Bombay High Court
Vidarbha Housing Board vs Income-Tax Officer, City And ... on 18 February, 1972
Equivalent citations: 1973 92 ITR 430 Bom
Author: Tulzapurkar
Bench: M Joshi, V Tulzapurkar
JUDGMENT Tulzapurkar, J.

1. By this writ petition filed under articles 226 and 227 of the Constitution, the petitioner, Vidarbha Housing Board, Nagpur, is seeking to challenge the validity and or legality of the notice dated 6th March, 1968, issued by the Income-tax Officer, City circle and Refunds, Nagpur (being annexure "A" to the Petition). The impugned notice is sought to be attacked as being without jurisdiction and in excess of authority of the officer concerned, and the circumstances in which the challenges is made may be stated.

2. The petitioner, that is, the Vidarbha Housing Board, Nagpur, is a body corporate having been established under the Madhya Pradesh Housing Board Act, 1950 (Act NO. XLIII of 1950). It appears that initially under the said Act a common housing board both for Vidarbha region and Mahakoshal region was constituted by the name of Madhya Pradesh Housing Board. Later on, under another Act called the Madhya Pradesh Statutory Bodies (Regional Constitution) Act, 1956, the Madhya Pradesh Housing Board. which has been established for whole of Madhya Pradesh, was dissolved and in its place two regional boards were established, one being the petitioner before us and the other for Mahakoshal region. The petitioner, that is, the Vidarbha Housing Board, has thus been established for 8 districts of Vidarbha region of the State of Maharashtra.

3. The Madhya Pradesh Housing Board Act, 1950, was an enactment intended to provide measures to be taken to deal with and satisfy need of housing accommodation and under section 3 of that Act initially the Madhya Pradesh Housing Board was incorporated which, as stated earlier, was dissolved and in its place two boards, one for Vidarbha region and the other for Mahakoshal region, came to be established. Principally, the petitioner-board was established for the purpose of undertaking works in any area of Vidarbha region for the framing and execution of housing schemes. In the matter of discharging its function of providing housing accommodation for the people of Vidarbha region in accordance with the housing schemes made or framed by it, the petitioner-board had its own funds which were principally received from the Central or the State Government in the shape of grants, subventions, donations, gifts of loans. It further appears that the activities of the board, which are directly subject to the control of the State Government could be classified in 4 or 5 categories as under :

(a) Construction of houses for industrial workers and their allotments under the Government of India subsidised housing scheme for industrial workers;

(b) Construction of houses for low income group and their allotment to such persons on hire purchase basis as per regulations framed by the board;

(c) Advancing of loans to various statutory bodies, local bodies and co-operative housing societies under the subsidised housing schemes of the Government of India and recovery of such loans; and

(d) Construction of houses for middle income group and their allotment to such persons on hire purchase basis as per the regulation framed by the board, keeping in view the provision of the middle income group housing scheme and low income group housing scheme of the Government under five years plan (housing).

4. It appears that the petitioner-board engaged itself in the construction of several housing works and also further indulged in granting loans to various statutory bodies, local bodies and co-operative housing societies.

5. It appears that on October 7, 1967, respondent No. 1 (Income-tax Officer, city and Refund Circle, Nagpur), issued a summons under section 131 of the Income-tax Act, 1961 directing the petitioner to furnish information as per annexure to the summons in respect of the activities of the board. Pursuant to this summons, the petitioner submitted detailed information as required by respondent No. 1 from time to time. Thereafter, on 6th March, 1968, respondent No. 1 issued notice to the petitioner-board under section 148 read with section 147 of the Act directing the petitioner to submit a return a income in the prescribed form for the assessment year 1959-60, on the ground that the income of the petitioner-board, which was chargeable to tax for the said assessment year, had escaped assessment within the meaning of section 147 of the Act. It is this notice that was received by the petitioner-board that is being challenged by the petitioner board before us by the present writ petition.

6. Mr.Thakar appearing for the petitioner-board has challenged the impugned notice on 3 or 4 grounds. In the first place, he contended that the income and the property of the petitioner-board really the income and property of the State Government, the board being merely an agent through the instrumentality of which it was the State Government which was discharging its functions pursuant to the Directive Principles of state policy contained in Part IV of the constitution and, as such, the income which was sought to be brought under taxation was immune from Union taxation under articles 289(1) of the constitution. Secondly, he contended that the income received by the board by way of rental from house properties and by way of interest from Government securities and form fixed deposits kept in banks was income derived from property held under trust or other legal obligation wholly or for charitable purposes and, as such, the same was exempt under section 4(3)(i) of the Indian Income-tax Act, 1922, or under section 11 of the present Income-tax Act, 1961. (The relevant provision applicable for the assessment year concerned was the provision of section 4(3)(i) of the Indian Income-tax Act, 1922). Thirdly, he contended that the impugned notice issued by respondent No. 1 under section 148 read with section 147 of the Act was in excess of the authority of respondent No. 1 or beyond his jurisdiction inasmuch as no reasons for issuing that notice had been recorded or had been furnished to the petitioner while issuing the said notice. Lastly, he contended that there was really no income left in the hands of the petitioner-board for the relevant assessment year inasmuch as it had always been a losing proposition for the petitioner board when they had undertaken the various activities in pursuance of the housing schemes framed by it; in other words, the expenditure was always in excess of the receipts and, as such, there was no taxable

income with the petitioner-board which could be brought to taxation.

7. On the other hand, in the return filed on behalf respondent No. 1 it has been contended that the income that was sought to be taxed was the income of the petitioner-board which was a separate legal equity and was not the income of the State Government nor income from property of the State Government nor income from property of the State Government at all and, as such there was no question of any immunity being enjoyed by the petitioner board under article 289(1) of the Constitution. So, far as the exemption claimed under section 4(3)(i) of the Indian Income-tax Act, 1922, is concerned, it has been pointed out that this would be primarily a matter for the Income-tax Office to decide and in the assessment proceeding the petitioner-board could claim such exemption and it was up to the Income-tax Officer to adjudicate thereon. It has been further pointed out that the question whether the exemption could be allowed under section 4(3)(i) of the 1922 Act involved consideration of legal as well as factual aspects and, as such, it required investigation into facts and without such investigation which could be done in the assessment proceedings that were intended to be initiated, the claim for exemption could not be considered and, therefore, this court should not interfere with the normal assessment proceeding that were being undertaken by the Income-tax Office pursuant to the notice issued. As regards the suggestion that no reasons had been recorded before issuing the notice, it has been pointed out that actually reasons were recorded by the Income-tax officer and even the sanction of the Commissioner was obtained inasmuch as the proceeding that were being initiated related to a period beyond the four year's period; it has been contended however that in law all that was required to be done was that before issuing the notice under section 148 read with section 147 of the Income-tax Act, 1961, the Income-tax Officer was obliged to record reasons and there was no obligation to furnish the said reasons to the petitioner-board. As regard the last contention, it was pointed out by the counsel for the respondent No. 1 that this essentially pertained to a scrutiny of the return that would be filed by the petitioner board pursuant to the notice issued to it and the petitioner-board could be property decided by the Income-tax Officer and was not a question over which this court could express one view or the other in the absence of materials being placed before it.

8. In our view, the real substantial question which arises for determination in the case pertains to the immunity claimed by the petitioner-board under article 289(1) of the Constitution, whereas the other contentions would be said to properly fall within the jurisdiction of the Income-tax Officer and since for deciding those points investigation into facts would be required, it would not be proper for this court to entertain those contentions in writ jurisdiction.

9. Turning to the principal contention urged before us by Mr. Thakar, it may be pointed out that the immunity is claimed under article 289(1) of the Constitution which runs as follows :

"289. (1) The property and income of a State shall be exempt from Union taxation."

10. The short question, therefore, that has to be answered is whether the income from property of the petitioner-board could be said to be the income from property of the State of Maharashtra and the answer to the question must depend upon the examination of the relevant provisions of the Madhya Pradesh Housing Board Act, 1950. On the one hand it has been contended by Mr. Thakar

before us that having regard to some of the provisions of the aforesaid Act it would appear that the petitioner-board was nothing but an agent or instrumentality the rough which the State Government was discharging one of its functions which has been enjoined upon it by the Directive Principles of State Policy enshrined in Part IV of the Constitution, and if that were so, the property and income of the board would be the property and income of the State Government and as such would be exempt from Union taxation in view of article 289(1). On the other hand, counsel for the respondent No. 1 urged that some of the sections clearly showed that the board was distinct and a separate entity from the State Government itself, that the board could hold its own properties and derive income and the though its activities were controlled by the State Government its distinct entity was maintained and that it was not acting either as an agent of the State government or as any instrumentality acting on behalf of the State Government while discharging the functions enjoyed upon it by the Act. These rival contentions will have to be considered in the light of the relevant provisions that are to be found in the Act.

11. Section 3 of the Madhya Pradesh Housing Board Act, 1950, enacts that with effect from such date as the State Government may, by notification, appoint in that behalf, there shall be established a board by the name of the Madhya Pradesh Housing Board (which has eventually been dissolved and tow boards in its place, one for Vidarbha region and the other for Mahakoshal region, came to be established). Section 3(2) clearly provides that the boards shall be a body corporate having perpetual succession and common seal with power to acquire property, both movable and immovable, and shall by the said name sue and be sued, while section 3(3) provides that the board shall be deemed to be a local authority for the purposes of the Land Acquisition Act, 1894. In other words, section 3 of the Act clearly shows that the petitioner board has been constituted a body corporate having perpetual succession and common seal and as such it would be distinct legal entity apart from the State Government. Section 4 provides for the constitution of the board and indicates who shall be members of the board, who inter alia, include representatives of state legislature and representatives of other local bodies. Section 5, 6, 8, 9 and 10 deal with the terms of office and conditions of service of the members, how the vacancies could be filled and the manner in which the business of the board should be contended by it. Sections 12 and 13 are rather important. Section 12 provides that the board shall have its own fund and may accept grants, subventions, donations, gifts or loans form the Central or the state Governments or a local authorities or any individual or body whether incorporated or not for all or any of the purposes of the board and section 13 provides that all property, fund and all other assets vesting in the board shall be held and applied by it, subject to the provisions and for the purposes of the Act. The provisions of these two sections make it very clear that the board which is a distinct legal entity will have property and assets of its own and all property, fund and other assets shall stand vested in the board and the board is enjoyed with a duty to apply the funds and assets only for the purpose of the Act and for no other purpose. Section 12 clearly indicates that the board can have loans from the Central or State Governments or local authorities. In other words, it can borrow loans from the State Government over which naturally it has to pay interest to the State Government. Section 14 empowers the board to make contracts that may be considered necessary or expedient for carrying out any of the purposes of the Act. Chapter II of the Act deals with housing schemes which are required to be framed and undertaken by the board. Under sections 18 and 19 provision has been made for acquisition of property for the purposes of the board and payment of compensation in respect of property thus acquired for it.

chapter III deals with acquisition and disposal of lands by the board power has been conferred upon the board to enter into an agreement or agreements with person or persons for the acquisition from him or them by purchase, lease or exchange of any land which is needed for the purpose of housing scheme; similarly, power has been given to the board, subject to the rules framed by the State Government, to dispose of its land. Then comes Chapter IV which deals with miscellaneous matters. Under section 27 power has been conferred upon the board to borrow sums required for its purpose with the previous sanction of the State Government and subject to the provisions of this Act. Section 28 provides for maintenance of proper accounts and audit thereof by person authorised by the State Government in that behalf. Section 32-A provides that all moneys due to the board may be recoverable as arrears of land revenue. Section 33 empowers the State Government to frame rules to carry out the purposes of the Act, while section 34 empowers the board, with the previous sanction of the State Government to make regulations touching the matters specified therein. Under section 39 protection has been given against any suit or prosecution or other legal proceeding being filed in respect of anything done in good faith and purported execution of the provisions of the Act. Section 40 is very material. It provides for dissolution of the board by the State Government by notification and it has been provided that no such dissolution could be made by the State Government unless a resolution in that behalf has been moved and passed to both the Houses of the State legislature. What should happen with regard to the assets and properties of the board after a dissolution has been provided for under sub-section (2) of section 40 and since, in our view, it is a very material provision, we would rather set it out verbatim. Section 40(2) runs as follows :

"40. (2) With effect from the date specified in the notification under sub section (1) -

(a) all properties, funds and dues which are vested in or realizable by the board shall vest in and be realizable by the State Government; and

(b) all liabilities enforceable against the board shall be enforceable against the State Government to the extent of the properties, funds and dues vested in and realised by the State Government."

12. From and examination of the various provisions of the Act, several aspects which have bearing on the issue involved become very clear. Mr. Thakar for the petitioner-board invited our attention to some aspects which according to him support his contention. In the first place, he pointed out that though the board was body corporate there was no provision in the Act empowering the board to raise any share capital which could be contributed either by the State Government or by any local authority or by private individuals, but all the funds and assets of the board were to be received by it in the form of grants, subventions, donations, gifts or loans from the Central or State Governments or local authorities of from any individual or body whether incorporated or not. Secondly, he pointed out that the provisions of the Act clearly showed that there was no question of the board making any profit for itself by undertaking the various activities enjoyed upon it by the Act; in other words, the activities enjoyed upon the board were not trading activities or activities of a commercial nature, but the activities were concerned with providing housing accommodation for the people in Vidarbha region for which housing schemes were required to be framed and executed and the board could utilise its funds and assets for construction of houses and could even make loans to other co-operative housing bodies, etc. Thirdly, he emphasised the fact that in all its activities-whether of

framing housing schemes and executing them or framing regulations or concerning financial matters-the board was under the supervision or direct control of the State Government. He also pointed out that the board has been deemed to be a local authorities for the purposes of the Acquisition Act. He further relied on the specific provision contained in section 32-A of the Act under which all moneys recoverable by the board either under the Act or under any agreement made by it have been made recoverable as arrears of land revenue and that for purposes of the recovery of such moneys the board has been deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890. Relying on these aspects or features, Mr. Thakar contended that the features emphasised by him were indicative of the fact that the board, though a statutory corporate body, will have to be regarded as an agent of the State Government through whose instrumentality the State Government was discharging its function of providing housing accommodation for the person living in Vidarbha region. He invited out attention to articles 38 and 47 appearing in Part IV of the Constitution; under the former article the State has been directed to secure a social orders for the promotion of welfare of the people, while under the latter article the state has been directed to raise the level of nutrition and the standard of living and to improve public health of its citizens. He pointed out that providing housing schemes for the persons residing in Vidarbha region would be one of the social activities which the State has been called upon to secure under the Directive Principles of State Policy and in order to discharge that function the petitioner-board was constituted under the Act through which agency the State was discharging its functions. In this situation he urged that the property and income of the board would be the property and income of the State of Maharashtra and, as such, the same was immune from Union taxation under article 289(1).

13. In our view, though it is true that the State has undoubtedly an obligation to promote the welfare of its citizens and providing housing accommodation would be one of the welfare activities of the State, the question is whether by constituting the petitioner board under the Madhya Pradesh Housing Board Act, 1950, a separate legal entity has been established undertaking the various activities on its own or whether the entity established is either a department of the State Government or an agent of the State Government acting on behalf of the State Government, for, it is obvious that if the activity undertaken is being performed by the petitioner board directly as the department of the State Government or as an agent acting on behalf of the State Government, it would be clear that the property and income of the board would be the property and income of the State Government, but if that be not the case and if the board under relevant provisions of the Act is a separate legal entity discharging functions enjoyed upon it on its own and not as an agent or department of the State Government, then clearly the immunity claimed by the petitioner board under article 289(1) of the Constitution would not be available to it. In our view, with the possible exception of the provision contained in section 32A, none of the other features pointed out by Mr. Thakar shows at all that the board is a department of the State Government or is its agent and even the provisions of section 32A dones not indicate that. Under that section all moneys recoverable by the board under the Act or under any agreement are declared to be recoverable as arrears of land revenue and Mr. Thakar urged that this provision showed that the board will have to be regarded as recoveries of the State Government, otherwise these would not have been made recoverable as arrears of land revenue. In our view, it is not possible to accept this submission of Mr. Thakar, for, all that section 32A provides for is merely indicate a mode a recovery and simply because a

particular mode of recovery which is generally available to the State Government for making its recoveries has been made available to the board for making its recoveries, it cannot mean that the said recoveries becomes recoveries of the State Government or that the recoveries made by adopting that particular mode become recoveries made by the board for and on behalf of the State Government. Similarly, the provision under which the board has been deemed to be a local authority for the purposes of the Land Acquisition Act could not be suggestive of an inference which would favour or support the petitioner's contention. In fact, the provision contained in section 3(3) is a deeming provision which implies that but for the said provision the board would be not a local authority, and what is more, it has been declared local authority for the purposes of certain enactment, namely, the Land Acquisition Act, which only facilitates acquisition of properties for the board. The features that the board as a corporate body has no power to raise share capital or that its activities are not of trading or commercial nature or that the element of profit-making is absent may have some relevance on the point whether its income will attract exemption under section 4(3)(i) of the 1922 Act, but from these features no inference could be drawn that the board is a mere department of the State Government or its agent. It is true that under the Act the board while discharging its functions does so under the general supervision and control of the State Government but that by itself cannot lead to the necessary inference that the board is a department or agent of the State Government. As against this, there are several provisions in the Act which support Mr. Manohar's contention for the 1st respondent.

14. In the first place, as we have stated in the earlier part of the judgment, the very constitution of the board under section 3 of the Act clearly shows that the board on its incorporation shall be a body corporate having perpetual succession and common seal. This provision clearly shows that prima facie the board is statutory entity distinct from the State Government. Even the constitution of the board which has been provided for by section 4 clearly shows that some members of the board could be nominated by the Speaker of the Legislative Assembly and by the State Government. The provision contained in section 12 of the Act would be a clear pointer to the board being a separate entity distinct from the State Government. Under that section the board shall have its own fund and such fund is to get augmented by acceptance of grants, subventions, donations or gifts as well as loans from the Central or the State Governments and obviously the board would be paying interest on such loans. Now, if the board were the department of the Government or an agent undertaking various activities for and on behalf of the Government, no provision would have been made enabling the board to borrow loans from the State Government or to pay interest thereon to the State Government, for, it is inconceivable that a party would by interest to itself. This provision, in our view, is a clear pointer to the fact that the Board is a distinct entity apart from the State Government and not department or an agent of the State Government. On the other hand, this provision clearly suggests that the board is a separate entity, possesses its own property, assets or funds and undertakes the various activities on its own account. The other provision which, in our view, is of a clinching character is the one to be found in section 40(2) of the Act. That provision indicates as to what should happen to the property and assets of the board upon its dissolution being made by the State Government. Under sub-clause (a) of sub-section (2) of section 40 it is provided that with effect from the date specified in the notification under sub-section (1), all properties, funds and dues which are vested in or realizable by the board shall vest in and be realizable by the State Government. If the board was acting as department of the State Government or was merely as agent

undertaking the activities for and on behalf of the State Government, it was utterly unnecessary to make the provision of the type indicated above. The very fact that provision has been made in section 40(2)(a) that upon the dissolution of the board all properties funds and dues recoverable by the board shall vest in the Government clearly shows that the board is a distinct entity and is not an agent or a department of the State Government. Similarly, section 40(2)(b) is further indication in the same direction. It provides that all liabilities enforceable against the board shall be enforceable against the State Government but only to the extent of the properties, funds and dues vested in and realised by the State Government. In other words, upon the dissolution of the board if the board is found to have created liability in excess of its assets or properties and funds which shall vest in the State Government, then the State Government is not responsible for such excess liabilities incurred by the board. If the board were merely acting as a department of the State Government or as an agent of the State Government, then the State Government would have been liable for all the liabilities created by the board. These provisions, in our view, run counter to the contention urged by Mr. Thakar before us that the petitioner-board, when it under took the activities enjoined upon it by the Act, did so either as a department of the State Government or as an agent of the State Government acting on behalf of the State Government. On the other hand, these provisions clearly show that the petitioner-board is a separate statutory body distinct from the State Government and it has been undertaking the activities enjoined on it not as an agent of the State Government but on its own. If that the position which really emerges from examination of the several provisions of the Act, it seems to us very clear that the income and property of the board could not be regarded as income and income and property of the State Government, with the result that the immunity claimed by the petitioner-board under article 289(1) of the Constitution is clearly not available to the petitioner-board. In our view, therefore, on an examination of the provisions of the Act, the contention raised by Mr. Thakar must fail.

15. In this context it would not be out of place to refer to the judgment of the Supreme Court in the case of Andhra Pradesh State Road Transport Corporation v. Income-tax Officer. In that case a similar question based on the provisions of the article 289(1) of the Constitution was raised and immunity from Union taxation thereunder was claimed by the Andhra Pradesh State Road Transport Corporation, and on an examination of the relevant provisions of the Road Transport Corporation Act, 1950, under which the Andhra Pradesh State Road Transport Corporation was constituted the court came to the conclusion that the trading or business activity that was being carried on by the Andhra Pradesh State Road Transport Corporation was not carried on by that corporation either as department of the State Government or as an agent on behalf of the State Government, but the corporation indulged in concerned trade or business activity on its own and it was held that the immunity claimed by that corporation under article 289(1) of the Constitution was not available to it. In that case there were provisions of that Act which showed that the bulk of the capital necessary for the establishment of the corporation had been contributed by the State Government, a small portion by the Central Government and a few shares were held by some individuals; the provisions of the Act also indicated that the activity of the corporation was controlled by the State and in particular there was a provision to be found in section 30 of the Act for making over surplus receipts to the State Government after disbursements indicated in sections 28 and 29 had been made and, notwithstanding these features, which emerged from the provisions of the Road Transport Corporations Act, 1950, the Supreme Court took the view that the other

features emerging from the examination of the other provisions of the Act showed that the Andhra Pradesh State Road Transport Corporation was a distinct statutory corporation and the property and income thereof were not the property and the income of the State Government and as such the immunity from Union taxation under article 289(1) of the Constitution could not be claimed by that corporation. It is true that some distinguishing features would be noticed if the provisions of the Madhya Pradesh Housing Board Act, 1950, are exclaimed in the context of the provisions which obtained in the Road Transport Corporations Act, 1950, but, in our view, the distinguishing features which were pointed out by Mr. Thakar could not be regarded as having any bearing on the question which is required to be considered in this case by us; for example, it was pointed out by Mr. Thakar that whereas under the Road Transport Corporations Act, 1950, there was provision for raising a share capital which could be subscribed by private individuals, there was not such provision for raising any share capital for the petitioner-housing board, under the Madhya Pradesh Housing Board Act, 1950; it was also pointed out that there was a glaring difference between the nature of activity undertaken by the Andhra Pradesh State Road Transport Corporation and the nature of activity undertaken by the petitioner-board, as, for instance, the activity undertaken by the former entity was in the nature of trading activity, while the activity undertaken by the petitioner-board could not be regarded as any trading activity in any sense of the term; further, it was pointed out that since profit motive was absent in the instant case before us, there was no question of making any provision for making over surplus receipts to the State Government which was feature which appeared clear under section 30 of the Road Transport Corporations Act, 1950. In the first place, in spite of the aforesaid peculiar features which obtained under the Road Transport Corporations Act, 1950, the Supreme Court took the view that the A. P. State Road Transport Corporation was distinct entity. Secondly, as stated earlier, the distinguishing features mentioned by Mr. Thakar may be relevant on the point of attracting the exemption under section 4(3)(i) and not on the issue which has been raised. The principal question involved both in that decision as well as in the case before us has been whether the income and the property of the board could be regarded as the income and property of the State Government and on that question the provisions of the Madhya Pradesh Housing Board Act, 1950, especially provisions of sections 3, 4, 12 and 14, clinchingly indicate that the petitioner-board cannot be regarded as department or an agent of the State Government and will have to be regarded as separate legal entity distinct from the State Government, and, therefore, the income and property of the board could not be regarded as the income and the property of the State Government. In other words, the relevant provisions concerning a particular entity established under a particular enactment would have to be considered for deciding the question and, in our view, as stated earlier, the provisions of the Madhya Pradesh Housing Board Act, 1950, clearly indicate that the board, its property and income cannot be regarded as property and income of the State Government. In this view of the matter, we feel that the principle enunciated in the Supreme Court's decision in the case of Andhra Pradesh State Road Transport Corporation, would be applicable to the instant case before us and on an analysis of the provisions of the concerned Act before us, we have come to the conclusion that the property and income of the board is not the property and income of the State Government. Mr. Thakar's contention, therefore, must fail.

16. Mr. Thakar then contended that the petitioner-board was entitled to an exemption under section 4(3)(i) of the Indian Income-tax Act, 1922, inasmuch as the income derived by way of rental of house properties and by way of interest on Government securities and fixed deposits and loans

advanced will have to be regarded as income derived from property held by the board under a trust or legal obligation wholly for charitable purpose inasmuch as the dominant object of the activities undertaken by the board under the statute constituting it was nothing but an advancement of the object of general public utility. According to Mr. Thakar, if regard be had to the provisions of the Madhya Pradesh Housing Board Act, 1950, particularly the provisions of sections 12 and 13, it would be clear that the dominant object of the board was to hold properties and funds for the purpose of advancement of the object of general public utility, namely, providing housing accommodation to the citizens in Vidarbha region. It is true that on a reading of the provisions of the Act, prima facie, it does not appear that the object with which the properties are held by the board is an object whereby the purpose of general public utility are served, but for deciding the question as to whether exemption under section 4(3)(i) of the Income-tax Act could be claimed by the board in respect of the income derived from its property and funds or not, it is obvious that the petitioner-board's case must fall within that provisions as has been explained by the various decisions of the various courts on the point. In this behalf it would be useful to refer to the relevant observations of the Supreme Court in the case of Commissioner of Income-tax v. Andhra Chamber of Commerce. The material portion of the relevant head-note runs as follows :

"Held, ...

(iii) That the expression "object of general public utility" was not restricted to objects beneficial to the whole of mankind. An object beneficial to section of the public was an object of general public utility. To serve as a charitable purpose, it was not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country or province. It was sufficient if the intention was to benefit a section of the public as distinguished from specified individuals. The section the community sought to be benefit must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature : where there was no common quality uniting the potential beneficiaries into a class, it might not be regarded as valid."

17. Now, before the question could be answered in favour of the petitioner-board that the board could claim exemption under section 4(3)(i) of the 1922 Act, it is absolutely essential to find out upon an investigation of facts as to whether the section of the community sought to be benefited by the various housing schemes that were undertaken by the board was sufficiently defined and identifiable by some common quality of the public or impersonal nature and unless this was found upon, it would not be possible for either the taxing authority or even this court to come to the conclusion whether the exemption could be granted to the board and this is exactly what has been contended by the counsel on behalf of respondent No. 1 before us. Mr. Manohar appearing for respondent No. 1 urged that there were two aspects of the matter : first, whether exemption could be claimed because the petitioner-board's case could fall within the aforesaid observations of the Supreme Court or not and, secondly, whether even if it were regarded as party entitled to such an exemption, what portion of its income was actually applied to the charitable purpose will have to be investigated into, because under section 4(3)(i) only such part of the income as is applied for charitable purposes or to carry out the object of general public utility that is entitled to be exempted from computation of income and on both these aspects of the matter, unless investigation was made, it would not be possible for this court to come to the conclusion that the petitioner-board was

entitled to the exemption claimed. According to Mr. Thakar, this was case where a cross-section of community which was the sought to be benefited by the housing schemes which were undertaken by the board was definite cross-section of the public for whom the benefits have been intended to be given; however, by merely asserting this position it would not be possible to come to any definite conclusion on this aspect. It is true that in the statement of reasons which were recorded, a copy of which has been now made available to the court as well as the petitioner-board in the proceedings before us, the Income-tax Officer has nowhere indicated that he had reason to believe that income has escaped assessment on the factual aspect of the matter; the statement of reason which made him form the requisite opinion required under section 148 is of a general character. But, indisputably, this is a case where no return under section 22 of the 1922 Act had been filed and, as such, if on the prima facie view of the matter the Income-tax Officer felt that the board was an entity whose income chargeable to tax has escaped assessment it could be said that the opinion which he formed was clearly warranted by the facts which obtained in the case. It may be stated that for two assessment years 1961-62 and 1962-63, the petitioner-board had by filing limited returns claimed refund from the income-tax department, but, admittedly, no regular returns under section 22 of the Act had been filed, but pursuant to the summons issued by the Income-tax Officer under section 131 of the 1961 Act the necessary information that was called for had been furnished by the petitioner-board. In other words, certain definite information was in the possession of the Income-tax Officer and on a prima facie view which he had taken that the board's income was chargeable to tax, it was clear that since no regular return had been filed, income could be said to have escaped assessment. However, as stated earlier, these questions both on the legal aspect as well as on factual aspect will have to be gone into for which investigation will have to be undertaken by the Income-tax Officer before exemption claimed under section 4(3)(i) could be allowed to the petitioner-board and that is exactly what will be done by the Income-tax Officer in the proceedings which had been initiated under the impugned notice under section 148 of the Act. In the circumstances, we do not think that this is a fit case where we should resort to writ jurisdiction as sought by the petitioner-board.

18. Mr. Thakar brought to our notice two aspects which he wanted to press into service. In the first place, he has invited our attention to a communication dated 13th May, 1965, addressed by the Under-Secretary, Central Board of Direct Taxes, to the Under-Secretary to the Government of Maharashtra, Urban Development and Public Health Department, whereunder request for exemption from payment of income-tax by the petitioner-board had been rejected on the ground that the test laid down by the decided cases of there being common quality uniting the potential beneficiaries into a class was not satisfied in the case of the petitioner-board. Relying upon this communication, Mr. Thakar urged that here was decision of the Central Board of Direct Taxes, the highest executive authority in taxation matters, on the point at issue and he urged that in view of section 119 of the Income-tax Act, 1961, and this decision of the Central Board, it was highly improbable, if not impossible, that the Income-tax Officer while dealing with the case of the petitioner-board under section 4(3)(i) of the 1922 Act would grant exemption sought by the petitioner-board and it would be a case of driving the petitioner-board from Caesar to Caesar. It is not possible to accept to accept this contention of Mr. Thakar for the simple reason that all that the Central Board of Direct Taxes has been empowered to do under section 119 is to issue orders, instructions or directions to the lower authorities and all the officers and persons employed in the execution of the Act are required to observe and follow such orders, instruction directions of the

Board. But it is well settled that the Board's powers of administration, supervision and control, though extend to the whole of the department, the Board cannot, by issuing any directions or instructions, interfere with discretion which under the Act has been left with either the Income-tax Officer or the Appellate Assistant Commissioner, particularly in the matters which have to be judicially decided by these officers. Besides, the communication relied upon by Mr. Thakar is not a communication addressed by the Central Board of Direct Taxes to any officer of the income-tax department, but it is a communication addressed by the Central Board of Direct Taxes to the Government of Maharashtra whereby its opinion on the point is communicated to the State Government. On both these grounds, therefore, the apprehension entertained by Mr. Thakar is without any substance.

19. Mr. Thakar next invited our attention to another letter, dated 18th March, 1968, addressed by the respondent No. 1 to the petitioner-board in connection with the assessment year 1963-64. It appears that when the petitioner-board was called upon to submit its return for the assessment year 1963-64 pursuant to the notice under section 148 served on it, the petitioner-board by its letter, dated March 16, 1968, raised some preliminary objections, including objection that if at all there was any surplus of receipts over the expenditure, the same was not assessable to tax, in view of section 11 of the 1961 Act and it appears that these preliminary objections were dealt with by respondent No. 1 in his communication, dated 18th March, 1968, and it has been pointed out by Mr. Thakar that in paragraph 3 of the said communication, dated 18th March, 1968, respondent No. 1 has rejected the petitioner-board's preliminary objections raised under section 11 of the 1961 Act. He has pointed out that respondent No. 1 has stated that in view of the multifarious activities for profit, the board has engaged itself for profit and the income of the board was not covered by section 11 of the Income-tax Act, 1961. Respondent No. 1 has further stated the tests laid down by judgments of High Courts and the Supreme Court were not satisfied by the petitioner-board and, as such, the object of the petitioner-board not being dominantly charitable, exemption under section 4(3)(i) was not available. Mr. Thakar has, therefore, urged that by this communication respondent No. 1 could be said to have almost decide the issue against the petitioner-board and there would be no point asking the petitioner-board to approach the Income-tax Officer for the purpose of getting a decision on that very point in regard to the other assessment years.

20. After having gone through the entire communication, dated 18th March, 1968, we feel that the communication does not spell out any final decision made up by respondent No. 1 in the matter of granting exemption to the petitioner-board under section 4(3)(i) of the old Act or under section 11 of the new Act. It is true that in paragraph 3 of the communication he has expressed a certain view of his but it must be remembered that this view expressed by respondent No. 1 by way of a reply to a letter, dated 16th March, 1968, which was received by him from the petitioner-board raising some points by way of preliminary objections and the expression of opinion in the absence of any investigation into facts touching the question will have to be regarded as prima facie expression of opinion on the point. In fact, counsel for respondent No. 1 has successfully argued before us that the contention raised under section 4(3)(i) requires further investigation into facts at the hands of the Income-tax Officer and in the absence of such investigation bringing out relevant material on record, it would not be possible either for the Income-tax Officer or for this court even to decide the question at issue. We feel that having successfully argued this contention before us, it would be a

little incongruous for respondent No. 1 or his successor, who will be dealing with the case, to take view that the point is concluded by reason of the communication dated 18th March, 1968. In the circumstances, we are not impressed by the argument of Mr. Thakar that the view expressed in paragraph 3 of the said communication is in any manner final or conclusive and that because of such view having been expressed this court should decide the question in its writ jurisdiction. We trust that when the regular return is filed by the petitioner-board in the assessment proceedings that will be undertaken by respondent No. 1 or his successor, due enquiry will be made by him, both on the factual as well as on the legal aspects on the basis of which the petitioner-board will be claiming exemption under section 4(3)(i) of the 1922 Act or section 11 of the 1961 Act. Counsel for respondent No. 1 has made a statement at the Bar before us that the respondent, Income-tax Officer, who will be dealing with the case of the petitioner-board after return is filed pursuant to the impugned notice, will deal with the question of exemption claimed under section 4(3)(i) or section 11 of the Act uninfluenced by the prima facie view expressed in paragraph 3 of the communication dated 18th March, 1968.

21. The remaining two points need not detain us any longer. There is no denial of the fact the reasons, on the basis of which opinion was formed by the Income-tax Officer concerned, had been recorded and at the hearing of this petition before us even copies of these reasons had been furnished to the counsel for the petitioner-board, and, as such, the contention urged by Mr. Thakar in that behalf does not survive. As regards the contention that the petitioner-board is making loses and there is no surplus left after meeting the expenditure, it is clearly question which will have to be dealt with by respondent No. 1, Income-tax Officer, in the proper assessment proceedings before him.

22. In the result, we feel that each one of the contentions urged against the impugned notice must fail and the petition is liable to be dismissed. Rule is, therefore, discharged. The petitioner will pay to respondent No. 1 the costs of this petition in one set.