Commissioner Of Income Tax vs Dharmodayan & Co., Kerala on 22 August, 1977

Equivalent citations: 1977 AIR 2211, 1978 SCR (1) 319, AIR 1977 SUPREME COURT 2211, 1977 4 SCC 75, 1977 SCC (TAX) 517, 1977 KER LT 761, 1978 (1) SCR 319, 1977 U J (SC) 571, 1978 2 ITJ 1, 1978 (1) SCWR 180, 109 ITR 527, 1978 2 SCJ 9, 1977 48 TAXATION 117

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, P.S. Kailasam

PETITIONER:
COMMISSIONER OF INCOME TAX

Vs.

RESPONDENT:
DHARMODAYAN & CO., KERALA

DATE OF JUDGMENT22/08/1977

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
KAILASAM, P.S.

CITATION:
1977 AIR 2211 1978 SCR (1) 319
1977 SCC (4) 75
CITATOR INFO :
D 1978 SC1443 (11)
R 1980 SC 387 (13,15)

ACT:
Income-Tax Act, 1961-ss. 11(1)(a) and 2(15) and Indian Income-Tax Act, 1922. 4(3)(i)-Scope of change in the two provisions.
Assessee carrying on business of kuries (chit funds)-High Court held assessee's income exempt from tax under 1922 Act-Income Tax Officer held that earlier decision no longer law because of change in definition of charitable purpose under 1961 Act-Earlier decision, if good law.

HEADNOTE:

Under s. 4(3)(i) of the Indian Income-tax Act, 1922 income derived front property held under trust for religious or charitable purposes was exempt from taxation in so far as such income was applied for those purposes. By cl. (b) of the proviso to s. 4(3)(i) income mentioned in cl. (i) was includable in the total income of the assessee if it was "derived from business carried on behalf of a religious or charitable institution". But cl. (b) of the proviso contained an exception to an exception to the effect that even income derived from business carried on behalf of a religious or charitable institution was exempt from tax if it was applied wholly for the purposes of the institution and either the business was carried on in the course of the actual carrying out of a primary purpose of the institution or the work in connection with the business was mainly carried on by the beneficiaries of the institution. Section 11(1)(a) of the 1961 Act contains an identical provision. Section 2(15) of the 1961 Act defines "charitable purpose" to include, inter alia, the advancement of any other object of general public utility not involving the carrying on of any activity for profit.

In respect of certain previous assessment years (1952-53 to 1956-57) of the assessee the Kerala High Court in Dharmodayan Co v. C.I.T. Kerala (45 ITR 478) held that since the business of kuries (chit funds) was held by the assessee under a trust for religious or charitable purposes, it could not be said that the business was conducted "on behalf of" the religious or charitable institution and that the income from kuries in so far as it was applied for religious or charitable purposes was exempt from tax. Revenue filed an appeal in this Court but withdrew it with the result the High Court's decision became final.

After the 1961 Act came into force, for the assessment year 1968-69, the Income Tax Officer declined to grant exemption in respect of income derived by the assessee from its kurie business. On appeal, the Appellate Assistant Commissioner held that despite the amendment introduced in s. 2(15) of the 1961 Act the earlier decision in Dharmodayan held good and that the assesses was entitled to claim exemption in regard to its income from kuries. This was upheld by the Tribunal.

Two questions, whether the Tribunal was correct in holding (1) that the income derived by the assessee was exempt under s. 11(1)(a) of the 1961 Act and (2) that setting apart of reserves under art. 39 of the assessee's articles of association did not vitiate the charitable purpose of the institution, which were referred to the High Court were answered in favour of the assessee.

In appeal to this Court it was contended by the Revenue that by reason of the words "not involving the carrying on any activity for profit" occurring in s. 2(15) of the 1961 Act the decision of the High Court in Dharmodayan was no longer good law and therefore that decision could not be said to

go-tern the question whether income received by the assessee by conducting kuries was exempt from taxation.

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Dismissing the appeals,

HELD: Income derived by the assessee from kuries is exempt from taxation under s. 11(1)(a) of the 1961 Act. [328E]

1(a) The significant change brought about in this regard by the 1961 Act is that by reason of the definition in s. 2(15) income derived from a business which is carried on for the advancement of an object of general public utility has to be included in the assessee's total income, if it involves carrying on of any activity for profit, while, under the 1922 Act income derived from a business carried on for the purpose of advancing an object of general public utility was excludable from the assessee's income, even if such advancing involved the carrying on of an activity for profit, if the income was applied wholly for the purpose of the institution. [323G- H]

(b) It will be erroneous to say that the decision in Dharmodayan has lost its validity by reason of the change in the definition of charitable purpose brought about by the 1961 Act. That ' judgment concludes the point that the kurie business is not conducted by the respondent in order to advance or for the purpose of advancing any object of general public utility. [324G]

(c) The assumption in the appellant's argument that the respondent is running the kurie business as a matter of advancement of an object of general public utility or for that purpose is plainly contrary to the finding of the High Court in Dharmodayan that the kurie "business itself is held under a trust for religious or charitable purposes". It is a necessary implication of this finding that the business activity was not undertaken by the respondent in order to advance any object of general public utility. The appeal to This Court against that decision was withdrawn by the Revenue. Though the relevant legislative provision has undergone a change the nature of the respondent's activity remains what it was when the High Court gave its judgment in Dharmodayan. [324D-F]

C.I.T. v. P. Krishna Warrier 53 ITR 176 explained.

East India Industries (Madras) (P) Ltd. v. C.I.T. 65 ITR 611 and C.I.T. v. P. Krishna Warrier, 84 ITR 119 referred to Sole Trustee, Lok Shikshana Trust v. C.I.T. 101 ITR 234 distinguished.

(d) Although in the Indian Chamber of Commerce v. C.I.T. (101 ITR 796) attention of this Court was specifically drawn to the judgment under appeal (reported in 94 ITR 113) and this Court criticized that decision as applying the wrong test, it cannot be said that decision has been overruled as stated in the headstand because the facts of the instant case were not before this Court. Further, it is evident from this decision that the test applied by the High Court

was held to be wrong on the assumption that the case-fell under the last clause of s. 2(15) which was the only part of that clause relevant for deciding the Indian Chamber of Commerce case. From the fact that the word industry occurring in the sentence "the assessee-company was conducting a profitable business of running chit funds and its memorandum of association had as one of its objects 'to do the needful for the promotion of charity, education and industry' has been italicised in that case it is plain that the Court assumed that the assessee was engaged in running an industry. On the facts of this case it is impossible to hold that the last clause of s. 2(15) has any application. Moreover, in the light of the activities of the respondent spread over the past several years, no importance can be attached to cl. 39 of the Articles of Association. It is, therefore, difficult to read the decision in Indian Chamber of Commerce as overruling the judgment under appeal. The Court was not even apprised in that case that this appeal was pending against the decision of the High Court. [327B, 328A-C]

2(a) The mere power under art. 39 of the Articles of Association to set apart reserves will not, without more, vitiate the charitable nature of the institution. The only activity in which the respondent is engaged over the years is the conduct of kuries. The respondent had never engaged itself in any industry or in any other activity of public interest. [328F]

(b) If and when the respondent sets apart the entire profits or a substantive part of it for reserves the Department will have ample powers and opportunity

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to deny the exemption to it. The High Court has found that the respondent has spent its income for charitable purposes. [328F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1521-1523 of 1973.

Appeals by the Special Leave from the Judgment and Order dated 5-10-72 of the Kerala High Court in income Tax Reference No. 75 of 1971 and O. P. Nos. 1588 of 1969 and 637/72.

J. Ramamurthi and Girish Chandra, for the Appellant. S. T. Desai (In CA 1521/73), Y. S. Chitale (C.A. 1522-23), Paripurna, A. S. Nambiar, Miss Pushpa Nambiar and M. Mudgal, for the Respondent.

The Judgment of the Court was delivered by CHANDRACHUD, J.-The assessee in these appeals is a company which was registered under the Cochin Companies Act and later under the Indian Companies Act, 1956. The sources of income of the assessee are interest on securities, income from

property and kuries or chit funds. For the assessment years 1952-53 to 1956-57, in making its returns of income, the assessee did not show the income from kuries on the ground that it was exempt under s. 4(3) (i) of the Income Tax Act 1922 and that the proviso to that 'section bad no application as the business of kuries was not carried on "on behalf of a religious or charitable institution" but was the trust business of the assessee itself. This contention was rejected by the Income-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal. but on reference under s. 66(1) of the Act of 1922, the High Court of Kerala in Dharmodayan Co. v. Commissioner of Income Tax, Kerala(1) held that the business of kuries was itself held by the assessee under a trust for religious or charitable purposes and that it could not be said that the business was conducted " on behalf of" the religious or charitable institution. Therefore, according to the Division Bench which decided that case, the proviso to s. 4(3) (i) was not attracted and the income from kuries in so far as it was applied for religious or charitable purposes was exempt from tax. The Revenue brought the matter in appeal to this Court but it withdrew the appeal with the result that the decision of the High Court became final.

The instant case arose after the Income Tax Act of 1961 came into force, the assessment year being 1968-69. The Income- tax Officer declined to grant exemption in respect of the income derived by the. assessee from its kurie business but that order was set aside by the Appellate Assistant Commissioner whose Judgment was confirmed by the Appellate Tribunal. These two authorities held that despite the amendment introduced by the Act of 1961 in s. 2(15), the earlier decision would apply and the assessee was therefore entitled to claim exemption in regard to its income from kuries.

(1) 45 I.T.R. 478.

The Tribunal, at the instance of the Revenue, referred the following two questions for the opinion of the High Court :

> "1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the income derived by the assessee is exempt under section 11 (1) (a) of the Income-tax Act, 1961 ?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that setting apart reserves under Article 39 of the assessee's memorandum did not vitiate the charitable purpose of the institution."

The assessee also filed two writ petitions in the High Court challenging, by one writ petition, a notice for reopening an assessment and by the other, a notice calling upon it to file a return. The High Court answered both the questions in favour of the assessee, allowed the writ petitions and quashed the notices. These appeals by special leave are directed against the judgment and orders of the High Court. On the first of the two questions referred to the High Court for its opinion it becomes necessary to consider comparatively the relevant provisions of s. 4(3) of the Income Tax Act 1922 as it existed when the Kerala High Court decided the Dharmodayam case (supra) on December 20, 1961 and the provisions contained in the relevant part of s. 11 read with s. 2(15) of the Income Tax

Act 1961. Section 4(3) of the Act of 1922 read thus :

> "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) Subject to the provisions of clause (c) of sub-section (1) of section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto :
>
> Provided that such income shall be included in the total income.
>
> (b) in the case of income derived from business carried on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either-
>
> (i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or
>
> (ii) the work in connection with the business is mainly carried on by the beneficiaries of the institution."

Section 11 (1) (a) of the Act of 1961 reads thus :

> "Income from property held for charitable or religious purposes.-(1) Subject to the provisions of sections 60 to 63,the following income shall not be included in the total income of the previous year of the person in receipt of the income-
>
> (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart-is not in excess of twenty-five per cent. of the income from such property;"

Section 2(15) of the Act of 1961 says "2. In this Act, unless the context otherwise requires,-

(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit;"

> It is undeniable that the law governing exemption from taxation of income derived from property held for religious or charitable purposes has undergone significant changes after the enactment of the Act of 1961. Under section 4(3)

> (i) of the Act of 1922, in so far as is relevant for the present purposes, income derived from property held under trust for religious or charitable purposes was exempt from taxation in so far as such income was applied for those purposes. Section 1 1 (1) (a) of the Act of 1961 contains for our purposes an identical provision, subject of course to the argument of the revenue with which we will presently deal that the definition of 'charitable purposes' in section 2(1) of that Act alters the very basis of exclusion of income from property held for religious or charitable purposes. By clause (b) of the proviso to section 4 (3) (i) of the Act of 1922, which was in the nature of an exception, income mentioned in clause (i) was includable, in the total income of the assessee if it was "derived from business carried on behalf of a religious or charitable institution".

But clause (b) of the proviso contained an exception to an exception to the effect that even income derived from business carried on behalf of a religious or charitable institution was to be exempt from tax if it ;was applied wholly for the purposes of the institution and either the business was carried on in the course of the actual carrying out of a primary purpose of the institution, or the work in connection with the business was mainly carried on by the beneficiaries of the institution. Section 2(15) of the Act of 1961 defines 'charitable purpose' to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. By reason of this definition, income derived from a business which is carried on for the advancement of an object of general public utility has to be included in the assessee's total income, if it involves carrying on of any activity for profit. Under the Act of 1922, income derived from a business carried on for the purpose of advancing an object of general public utility was excludable from the assessee total income, even if such advancing involved the carrying On of an activity for profit, if the income was applied wholly for the purposes of the institution and either the business was carried on in the course, of the actual carrying out of a primary purpose of the institution or the work in connection with the business was mainly carried on by the beneficiaries of the institution. This is the significant change brought about by the 1961 Act. But, we are unable to accept the submission made by Mr. Ram- murthi on behalf of the revenue that by reason of the change brought about by the Act of 1961 in the definition of the expression 'charitable purpose', the judgment of the Kerala High Court in Dharmodayain (supra) is not good law and that the decision therein cannot any longer govern the question whether income received by the assessee by conducting the kuries is exempt from taxation. The entire argument is built around the words "advancement of any other object of general public utility not involving the, carrying on of any activity for profit" which occur in the definition of "charitable purposes" contained in section 2(15) of the Act of 1961, particular emphasis being laid by counsel on the expression not involving the carrying on or any activity for profit". This argument assumes that the respondent is running the kuries as a matter of advancement of an object of general public utility. If that were so, it would have been necessary to inquire whether conducting the kuries business involved the carrying on of any activity for profit. The answer, perhaps, to that inquiry might have been in the affirmative since, speaking generally, the conduct of a business involves the carrying on of an activity for profit. But the assumption that the respondent is running the kurie business as a matter of advancement of an object of general public utility or for that purpose is plainly contrary to the finding of the Kerala High Court in Dharmodayam (supra) that the kurie "business itself is held under a trust for religious or charitable purposes". It is a necessary implication of this finding that the business activity was not

undertaken by the respondent in order to advance any object of general public utility. The decision of the Kerala High Court was challenged by the revenue in an appeal filed in this Court, but that appeal was withdrawn by it. The relevant legislative provision has certainly undergone a change, but the nature of the respondent's activity remains what it was when the Kerala High Court gave its judgment in Dharmodayam. It will, therefore, be erroneous to say, as contended by Mr. Rammurtbi on behalf of the revenue, that the Kerala judgment has lost its validity. That judgment, in our opinion, concludes the point that the kurie business is not conducted by the respondent in order to advance or for the purpose of advancing any object of general public utility.

Nothing really turns on the respondent's Articles or Association or on the circumstances that article 39 was amended in 1963 after the High Court gave its judgment on December 30, 1961. Article 39, as it then stood, has been set out at page 480, para 9, of the High Court's judgment in Dharmodayam. The present article 39 reads thus :

> "The profits of this company shall not be divided among the members. From the annual net profits from the working of the company, such proportion as the General Meeting may deem fit may be set apart towards a reserve fund for the stability of the Company and towards a reserve for bad debts and the balance of the profit may in accordance with the object in the memorandum be spent on charity, education, industry and other purposes of public interest."

It is undisputed that the respondent company, which was registered on January 21, 1959 under the Cochin Companies Act, has never engaged itself in any industry or in any other activity of public interest. It is notorious that the memoranda and articles of association of companies usually cover a variety of activities, only a few of which are in fact undertaken or intended to be undertaken. That obviates the necessity for applying for amendment of the articles from time to time and helps rule out a possible challenge on the ground that the company has acted beyond its powers in undertaking a particular form of activity. The only activity in which the respondent is engaged over the years is the conduct of kuries. On this aspect of the matter the High Court rightly observes : "There is no case that Dharmodayam Company ever started any industry; there is also no ground for saying that the object of the Company was to start an industry for the purpose of making profit". (1) We, may now notice some of the decisions cited at the bar. In C.I.T. Kerala v. P. Krishna Warrier(2), it was held by this Court in a case which arose under section 4(3) (i) of the Act of 1922 that clause (b) of the proviso to the section which spoke of income derived from "business carried on behalf of a religious or charitable institution" did not apply to cases in which the business itself was held in trust. Speaking for the Court, Subba Rao J. observed that if business is property and is held under trust, the case would fall squarely under the substantive part of clause (i) and in that event, clause (b) of the proviso cannot be attracted since, under that clause of the proviso, the business mentioned therein is not held under trust but is one carried on behalf of a religious or chirtable institution. The importance of this decision is two-fold. In the first place, it places in a proper light the decision of the Kerala High Court to Dharmodayam (supra) by showing that the High Court having held in that case that the kurie business was itself held by the respondent in trust, there was no scope for saying that the business was carried on on behalf of any religious or charitable institution. Therefore, despite the change brought about by the Act of 1961 by framing a new definition of 'charitable

purpose', a busness which was held in trust cannot by mere reason of the amendment become a business started for the purpose of advancing an object of general public utility. The second aspect on which the decision in Krishna Warrier (supra) is important is that the judgment of the Kerala High Court in Dharmodayam was referred to by this Court approvingly. Counsel for the revenue, however, relies on a subsequent judgment of the Kerala High Court in C.I.T v. P. Krishna Warrier(3) in (1) 94 I.T.R. 113, 119.

(2) 53 T.T.R. 176.

(3) 84 I.T.R. 119.

which the impact of section 2(15) of the Act of 1961 had to be considered. This case arose out of identical facts as the decision of this Court in 53 ITR 176, which we have discussed above. After referring to the judgment of this Court in the, earlier case, the Kerala High Court took the view that the income in respect of which exemption was claimed was not excludable from the total income of the assessee since the assessee had commenced a business for the purpose of advancing an object of general public utility involving the carrying on of an activity for profit. He main argument advanced before the Kerala High Court was that the true purpose of the business, as gleaned from all the circumstances of the case, was to afford medical relief and not the advancement of an object of general public utility. The High Court rejected that argument and held that the preparation and sale of Ayurvedic medicines cannot be said to be an activity in the nature of medical relief. As explained earlier, in the instant case the last clause of section 2(15) of the Act of 1961, which is described in various judgments as the fourth category falling within the terms of that section, has no application.

The decision of this Court in East India Industries (Madras) Private Limited v. C.I.T. Madras(1) arose out of similar facts as the Kerala judgment in Warrier (supra). It was held by this Court that the carrying on of a business of manufacture, sale and distribution of pharmaceutical, medicinal and other preparations was neither charitable nor religious in character and since the trustees could, under the deed, validly spend the entire income of the trust on such nonchargeability objects, the assessee was not entitled to claim deduction under section 15B of the Act of 1922 in respect of donations received by the trust. In Sole Trustee, Loka Shikshana Trust v. C.I.T Mysore(2), it was held by this Court that though a number of objects, including the setting up of educational institutions, were mentioned in the trust deed as the, objects of the trust, at the relevant time the trust was occupied only in supplying the Kannada speaking people with an organ or organs of educated public opinion. This, according to the Court, was not 'education' within the meaning of section 2(15) of the Act of 1961, which expression was to be understood in the sense of systematic instruction, schooling or training. Learned counsel for the revenue relies strongly on the observation of Khanna J. at page 242 of the report that, as a result of the addition of the words "not involving the carrying on of any activity for profit" at the end of the definition in section 2(15) of the Act of 1961, even if the purpose of the trust is 'advancement of any other object of general public utility, it would not be considered as a charitable purpose unless the purpose does not involve the carrying on of any activity for profit. This has no application in the instant case since, the business of kuries was not started by the respondent with the object or for the purpose of advancing an object of general public utility.

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

(2) 101 T.T.R. 234.

32 7 This judgment will be incomplete without a close and careful consideration of the decision of this Court in Indian Chamber of Commerce v. C.I.T. West Bengal 11(1) on which counsel for the revenue has placed the greatest reliance. That is understandable, because the judgment of the High Court which is now under appeal before us and which is reported in 94 ITR 113, was specifically brought to the notice of the Court in Indian Chamber of Commerce(1) and was criticised therein as applying the wrong test. It is urged on behalf of the revenue that the three-Judge Bench, having already overruled the judgment in appeal before us, there is nothing left for us to do save to allow this appeal filed by the revenue. Having given our most anxious and respectful consideration to the judgment in Indian Chamber of Com- merce,(1) we find ourselves unable to accept this submission. The Memorandum and Articles of Association of the assessee in that case, the Indian Chamber of Commerce, indisputably showed that the Chamber was to undertake activities for the purpose of advancing objects of general public utility (p. 799). The Chamber received income, amongst other sources, from : (a) arbitration fees, (b) fees collected for the certificates of origin, and (c) share in the profit made by issuing certificates of weighment and measurement. The bone of contention was whether this income was excludible under section 1 1 (1) (a) read with section 2(15) of the Act of 1961. As said by Krishna Iyer J., (p.

799), who spoke for the Court, the straight question to be answered was whether the three activities which yielded profits to the Chamber involved the carrying on of any activity for profit. Observing that the various chambers of commerce were established in the country in order to promote the trading interests of the commercial community (p. 802), the Court held that by the new definition in section 2(15), the benefit of exclusion from total income was taken away where in accomplishing a charitable purpose the institution engages itself in activities for profit (p. 803). In other words, " section 2(15) excludes from exception the carrying on of activities for profit even if they are linked with the objectives of general public utility, because the, statute interdicts, for purposes of tax relief, the advancement of such objects by involvement in the carrying on of activities for profit" (p. 805). After so holding, the Court referred to the decision of this Court in Loka Shikshana Trust (supra) and observed :

> " Among the Kerala cases which went on the wrong test we wish to mention one, Dharmodayam. The assessee-company was conducting a profitable business of running chit funds and its memorandum of association had as one of its objects 'to do the needful for the promotion of charity, education and industry'. The court found it possible on these facts to grant the benefit of section 2(15) by a recondite reasoning. If this ratio were to hold good, businessmen have a highroad to tax avoidance. Dharmodayam shows how dan- gerous the consequence can be if the provision were misconstrued." (pp. 807-808). This is square and scathing comment on the judgment now in appeal before us and the Court has expressed its view in unequivocal language.

(1) 101 I.T.R. 796.

But we cannot accept that the Court "overruled", as stated in the head-note of the report (p. 797), the judgment of the Kerala High Court and that we must, without considering the facts of the case, allow the appeal straightaway. The facts of the instant case were not before the Court in Indian Chamber of Commerce (supra) and it is evident from the passage extracted above that the test applied by the Kerala High Court was held to be wrong on the assumption that the case fell under the last clause of section 2(15) of the Act of 1961, which was the only part of section 2(15) relevant for deciding the Indian Chamber of Commerce case (supra). Considering further that the word 'industry' has been italicised in the passage extracted above, it is plain that the Court assumed that the assessee was engaged in running an industry. We have endeavored to point out that, on the facts of the case, it is impossible to hold that the last clause of section 2(15) has any application and that, in the light of the activities of the respondent spread over the past several years, no importance can be attached to clause 39 of its Articles of Association which enables it "to do the needful for the promotion of ... industry". With great deference, therefore, we are unable to read the decision in Indian Chamber of Commerce (supra) as overruling the judgment which is under appeal before us. The Court was not even apprised there that this appeal was pending against the decision of the Kerala High Court.

We are therefore of the opinion, strictly limiting ourselves to the facts of the case and for the reasons mentioned above, that the income derived by the assessee from the kuries is exempt from taxation under section 1 1 (1) (a) of the Act of 1961.

The second question presents no difficulty. The apprehension that in exercise of the power conferred by article 39 of the Articles of Association, the General Meeting may set apart the entire profit or a substantive part of it for reserves is unfounded. If and when the affairs of the respondent take that shape, the Department will have ample powers and opportunity-to deny the exemption to the respondent. For Power time being it is enough to state that the High Court has found that the respondent has spent the income for charitable purposes. The answer to the second question must, therefore, be that the power to set apart reserves under article 39 will not, without more, vitiate the charitable nature of the institution. Accordingly, we confirm the High Court's judgment and dismiss the appeals. The appellant shall pay the respondent's cost in one set.

P.B.R. Appeals dismissed.

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