planning Act, 1947; 'Crystal Place Trustees v. Minister of "Town and Country Planning', 1951 Ch D 132 (P) the claim of the society to exemption from payment of income-tax was resisted mainly on the ground that by reason of certain privileges which the members of the society possessed the objects of the society were for the benefit of the members rather than for public welfare for the improvement of agriculture.

The learned Judge Danckwarts J. held as follows :

> "In those circumstances, it seems to me that the intention of the Act (Crystal Place Act, 1914) in including in the objects the promotion of industry, commerce and art, is the benefit of the public, that is, the community, and is not the furtherance of the interests of individuals engaging in trade or industry or commerce by the trustees. It appears to me that the promotion of industry or commerce in general in such circumstances is a public purpose of a charitable nature within the fourth class in the enumeration of charitable purposes contained in 1891 AC 531 at p. 583 (N)."

The only support which learned counsel wanted to derive from this case was that promotion of industry or commerce in general may be a public purpose but that promotion of trade or industry in the interest of individuals will not be a public purpose. It was argued that the object being to promote trade and industry in the interest of the Satsangis who must be treated as individuals and not a cross section of the public the trust was not for a public purpose.

41. It is not necessary for us to go into greater detail as to what are' considered to be charitable objects in England, being consider-

ed to be beneficial to the community. Apart from the observations made by Lord Simonds and Lord Normand quoted above that the law in England is not logical, we have the observatons of their Lordships of the Judicial Committee that the law is not to be applied by the courts in India, in the -- 'All India Spinners' Association case of Mirzapur, Ahmedabad (J)', cited above. In that case at page 91 their Lordships said-

> "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. The English decisions on the law of charities are not based on definite and precise statutory provisions. They have been developed in the course of more than three centuries by the Chancery Courts.

> The Act of 43 Elizabeth (1601) contained in a preamble a list of charitable objects which fell within the Act, and this was taken as a sort of chart or scheme which the court adopted as a ground-work for developing the law. In doing so they made liberal use of analogies, so that the modern English law can only be ascertained by considering a mass of particular decisions, often difficult to reconcile. It is true that Section 4 Sub-section (3) of the Act has largely been influenced by Lord Macnaghten's definition of charity in -- 'Income-tax Commissioners v. Pemsel', (N) but that definition has no statutory authority and is not precisely followed in the most material particular; the words of the section are for "the advancement of any other object of general public utility," whereas Lord Macnaghten's words were "other purposes beneficial to the community." The difference in language, particularly the inclusion in the Indian Act of the word "public" is of importance. 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."

This warning of their Lordships of the Judicial Committee has come in a series of decisions. In the -- Commr. of Income-tax v. Shaw Wallace & Co.', A. I. R. 1932 P. C, 138 at P. 140 (Q) their Lordships said-

> "The Indian Act is not in pari materia; it is less elaborate in many ways, subject to fewer refinements, and in arrangement and language it differs greatly from the provisions with which the Courts in this country have had to deal. Under these conditions their Lordships think that little can be gained by attempting to reason from one to the other, at all events in the present case in which they think that the solution of the problem lies very near the surface of the Act, and depends mainly on general considerations."

42. In -- 'Raja Bejoy Singh Dudhuria v. Commissioner of Income-tax, Bengal', A.I. R. 1933 PC 145 (R) their Lordships of the Judicial Committee agreed with the learned Chief Justice of the Calcutta High Court that a passage quoted from a judgment of Lord Davey in -- 'London County Council v. Attorney-General', 1901 A. C. 26 (S) dealing with the Imperial Income-tax Act of 1842 was inapplieable in the interpretation of Indian Act and pointed out that:

> "they have had occasion to show more than once of late, that the invocation of the Imperial Income Tax Code and of decisions pronounced upon it is apt to be very misleading in the interpretation of Indian Income-tax legislation which is framed on other and fortunately much simpler lines."

43. Coming now to the objects of the trust, we have already said that the sect known as the Radhaswami Satsang was founded in the year 1861. At the time when the tenets of. the faith were preached by the first Guru there was nothing in writing and in course of years as the sect developed

its doctrines came to be more and more clarified. Ultimately after the schism, which divided the sect into two district communities -- Swami Bagh sect and the Dayal Bagh sect -- the Dayalbagh sect, under its able Gurus, attracted a large number of followers who dedicated to the cause of the sect properties which the Gurus belonging to the Dayalbagh sect treated as trust properties, and not for their personal use, and ultimately it became necessary to have a body constituted in whom all these properties should vest and who should be in charge of the management of the properties.

Thus the Sabha was founded in 1910 and came to be registered under the Charitable Societies Registration Act (No. 21 of 1860). The rules relating to the Sabha originally passed at the meeting of 29-12-1910, are quoted in para 15 of the appellate order of the Tribunal. Clause (b) of the Rules is important and is to the following effect:

> "To take possession of all the movable and immovable properties which have upto this time been received as offerings made to Radhaswami Dayal or which may be received as offerings in future or which may be acquired for Radhaswami Satsang or which may be given to Satsangis aforesaid by way of offerings for the purposes of advancement of the object of Radhaswami Satsang and to protect and manage the same." These rules were amended from time to time and the rules on which the Tribunal relied are of 1930 and are in the same paragraph of the appellate order and are to the following effect: "(a)
>
> (b) To collect, preserve and administer the properties movable and immovable that have been or may hereafter be dedicated to Radhaswami Satsang and to deal with and apply the same to the furtherance of the religious and charitable objects of that Satsang."

44. These rules were further amended in the year 1937 and 1940 but for some reason not clear to us the Tribunal has given its decision on the basis of the rules in force in 1930. It does not seem to have been challenged before the Tribunal nor was it suggested to us that the amendments of 1937 and 1940 were not genuine and were not intended to be given effect to. The reason why the amendments of 1937 and 1940 were not relied on was that by that time the question whether the Sabha was liable to payment of income-tax had already arisen and those amendments were made in the constitution to clarify the position of the Sabha to escape assessment of. income-tax (see para 16 of the Appellate Order of the Tribunal). If the amendments were genuine and were actually made in the rules governing the Sabha, then to all assessments after the years of the amendment the rules as amended were clearly applicable. It is not, however, necessary for us to refer to the amendments of 1937 and 1940 as they were really not amendments to the rules but merely clarification of what the rules of 1930 already contained.

One fact that is, however, important is that even in the rules in force in 1930 there was a clear provision that the entire income of the properties moveable and immoveable was to be utilised for the furtherance of the "religious and charitable objects" of the Satsang, Even if, therefore it is assumed that the Satsang had some objects which were not religious and charitable, the rules being clear that the income is to be utilised only for religious and charitable objects, any application of the

income for any purpose, which is not religious or charitable, will not be in accordance with the rules. In this connection we may refer to two cases, both of the Bombay High Court.

45. In the 'Tilak Jubilee National Trust Fund, Bombay, in re', AIR 1942 Bom 61 (T), Beaumont C. J. said as follows : "Assuming the objects specified in Sub-clause (a) to be charitable, this is not the case of a gift for such charitable purposes as the Managing Committee may think fit. A gift of that sort would, no doubt, be good because the Managing Committee would be bound to keep within the ambit of charity, and if they go beyond the legal boundary, they can be controlled by the Court."

Kania J. expressed his opinion in these words: "When there is a general charitable intention, the Court will uphold it, and if within that limit discretion is given to the trustees to select an object the trust will not fail because of the discretion so given. If a trustee selects an object, which is not charitable according to law, the Court can intervene and rectify the error,"

46. 'In re Vallabhadas Karsondas Natha', AIR 1947 Bom 382 (U) where the trust deed provided that the property was dedicated for religious and charitable objects such as, and then eight objects were enumerated, some of which were neither religious nor charitable, Stone C. J., dealing with the objection that the whole trust was invalid, said : "the material words are that what is settled is to be dedicated 'for ever by me for religious and charitable objects, such as': and then are set out the eight objects, and the question is whether those eight objects predominate and govern the preceding trust or whether they are to be regarded as illustrative of the type of religious or charitable objects to which the trustees may apply the funds. In my opinion, the latter is the correct view, ..."

Chagla J. expressed himself in this way : "The dedication is to religious and charitable objects and the trustees have no discretion to apply any of the trust income except to religious and charitable objects. If any of the eight objects which are specified as and by way of illustration do not fall within the category of religious and charitable objects, then the trustees must discard such objects and apply the trust income only to religious and charitable objects."

Mr. Pathak's argument is that these two decisions are distinguishable as Satsangis considered all the objects of the Sabha to be religious and charitable and the rules, therefore, must be interpreted to enjoin on the Sabha the duty of administering the funds for the benefit of all the objects, whether religious and charitable or not. We do not think this argument has any substance. In our view, this case is a much stronger case than the Bombay decision -- 'In re Vallabhadas (U)'. In the case before us, even the objects are not enumerated and all that is said is that the property is to be utilised in furtherance of the religious and charitable objects of the Satsang and if any object does not come in the category of being religious and charitable then the Sabha cannot utilise the income for that purpose.

47. We may here mention, as we have already done before, that we are concerned only with two types of income, the 'bhent' income and the income from business. As a matter of fact the Tribunal .pointed out that the arguments before the Tribunal were confined only to these two types of income and there were certain other miscellaneous items about which no arguments were advanced.

48. 'Bhent' income is the offering made to the Supreme Creator Radhaswami Dayal or to the Sant Satguru as representing him on earth, or to the Sabha itself, for the purpose of being utilised for the religious and charitable objects of the Satsang. Bye-law 18, which refers to if (quoted in para 6 of the Appellate Order of the Tribunal) is as follows :

> "All offerings, movable and immovable, howsoever and through whomsoever presented to the Supreme Creator Radhaswami Dayal or to the Radhaswami Satsang Sabhaj and all properties, movable and immovable, acquired or that may be handed over or placed in the charge of the Sant Satguru, the Executive Committee or any other Committee or any individual Member, Manager or Agent, or that may come in possession of any one of them in their official capacity as such, shall always remain vested in the Sabha."

And to this property which remains vested in the Sabha is applicable the rule which requires the Sabha to utilise it for the religious and charitable object's of the Satsang.

49. When Sir Anand Sarup became the Sant Satguru he started certain educational institutions, hospitals, dispensaries, etc., and also certain model industries, which have brought a lot of income to the Sabha. It is admitted, as we have already said, that not a pie out of this income has either been given to any member of the Sabha or to the Sant Satguru, nor have the profits been ever divided between them. A part of the income thus made, however, has been allowed to accumulate and we shall deal with that question when we deal with Mr. Pathak's argument, whether the income unspent can be said to be income which has been applied.

The Tribunal's finding on this part of. the activity of the Sabha is spread out at several places in its order but before we come to it we might mention that the clause relating to objects in the Constitution of 1930, was as follows :

> "To regulate the conduct of business pertaining to the Satsangis i.e. the followers of the Radhaswami faith and the institutions of the Radhaswami faith for the conduct of religious services, i.e. the Central Satsangis and Branch Satsangis."

was amended in 1937 to the following effect: "(a) To regulate the conduct of the followers of Radhaswami faith and to establish, run and subsidise religious, educational and industrial institutions with a view to advance the cause of religious, mental, moral and technical education amongst the followers of the Radhaswami faith solely with object of doing public good and not for purposes of profit."

In the year 1940 this clause was further amended and stood thereafter as follows : "To regulate the conduct of the followers of the Radhaswami faith and to establish, run and subsidise religious, educational, and industrial institutions solely with a view to advance the cause of religious, mental, motal and technical education with the object of doing public good."

And a new Clause (b) was added to the following effect: "to remove unemployment."

Even though the amendments of 1937 and 1940 came later, the facts as dealt with by the Tribunal and the evidence of respectable witnesses which the Tribunal has believed made it conclude and find that from the very beginning the objects with which the income was utilised by the Sabha were for the advancement of religious, mental, moral and technical education of the followers of the Radhaswami faith and not for purposes of profit.

In para 11 of the Appellate Order the Tribunal has found that the Sabha was a religious and charitable body, and has said : "It was religious inasmuch as it involved the propagation of the Radhaswami faith by maintaining institutions for the conduct off the religious services and for the regulation of the conduct of the Satsangis in consonance with the tenets of that faith. It was charitable inasmuch as it also intended to ameliorate the condition of the Satsangis in various phases of their life moral, mental, educational, intellectual, industrial and economic ..... The Sabha in furtherance of such objects provided support to the indigent and needy Satsangis. It started educational institutions for their children and opened industrial concerns and factories and thereby reduced unemployment among them to improve their economic life. It started league of youths for rendering humanitarian services to the Satsangis. All this is established from the mass of unrebutted evidence of a large number of respectable Satsangis on the record."

A criticism is, however, levelled by learned counsel on the word "economic" in the quotation given above and the argument is that economic amelioration of the condition of the Satsangis does not mean merely giving help to the poor and it might include also the object of making the rich Satsangis richer. We do not think that this is a fair criticism in view of the finding that the income from business is not divisible amongst the Satsangis, nor can it be used by or has ever been given away to the Sant Satguru or to any Satsangis. From the Appellate Order of the Tribunal it is clear that this economic amelioration of. the condition of the Satsangis was intended to be effected in three ways : (1) by giving them training; (2) by setting up model industries; and (3) by reducing unemployment. We have already quoted the passage from para 11 of the Appellate Order of the Tribunal where the reducing oft unemployment is mentioned.

In para 19 the Tribunal held that various industries, hospital dairy and agricultural farming and technical colleges were started as model industries. No objection is taken by Mr. Pathak to the first 10 heads which he admits are charitable objects even according to the English decisions. His main objections are to the textiles and hosieries and any similar industries that might have been started. Though the word 'model' is not mentioned in the list, yet before giving the list the Tribunal clearly indicated that these were model industries and must, therefore, be deemed to have been intended for the education of the Satsangis who might have been interested in textile or hosiery business. Leather working school and classes for instructions in the manufacture of electrical goods have, it will be seen, been described at some places in the Appellate Order as leather factory and factory for manufacture of electrical goods, but that does not mean that they were started as business concerns with the object of making profit in the commercial sense for the benefit of those who were running the business. As a matter of fact the Tribunal pointed out that it was admitted that these various concerns were not run for individual profit, nor were these profits ever divided amongst the members.

The economic welfare, therefore, which is the only object to which exception has been taken, can easily be held to be a charitable object, being educational in nature and also charitable in the sense that it provided employment and thus reduced unemployment amongst the Satsangis who were the beneficiaries of the trust. We, therefore, agree with the Tribunal that all" the properties were held f9r charitable and religious purposes. On this point the findings of the Tribunal are enumerated in para 19 of the Statement of the Case.

Before, however, we leave this point we may refer to a passage in the decision of their Lordships of the Judicial Committee in AIR 1944 PC 88 (JJ, where their Lordships referring to the Scheme said :

> "Nor is there any ground for the court holding that the scheme is not one which 'may 'be' (underlining is ours (here in ' ')) for the public benefit. The court might in proper cases refuse to admit as charitable schemes purposes eccantric or impracticable. But though economists might differ about the wisdom, of some aspect at least of the Association's purposes, the court could not hold that it was beyond the pale of legitimate charitable trusts."

It is difficult for us, in view of the manner in which the activities have been carried on and the income utilised, to differ about the wisdom of some aspect of the purposes for which the income was utilised and to hold that it was beyond the pale of legitimate charitable trust.

50. In this connection we may refer to the observations of Lord Macnaghten in 1891 AC 531, at page 583 (N) :

> "The trusts" (beneficial to the community)...
>
> "are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly."

And the mere fact that employment might have been given to some Satsangis, who could not be said to be in dire need of sustenance, or training was given to Satsangis, who might have received training in other institutions, cannot be said to make the trust any the less charitable because it happened to benefit not only those who were in real need but some of those who might have been able to fulfil their needs by other means.

51. The next point urged by learned counsel is that income from business was not exempt from income-tax in England till the amendments made in 1921 and 1927 and our Indian Income-tax Act, which follows the English Income-tax Act, also did not exempt income from business till the amendments made in 1939 to Section 4(3) and income from business was not, therefore, exempt from income-tax till 1939. He has contended that business cannot be 'property' under Section 4(3) (i), Income-tax Act, and before the amendment of 1939, therefore, there was no exemption at all. As regards the law in England learned counsel has referred to a number of cases but it would be sufficient to give reference only to some of them.

52. In 'Coman v. Governors of the Rotunda Hospital, Dublin', 1921 AC 1 (V) where the management of the Rotunda Hospital let out certain furnished rooms attached to the hospital for various purposes and made some income which was utilised in running the hospital and the question was whether such income was exempt from income-tax.

Viscount Finlay in the course of his decision said :

> "Profits are undoubtedly received in the present case which are applied to charitable purposes, but they are profits derived not merely from the letting of the tenement but from its being let properly equipped for entertainments, with seats, lighting, heating and attendance. The subject which is hired out is a complex one. The mere tenement as it stands, without furniture, etc., would be almost useless for entertainments. The business of the Governors in respect of these entertainments is to have the hall properly fitted and prepared for being hired out for such uses. The profits fall under Schedule D, and to such profits the allowance in question has no application, as they cannot be properly described as rents or profits of lands, tenements, hereditaments or heritages. They are the proceeds of a concern in the nature of a trade which is carried on by the Governors and consists in finding tenants and having the rooms so equipped as to be suitable for letting. The case does not in substance differ from the letting of furnished apartments."

At page 13 of the judgment Lord Birkenhead L. C. said:

> "the seating and heating are not the only matters to be considered, and to treat the user of the premises in this way is not the proper method to adopt. The question is whether the utilisation of these rooms and the provision of facilities and services in the way set out in the case, yielding, as it does, a regular annual income to the respondents above the letting value as a property and over and above the profit assessable to Schedule A, amounts either to the carrying on of a trade or business under Case 1 of Schedule D, or to a profitable activity which is assessable under Case 6 of that schedule. The provision of seating and heating is part of the whole of the circumstances upon which the determination of the real question depends."

The decision in the 'Rotunda Hospital case (V)' is based on the language of the Income-

tax Act of 1918 (8 and 9 Geo. V. c. 40) Section 37 of which was as follows: "Exemption in respect of rents of lands belonging to hospitals and other charities.--(1) Exemption shall be granted--(a) from tax under Schedule A in respect of the rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school or almhouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only."

The rest of the section is not material. The House of Lords were, therefore, called upon to consider whether the income with respect to which the exemption was claimed could be deemed to be rents and profits of any lands, tenements, hereditaments or heritages and their Lordships pointed out that

it could not be said that the income was derived as rents and profits of any lands, tenements, hereditaments or heritages, considering that besides the rooms themselves there were other services provided. The language of our Act, Section 4(3) (i), however, is much wider and it uses the word 'property' and not the words 'lands, tenements, hereditaments or heritages.'

53. In 1921 certain amendment was made by the Finance Act of that year and a Clause (c) was added which granted exemption "from income tax under Schedule D in respect of the profits of a trade carried on by any charity, if--the work in connection with the trade is mainly carried on by beneficiaries of the charity."

54. Then came the decision of the House of. Lords in -- 'Brighton College v. Marriott', 1926 AC 192 (W), in which Viscount Cave pointed out that-

> "by the Finance Act, 1921 (Section 30), exemption is granted from income-tax under Schedule D in respect of the profits of a trade carried on by any charity, if the work in connection with the trade is mainly carried on by beneficiaries of the charity and the profits are applied solely to the purposes of the charity." His Lordship then said that--"It has long been decided that, if a trade is in fact being carried on at a profit, it is immaterial that the profits must, under the constitution of the trading corporation, be devoted to public objects."

Again that-

> "If a corporation established for charitable purposes and carrying on a subsidiary trade for the benefit of its main objects is charge-
>
> able with tax, the tax is equally chargeable where the very purpose and object of the charity is to carry on a trade. The surplus receipts in such a case, even if they were not profits, are certainly gains, and so fall under the burden of the tax."

55. As a result of this decision a further amendment was made in the income-tax law by the Finance Act of 1927 (See S. 24) and a further exemption was granted if the trade was exercised in the course of the actual carrying cut of a primary purpose of the charity.

56. Viscount Cave, in the course of his judgment in the 'Brighton College case (W)', referred to above, when called upon to consider whether the fees realised by the school were exempt from taxation on the ground that they were an annual payment forming part of the income within the meaning of Section 37, Income-

tax Act, 1918, said that the answer was twofold, namely, first that the fees received from the scholars were not properly described as an annual payment, and secondly, that it was not sought to tax the fees but the profits.

57. The language of. the Indian Income-tax Act was entirely different from the language of the English Act, before the amendment of the Indian Act in 1939. Section 4(3) before its amendment in 1939 was as follows : "Section 4(3)-- This Act shall not apply to the following classes of income-

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto.

(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes."

It is not necessary to quote other clauses of this sub-section.

In the year 1939, by the Income-tax (Amendment) Act (Act 7 of 1939), two changes were made. The words 'this Act shall not apply to the following classes of income' were replaced by the words 'any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them' and a Clause (ia) was added as follows :

> "Clause (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-
>
> (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 the beneficiaries of the institution."

58. Mr. Pathak's argument is that, before Clause (ia) was added, income from business was taxable in all cases as it could not be said to be income derived from property. He has, therefore, urged that the assessee can, in no case, claim any exemption of income from business made before the amendment of the Indian Income-tax Act in 1939.

59. The reliance placed on the English cases, as we have already said, is wholly unjustified in view of the fact that the language of the Indian Act is materially different from that of the English Act. In the English Act, the words 'rents derived from lands, tenements, hereditaments' were much more restricted than the words 'income derived from the property' in the Indian Act. There is no reason to limit the word 'property' only to corporeal property and to exclude from its operation business which was itself held under trust or other legal obligation. The point now, to our minds, has been settled by two decisions of the Judicial Committee and by a decision of the Lahore High Court.

In -- 'AIR 1939 PC 208 (I)', a trust was created of the Tribune Press of Lahore and the object mentioned in para. 2i of the trust deed was to the following effect:

> "That it shall be the duty of the said Committee of Trustees to maintain the said press and newspaper in an efficient condition, keeping up the liberal policy of the said newspaper and devoting the surplus income of the said press and newspaper, after defraying all current expenses in improving the said newspaper, and placing it on a footing of permanency."

The question was whether the income of the Tribune Trust in the hands of the trustees was liable to be assessed to income-tax. A Full Bench of the Lahore High Court by majority held that the income was so taxable. It must be remembered that, at the time when that case came up, the amendment of the Indian Income-tax Act had not been made and 'the Act had to be interpreted as it stood before its amendment in 1939. It was not disputed by eminent counsel appearing in the case, nor was it doubted by their Lordships that the income derived from the Tribune newspaper was income from property and they observed as follows: "In the letter of reference there is no suggestion that the income under assessment is not derived from property held under the trust declared in the 20th and 21st para of the will. Their Lordships are not prepared to hold that the property referred to in these paragraphs of the will is held for the purpose of "education" in the sense of that word as it appears in Section 4 of the Act. 'Prima facie', therefore, the only question for decision is whether that property is held under trust wholly for the advancement of an object of general public utility "

60. In -- 'Charitable Gadodia Swadeshi Stores v. Commr. of Income-tax, Punjab', AIR 1944 Lah 465 (X), the question arose whether income from business was income from property within the meaning of Section 4(3)(i), Income-tax Act. Dealing with this question the learned Judges observed:

> "In fact, there is every reason to think that the term as used here was being used in the popular sense. It could not possibly be intended by the Legislature that, if, for example, a sum of money endowed to charity was deposited in a bank, instead of being invested in buildings, the interest accruing therefrom should not be exempt from income-tax. Similarly, interest on securities, though a separate head of income chargeable to income-tax under Section 6 as distinct from property, cannot but be considered to be within this clause. Now, a person may invest a sum that he proposes to endow to charity in business and provide that the income derived therefrom would be applied wholly and exclusively to charitable purposes. Will it be consistent with reason to urge that though cash or securities may be covered by the term 'property' as used in this clause, business is not? The Legislature was not so enamoured of buildings as to bring to bear a pressure on charitably disposed people to invest their money in them alone if they wanted to escape from the burden of income-tax."

61. The learned Judges quoted from the Income-tax Manual, and our attention has also been drawn to that manual before the amendment of 1939, and pointed out that the instructions given in the manual to the Income-tax Officers were to the effect that they were to exclude the business income of a charitable or religious trust when the income was applied solely to the purposes of the institution and that the word 'property' in Clause (i) of Sub-section (3) of Section (4), Income-tax Act, does not bear the restricted meaning that it bears in Section 9 of the Act but includes business, profits or share in a business.

That the term 'property' does not necessarily bear a restricted meaning was also held by their Lordships of the Judicial Committee in --'Commr. of Income-tax, Bombay v. Currimbhoy Ebrahim and Sons, Ltd.', AIR 1936 PC 1 (Y). While dealing with Section 42, Income-tax Act, their Lordships pointed out that the word 'property', when used in Section 6 to describe a head of income, is not defined by the statute and is wider than the meaning given to it in Section 9 of the Act. Their Lordships pointed out that there was nothing in sub-s. (1) of Section 42, Income-tax Act, to exclude from its scope any of the six classes of income mentioned in Section 6 of the Act.

Whatever doubts might have been entertained at one time, those doubts must now be deemed to have been set at rest after the decision of their Lordships of the Judicial Committee in --'AIR 1944 PC 88 (J)'. At page 92 of the judgment, Lord Wright remarked:

> "On that footing a question was suggested that the property of the Association from which the profits were derived was not 'held' within the meaning of the section. But Clause 3 provides expressly that the funds and assets of the Association are to vest in the trustees, to be held for the purposes of the Association. The High Court seems to have been, of opinion that the property from which the profits were derived was the cloth which from time to time was sold. Their Lordships, however, prefer the view implied in the decision of the Board in -- 'AIR 1939 PC 208 (I)' to which fuller reference will be later made, where the 'property' in question was the stock and good will of the press and newspaper. Here the property consisted of the organization and the undertaking as well as in the fluctuating stock of yarn and cloth."

This case also was decided under the Indian Income-tax Act as it stood before its amendment in the year 1939 and, according to their Lordships, the word 'property' in Section 4(3)(i) of the Act included the stock and good will of the press and newspaper in the -- 'Tribune case (I)' and, in the -- 'All India Spinners' Association case (J)', it included the organization and the undertaking as well as the fluctuating stock of yarn and cloth. The word 'property' used in Section 4(3)(i) was, therefore, used in its widest sense and there is no reason to give it the interpretation suggested by Mr. Pathak that it includes only corporeal property and does not include business which, according to learned counsel, includes not only the assets held by it but also the good will and the profits are made by the utilisation of human efforts and the assets held by the business.

62. The next point suggested is that if the word 'property' is given the wide meaning as is suggested on behalf of the assessee, then there-was no reason why the clause should have been amended in the year 1939; but a careful reading of the sub-section indicates that the two clauses deal with two different matters. Clause (i) of Sub-section (3) of Section 4 deals with income derived from property held under trust or other legal obligation for religious or charitable purposes, while Clause (ia) deals with income derived from business carried on on behalf of a religious or charitable institution. The two clauses, there-

fore, do not necessarily overlap. Clause (i) of Sub-section (3) of Section 4 of the Act, as we have already pointed out, applies to cases where the business itself is held under trust for religious or charitable purposes, while Clause (ia) applies only to such business as is carried on on behalf of a

religious or charitable institution which was not held under trust.

Both in the -- 'Tribune case (I)' as well as 'The Spinners' Association Case (J)' the business itself was the subject-matter of the trust and their Lordships of the Judicial Committee, therefore, held that the income from such business fell under Section 4(3)(i) of the Act. A type of case, to which Section 4(3)(i) will not apply but Section 4(3)(ia) might be applicable, came up before this Court -- 'In the matter of Lachhman Das, Narain Das', AIR 1925 All 115 (Z). In that case, a partnership business was started in which the fourth partner was said to be Radhaballabh, a deity installed in a temple in Mathura, who was to receive a share in the profits to the extent of three annas. It was interpreted by the Court that this amounted to merely a dedication of a three-sixteenth share of the profits of the business for charitable purposes. The business, therefore, was not itself held under trust but it was carried on for the purpose of utilisation of a portion of the business for charitable purposes. To such a case, therefore, Section 4(3)(i) could not be applied.

The Court was justified in holding, if we may say so with respect, that the correct interpretation of the partnership deed was that only three-sixteenth share of the income was earmarked for charitable purposes as the deity installed in Mathura could not legally be a partner in the firm, nor was it liable for the losses of the partnership business. The learned Judges, in our view, on the facts of that case, rightly held that income derived from profits made by the trading concern was not income derived from property held under trust, but unfortunately, by reason of certain observations made later, the case was misunderstood when it was followed by a Special Bench of the Madras High Court in --'The Commissioner of Income-tax, Madras v. Thevara Patasala', AIR 1926 Mad 949 (Z1). In the Madras case, the learned Judges were guided by the English decisions, specially, -- 'The Rotunda Hospital case (V)' and, in view of what we have already said, it is not necessary to go into that question further. This disposes of almost all the points that were discussed at the Bar. There were two other small points mentioned at the Bar which we may dispose of here before we come to the questions referred to us for our decision.

63. It has been urged that the Sabha is rot an institution and importance has been placed on the words 'religious or charitable institution' in Clause (ia) of Sub-section (3) of Section 4 of the Act. What is an institution has been discussed by the House of Lords in the case of -- 'Minister of National Revenue v. Trusts and Guarantee Co., Ltd.', 1940 AC 138 (Z2). Their Lordships pointed out that-

> "It is by no. means easy to give a definition of the word 'institution' that will cover every use of it. Its meaning must always depend upon the context in which it is found. It seems plain for instance, from the context in which it is found in the sub-section in question that the word is intended to connote something more than a mere trust."

In the case of -- 'Mayor of Manchester Corporation v. McAdam', 1896 AC 500 (Z3), while dealing with the Income-tax Act of 1842, Lord Mac-

naghten observed:

> "It is a little difficult to define the meaning of the term 'institution' in the modern acceptation of the word. It means, I suppose, an undertaking formed to promote some defined purpose having in view generally the instruction or education of the public. It is the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle."

The Sabha, in the sense understood by Lord Macnaghten, is clearly an institution having been brought about to effect the purpose and to carry out the objects for which the trust was founded. The other word, on which reliance is placed, is the word 'applied' in Clause (ia). This word 'applied' in this clause it is said means actually spent and it is pointed out that while, in Clause (i) of Sub-section (3) of Section 4 of the Act, the words used are 'income applied or finally set apart', the words 'finally set apart' have not been repeated in Clause (ia) of that sub-section. We do not think that the word 'applied' necessarily means 'spent'. Even if it has been earmarked and allocated for the purposes of the institution, it may, to our minds, be deemed to have been applied for its purposes. Neither the word 'applied' nor the word 'institution' is of any importance in this case, as, in our view, the case is governed by income from the property held under trust as laid down in Section 4(3)(i), Income-tax Act

64. Our answer to the first two questions formulated by the Tribunal is, therefore, as follows:

> The 'bhents' (offerings) vest in the Sabha under a legal obligation wholly for religious or charitable purposes of the Sabha but the 'bhents' cannot be said to be income derived from property under Section 4(3)(i), Income-tax Act. They will properly come under Clause (ii) of that sub-section meaning thereby that they are income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

65. Our answer to the fourth and fifth question is that the income derived from industrial and commercial concerns is the income from property held under trust wholly for religious or charitable purposes and is exempt from income-tax under Section 4(3)(i), Income-tax Act and it is, therefore, not necessary to apply to such income Section 4(3)(ia) of the Act.

66. Our answer to the third question is in the affirmative.

67. Our answer to question No. 6 is that the income derived from industrial and commercial undertakings of the Sabha is exempt from income-tax under Section 4(3)(i) of the Act and the rest of the question, therefore, does not arise. Section 4(3)(ia), however, we may point out, gives exemption to a different type of income which does not come under Section 4(3)(i) of the Act.

68. The assessee is entitled to its costs which we assess at Rs. 200/- in each case, i.e., Rs. 1200/- in all.