Supreme Court of India
Commissioner Of Income Tax, ... vs Bijli Cotton Mills (P) Ltd., ... on 7 November, 1978
Equivalent citations: 1979 AIR 346, 1979 SCR (2) 241
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
COMMISSIONER OF INCOME TAX, (CENTRAL) DELHI,NEW DELHI

Vs.

RESPONDENT:
BIJLI COTTON MILLS (P) LTD., HATHRAS., ALIGARH

DATE OF JUDGMENT07/11/1978

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
TULZAPURKAR, V.D.

CITATION:
1979 AIR 346 1979 SCR (2) 241
1979 SCC (1) 496

ACT:
Indian Income Tax Act. 1922 s. 4(3)(i) & s. 10(1)-Assessee collected moneys on sale of goods under the head "Dharmada"-Kept the amount in a separate account-Created a trust-Utilised time money for charitable purposes-Whether amount realised could be regarded as assessee's income-"Dharmada" Trust whether void as vague and uncertain.
Words & Phrases-"Dkarmada" meaning of.

HEADNOTE:
The assessee realised certain amounts of money on account of Dharmada (charity) from its customers on sale of yarn and bales of cotton which was its principal business. The amounts so realised were shown in a separate column headed "Dharmada" in the bills issued to customers. Without taking them into its trading account, the assessee, credited these amounts to a separate account known as "Dharmada" account. The Board of Directors of the company created a trust and declared that all moneys standing in the "Dharmada Account", and realised on this account in future should be treated as trust fund and utilised by the trustees for such religious and charitable purposes as may be decided by them.
For the assessment years 1951-52, 1952-53 and 1953-54 the Income Tax officer addled the amounts realised under the

head "Dharmada" to the assessable income of the assessee. The assessee's appeals to the Appellate Assistant Commissioner were dismissed. On further appeal the Appellate Tribunal held that the trust was void for vagueness and uncertainty and that the realisations partook of the character of trade receipts.

On reference, the High Court held that the amounts were never the income of the assessee, that the assessee was merely acting as a clearing house for passing the amount to the trust, that the fact that it was a compulsory levy did not make it a trade receipt, that "Dharmada" was a customary levy prevailing in some parts of the country and where it was paid by the customers to a trading concern, the amount was not paid as a price for the commodity sold to the customer.

In appeal to this Court it was contended on behalf of the Revenue that the realisations being a compulsory levy, they must be regarded as a part of the consideration or price of the goods purchased by the buyers and that gift for "Dharmada" was void for vagueness and uncertainty.

Dismissing the appeals,

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HELD: 1. The impugned realisations made by the assessee from ib customers for ''Dharmada'' being entirely earmarked for religious or charitable

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purposes would not be regarded as the assessee's income chargeable to income tax. [256F]

2. A gift to the "Dharmada" or "Dharmadaya" both in common parlance as well as the customary meaning attached thereto among the commercial and trading community cannot be regarded as void or invalid on account of vagueness or uncertainty. When the customers or the brokers paid the impugned amounts to the assessee earmarking them for "Dharmada" these payments were validly earmarked for charitable purposes. In other words right from the inception these amounts were received and held by the assessee under an obligation to spend the same for charitable purposes only, with the result that these receipts could not be regarded as forming income of the assessee.

[253H-254B]

Though there is some justification for holding that a gift to "Dharma" simpliciter would be invalid on grounds of vagueness and uncertainty, a gift to "Dharmada" would be definite, the object being certain viz., for religious or chartiable purposes. In common parlance the expression "Dharmada" or "Dharamadaya" cannot be said to be vague or uncertain and as such a gift to "Dharmada" (Dharmadaya) would not be invalid for vagueness or uncertainty. [251 E-F]

3. While the word "Dharma" is indefinite and equivocal, the word 'Dharmadaya" is quite definite. The former means either law or virtue or legal duty or moral duty, the latter means an endowment or gift for religious or charitable

purpose. Similarly while the expression "Dharma" is idefinite and equivocal the expression "Dharmarth" has only one meaning viz., anything given for charitable or pious purposes. [251C-D]

4. Apart from the fact that the concept of "Dharmada" or "Dharmadaya" in common parlance means anything given in charity or for religious or charitable purposes among the trading or commercial community in various parts of this country, a gift or payment for "Dharmada" is by custom invariably regarded a gift to charitable purposes. [252C]

5. Since a gift or payment for "Dharmada" is by commercial or trading custom invariably regarded as a gift for charitable purposes there is no question of there being any vagueness or uncertainty about the object for which such gift or payment has to be utilized. [253]

6. Since the realisations are not a part of the price or surcharge on the price but payments for a specific purpose of being spent no charitable purposes, they cannot be regarded as trading receipts of the assessee. [255g]

7. The amount of "Dharmada" is a payment which a customer is required to pay in addition to the price of the goods which he purchases from the trader but the purchase of the goods by the customers would be the occasion and not the consideration for the "Dharmada" amount taken from the customer. Al though without payment of "Dharmada" amount the customer may not be able to purchase the goods, but that would not make the payment of "Dharmada" involuntary inasmuch as it is out of his own volition that he purchases the goods from the trader. The "Dharmada" amount is, therefore, not a part of the price but a payment for the specific purpose of being spent on charitable purposes. [255C-E]

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8. Even if the assessee had not kept these amounts in a separate bank account, A admittedly a separate "Dharmada Account" was maintained in the books of the assessee in which every receipt was credited and payment made out on charity was debited. The High Court had clearly found that all these amounts were never credited in trading account nor carried over to profit and loss statement. [256E]

Commissioner of Income-tax, West Bengal v. Tollygunge Club Ltd., [1977] 107 ITR 776; followed.

Agra Bullion Exchange Ltd. v. Commissioner of Income Tax, [1961] 41 ITR 473, Ranchordas v. Parvatibai, 26 IA 71; Devshankar v. Moti Ram, ILR 18 Bom 136; Thakur Das Shyam Sunder v. Additional Commissioner of Income-tax, U.P. & Anr., [1974] 93 ITR 27; Commissioner of Income-tax, Amritsar v. Gheru Lal Bal Chand, 111 ITR 134, Advocate General of Bombay v. Jimbabai, ILR 41 C Bom. 181; Chaturbhuj Vallabhdas v. Commissioner of Income-tax, 14 ITR 144 referred to.

Poosarla Sambamurthi v. State of Andhra, 7 STC 652; N. S. Pandaria Pillai v. State of Madras, 31 STC 108 distinguished.

Prof. Wilson's Glossary of Judicial and Revenue Terms: Molesworth's Dictionary (Marathi-English) Second Edition (1975) referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1328 and 1329/73 & 2059/71.

(From the Judgments and orders dt. 18.11.69 and 21.1.70 of the Allahabad High Court in Income Tax-Reference Nos. 320/64 and 454 131 of 1965).

T. A. Ramachandran and A. Subhasini for the appellant. C. S. Agarwal, R. A. Gupta, S. K. Jain and K. C. Dua for the respondent in CA 2059/71.

C. S. Agarwal, R. A. Gupta, S. K. Jain, G. S.

Chatterjee and K. C. Dua for the respondent in CA 1328- 1329/73.

The Judgment of the Court was delivered by TULZAPURKAR, J.-These three appeals are preferred on certificates of fitness granted by the Allahabad High Court under ss. 66-A of the Indian Income Tax Act, 1922. They raise a common question whether the amounts realised by the assessee-company from its customers as and l`or 'Dharmada' during the three assessment years 1951-52, 195253 and 1953- 54 are liable to be taxed as its income under the Act and the question arises in the following circumstances.

The assessee is a private limited company having been incorporated in the year 1943. It carries on the business of manufacturing and selling yarn. Right from the inception it used to reales certain amounts on account of 'Dharmada' (charity) from its customers on sales of yarn and bales of cotton. The rate was one anna per bundle of 10 lbs. Of yarn and two annas per bale of cotton. In the bills issued to the customers these amounts were shown in a separate column headed 'Dharmada'. The assessee did not credit the amounts of 'Dharmada' so realised by it in its trading account but it maintained a separate account known as the "Dharmada Account" in which realisation on account of 'Dharmada' were credited and payments made out were debited from time to time. It appears that at a meeting of the Board of Directors of the assessee-company held on January 15, 1945, the Board passed a resolution that the, moneys standing in the 'Dharmada Account" be treated as trust fund of which Lala Nawal Kishore and Lala Ram Babulal, two Directors of the company, be the trustees and it was further declared that all the money realised in future by the company on sale of yarn from the purchasers at the rate of one Anna per bale or such rate as may be decided in future be handed over to the trustees for being utilised in such altruistic, religious and charitable purposes as may be decided upon by them, and that the trustees shall in particular utilise such funds for the advancement of education and the alleviation of misery and sickness of the public in general as it think fit. Subsequently, OH October 3, 1950 the said two Directors executed a Deed of Declaration of Trust wherein it was stated that a sum of Rs. 85,000 had accumulated in the charity fund

maintained by the trustees and it was declared that the amount did not belong to any individual but it was trust money of which the executants were trustees and it will be utilised by them for altruistic, religious or charitable purposes.

During the previous year (being the calendar year 1950) relevant to the assessment year 1951-52, the total amount received by the asses see-company in the "Dharmada Account" as aforesaid amounted to Rs. 21,898/-; similarly during the previous year (being the calendar year 1951) relevant to the assessment year 1952-53 the company collected from its customers a sum of Rs. 17,242/- on account of 'Dharmada' and a sum of Rs. 904/- for the same purpose from the brokers and interest was also credited to this account amounting to Rs. 4,010/-, while during the previous year (being the calendar year 1952) relevant to the assessment year 1953-54 the assessee received a sum of Rs. 19,490/- as Dharmada' from its customers and a sum of Rs. 4578 was also credited on account of interest in the "Dharmada Account". IN the assessment proceedings for the assessment years 1951-52, 1952-53 and 1953-54 the assessee claimed that the aforesaid amounts Lying to the credit of the "Dharmada Account" were held in trust by it and were ear-marked for charity and as such they were not its income from business liable to tax and in support of this contention reliance was placed upon the resolution passed by the Board of Directors on January A 15, 1945 and the Deed of Declaration of Trust dated October 3, 1950. The Income-Tax officer rejected the contention and added the said amounts to the assessable income of the assessee-company in all the years. The appeals before the Appellate Assistant Commissioner at the instance of the assessee-company proved unsuccessful. Further appeals to the Appellate Tribunal also proved futile. Before the Tribunal it was contended on behalf of the assessee that each customer who paid the 'Dharmada' amount was a settlor of the trust, that there were as many settlors as there were customers and that the assessee had receive(' these amounts under an obligation to utilise the same for charity; it was pointed out that the resolution of the Board of Directors dated January 15, 1945 was merely a confirmation of the fact that the, amounts were held in trust by the assessee and that the deed dated October 3, 1950 was merely a declaration of the acceptance of the trust by the two trustees mentioned therein; in other words, it was contended that the customers of the assessee created a trust by paying the amounts as 'Dharmada' and the amounts having been ear-marked for charitable purpose only they were not the assessee's income liable to tax. The Tribunal negatived the claim of the assessee on two grounds, first, that the amounts in question could not be regarded as having been received or held by the assessee under a trust for charitable purposes, the trust being void for vagueness and uncertainty and, secondly that the realisations partook of the character of trading receipts. At the instance of the assessee the matter was carried to the High Court by way of two References, Income- tax Reference No. 329/1964 being in relation to the amounts concerned in the two assessment years 1951-52 and 195753 and Income-tax Reference No. 454/1965 being in relation to the amount concerned in the assessment year 1953-54. In the former Reference the High Court approached the question not from the angle of deciding whether the assessee could claim exemption from tax under s. 4(3) (i) of the Act in respect of the impugned amounts but whether the impugned amounts could be regarded as the profits or gains of the business carried on by the assessee under s. 10(l) to the Act; in other words in the opinion of the High Court the dispute related to the initial character of the receipt itself and the question was whether the amount paid by the customers ear-marked for charity were the assessee's income at all and following an earlier decision of a Division Bench of that very Court in the case of Agra Bullion Exchange Ltd. v. Commissioner of

Income tax,(l) the High Court held that the impugned amounts we never the income of the assessee at all and that the assessee was merely acting as a conduit pipe or clearing house for passing on the amounts (1) (1961) 41 I.T.R. 472.

to the objects of charity. It took the view that the Tribunal erred in holding that the levy for 'Dharmada' was in the nature of a surcharge on the price charged for sale of yarn and cotton and that in its opinion the fact that it was a compulsory levy ipso Facto did not impress the same with the character of a trading receipt. the High Court pointed out that the amounts realised by the assessee on account of 'Dharmada' were never treated as trading receipts or as a surcharges on the sale price which was evident from the fact that such realisations were never credited to their trading account nor shown in the profits and loss statement for any year. It further observed that it was well-known that the "Dharmada" was a customary levy prevailing in certain parts of the country and , where it was paid by the customers to a trading concern the amount was not paid as price for the commodity sold to the customer. In this view of the matter the High Court answered the questions in favour of the assessee and against the Revenue. Following this decision, the High Court answered the question raised in the latter Reference also in favour of the assessee. The Commissioner of Income Tax, Delhi (Central), New Delhi has challenged the aforesaid view of the High Court before us in these appeals.

Counsel for the Revenue raised a two-fold contention in support of these appeals. In the first place he contended that since the realisation or recovery of 'Dharmada' amounts by the assessee from each of its customers was a compulsory levy such payments from the customers' point of view must be regarded as a part of the consideration or price for the goods purchased by them to from the assessee. He urged that such compulsory levy would be in the nature of a premium or surcharge on the price and as such will have to be regarded as a trading receipt. In that behalf reliance was placed upon two decisions, one of the Andhra Pradesh High Court in Poosarla Sambamurthi v. State of Andhra,(') and the other of Madras High Court in N. S. Pandaria Pillai v. The State of Madras,(1) where similar amounts charged by the assessee as and by way of 'Dharmam' in the former case and 'Mahimai' in the latter case were held to be part of the price includible in the taxable turnover of the assessee. Secondly, he contended that it is well-settled that a gift for 'Dharma' or 'Dharmada' is void for vagueness and uncertainty and, therefore, when the 'Dharmada' amounts were paid by the customers and received by the assessee these amounts could not be regarded as "property held under trust or other legal obligation for charitable purposes" within the meaning of s. 4(3) (i) of the Act and in this behalf strong reliance was placed upon the meanings given to the expressions (1) 7 S.T.C. 652.

(2) 7 S.T.C. 108.

Dharma' and 'Dharmada' in Prof. Wilson's Glossary of Judicial & Revenue Terms, the decision of the Privy Council in Ranchordas v. Parvatibai(ll) and the decision of the Bombay High Court in Devshankar v. Moti Ram.(2)Apart from this legal position he sought to support the Tribunal's finding that no trust could be said to have been created by the customers on the basis of certain factual aspects-(a) the customers paid the amounts not voluntarily but out of compulsion, (b) the customers being illiterate did not appreciate that they were paying the amounts with a view to create

trust, (c) there was no control over the assessee as regards the manner in which and the time when it should spend for 'Dharmada' and (d) the assessee did not keep these amounts in a separate bank account-separate from its business assets. He therefore, urged that no trust of these realisations could be said to have been created and as such these realisations were rightly regarded by the. Tribunal as part of the assessee's trading receipts liable to be included in its assessable income.

On the other hand, counsel for the assessee contended that it was the initial character of the receipt in the hands of the assessee that was important, that the amounts when paid by the customers, over and above the price for the goods purchased from the assessee, were paid for 'Dharmada' (i.e. for charity) and were received by the assessee as such; in other words, the receipts from the inception were impressed with the obligation to spend the same only on charitable objects. He contended that the two concepts of 'Dharma' and 'Dharmada' were distinct from each other and though a gift to 'Dharma' may be void on grounds of vagueness and uncertainty, a gift to 'Dharmada' would not be void inasmuch as the concept of 'Dharmada' was not vague or uncertain especially when a gift to 'Dharmada' was by commercial or trading custom invariably regarded as a gift to charitable purposes, and in this behalf strong reliance was placed by him upon Full Bench decision one the Allahabad High Court in Thakur Das Shyam Sunder v. Additional Commissioner of Income-Tax, U.P. and Another(2) and the decision of the Punjab Haryana High Court in Commissioner of Income-tax, Amritsar v. Gheru Lal Bal Chand('), where such customary meaning of 'Dharmada' among the trading community has been judicially recognised. He further urged that the compulsory nature of the payment, did not affect or alter the initial character of the receipts which were earmarked for charity and, therefore such receipts could not be regarded as trading receipts, (1) 26 I.A. 71.

(2) I.L.R. 18 Bom. 136.

(3) (1974) 93I.T.R. 27.

(4) 111 I.T.R. 134.

not being any part of the price nor even a surcharge on the price. I n support of his contentions counsel strongly relied upon the decision of this Court i n Commissioner of Income-tax, West Bengal v.Tollygunge Club Ltd.(1).

Having regard to the rival contentions noted above, it seems to us clear that. there are two aspects that are required to be considered fol determining the question raised in these appeals but in a sense the two aspects are so inter-related that they would represent the two sides of the same coin. The one aspect is what is the true nature or character these receipts, whether they constitute a part of the price received by the assessee while effecting sales of yarn or cotton and are, therefore, trading receipts of the assessee ? The other aspect is whether these realisations are property held under trust or other legal obligation for charitable purposes or not ? And this depends upon whether the ear-marking of these payments for 'Dharmada' creates a valid trust of obligation to spend the same only on charitable objects ? But in the facts and circumstances of the case it is obvious that these receipts would not be trading receipts only if at the time these are received they are held under a

trust or other legal obligation to spend the same for charitable purposes. In other words if the legal obligation to spend the same for charitable purposes is void and, therefore, non-existent the receipts or the realisations may have to be regarded as trading receipts in the hands of the assessee. That being the position, in our view, the approach adopted by the High Court to determine the question at issue cannot be regarded as correct. As pointed out earlier, the High Court approached the question from the angle of deciding whether the impugned amounts realised by the assessee could be regarded as the Profits and gains of the business carried on by the assessee under s. 10(l) of the Act, impliedly suggesting that a claim for exemption for such amounts under s. 4(3) (i) of the Act was unnecessary or irrelevant and that the dispute merely related to the initial character of the receipt itself and following the decision in Agra Bullion Exchange case (supra) it held that the amounts in question which were paid by the customers ear-marked for charity were not trading receipts and were never the income of the assessee at all It is clear that the while making this finding the High Court assumed that the customers while paying these amounts had validly ear-marked them for charity. Since the Revenue had specifically raised a dispute that the receipts of 'Dharmada would neither create a valid trust nor a valid legal obligation to spend the same for charitable purposes, 'Dharmada' being a vague and uncertain concept, the High Court could not, in our (1) (1977) 107 I.T.R. 776.

view, come to the finding that these realisations were not trading receipts unless it further found that ear-marking for 'Dharmada was a valid ear-marking for charity. In our view, therefore, both the aspects of the question are required to be considered for the purpose of arriving at a correct decision thereon.

Therefore, the first question that arises for our consideration is whether a gift to Dharmada' is void on grounds of vagueness or uncertainly ? The answer to this question will depend upon what is the true meaning of the expression 'Dharmada' and is the concept of 'Dharmada' as vague or uncertain as the concept of 'Dharma' ? The two allied concept of 'Dharma Anna Dharmada' will have to the considered together. It is true that as early as in 1899 the Privy Council in Runchordas Vandrawandas C. and others v. Parvatibhai and others (Supra) declared a bequest or a gift to 'Dharma' (Dharm) simpliciter to be void, the concept being vague and uncertain and in that behalf the Privy Council relied upon the meaning of that expression given in Prof. Wilson's Glossary of Judicial and Revenue Terms, where the expression is stated to mean 'law, virtue legal or moral duty'" derived from the Sanskrit verb 'Dhri' meaning 'to hold', that which keeps a man in the right path. Accepting the aforesaid meaning of the expression 'Dharma', the Privy Council observed thus:

> "In Wilson's Dictionary "Dharam" is defined to be law, virtue, legal or moral duty .. The object which can be considered to be meant by that word are too vague and uncertain for the administration of them to be under any control."

By this decision the Privy Council gave its impramatur to the view which prevailed in the Presidencies of Bombay and Calcutta for the past 50 years that gifts to 'Dharma' simpliciter were invalid. The reason for the decision was the oft-quoted principle that all charities were the special care and under the direct control of the Court of Equity and that the Court must refuse to accept as "charity" any gift which by reason of the vagueness in which it was expressed left the Court m doubt

as . to how it was to be applied. However, in a later Bombay case, namely, the Advocate- General of Bombay v. Jimbabai.(3) Beaman, J., felt that in this country 'Dharma' did mean roughly and almost invariable in the cases which had come up for legal decisions just "charity" and nothing else and observed:

> "It is true that an oriental's idea of charity might be a little wider and looser than that of the Lord Eldon, particularly amongst the lower and more illiterate classes of Hindus and (1) I.L.R. 41 Bom. 181.

17-817 SCI/78 Mahomedans; but a liberal use of the convenient doctrine of cypress which is surely elastic enough to reach almost anything which Judges wish to reach, might have validated the technical defects and cured the infirmity."

It may be stated that with a view to give effect to the popular concept of the word 'Dharma' a Bill was introduced (being Bill No. 10 of 1938 published in the Gazette of India Part V. dated 17.9.1938) but it was presumably dropped as it fell under "Religious and Charitable Endowments" in List II of the Government of India Act, 1935, which was a Provincial subject. Thereafter the State of Bombay enacted(l Bombay Public Trust Act being Act No. XXIX of 1950 which is now in operation in the States of Maharashtra and Gujarat. By title Explanation to s. 1() it has been enacted that a public trust created for such objects as "Dharma, Dharmada, Punyakarya or punyadan" shall not be void only on the ground that the objects for which it is created are unascertained or unascertainable; in other words, in the areas where legislation similar to the Bombay Public Trust Act would be in operation bequests or gifts for religious or charitable purposes, expressed in terms for "Dharma, Dharmada, Punyakarya, punyadan, etc." would not fail on ground of vagueness or uncertainty. However, in areas where such legislation is not in force bequests or gifts to 'Dharma' simpliciter would continue to be void on ground of vagueness or uncertainty.

In the above context it will be interesting to point out that in Chaturbhuj Vallabhadas v. Commissioner of Income-Tax(l) the Bombay High Court has taken the view that where instead of 'Dharma' the testator used the English word 'Charity' that word without any qualifications or limitations denoted public charity and as such the bequest was held to be a valid charitable bequest falling within the definition of "charitable purposes" in s. 4(3) (i) of the Act.

Turning to the concept of 'Dharmada' ('which is the same as 'Dharmadaya') the question is whether that concept could be said to be as vague as the concept of 'Dharma'. In Prof. Wilson's Glossary the expression 'Dharmada' or 'Dharmadaya' is stated to be the vernacular equivalent of the Sanskrit expression 'Dharmada' or 'Dharmadaya' and the expression 'Dharmada' is explained thus:

> "Dharmadeo, corruptly, Dharmadow, (from Dan or Daya, donation) An endowment, grant of food, or funds or funds, for religious or charitable purposes".

(1)14 I.T.R. 144 Two other allied expressions, namely, 'Dharmakhaten' and 'Dharmarth' are explained thus:

"Dharmakhaten, (Marathi) The head of accounts under which pious or charitable gifts are entered." Dharmarth, (Sanskrit) Any thing given for charitable or pious purposes. "

In Molesworth's Dictionary (Marathi-English), Second Edition, reprinted 1975, the expression 'Dharmadaya' or 'Dharmadav' is stated to mean "an alms or a gift in charity".

If the respective meanings of the two expressions 'Dharma' and 'Dharmada' as given in the above dictionaries are compared, it will appear clear that that the former is indefinite and equivocal whereas the latter is quite definite; the former means either law, or virtue or legal duty or moral duty but the latter only means an endowment or gift for religious or charitable purpose. Similarly, if the expression 'Dharma' is compared with the expression 'Dharmarth' it will be clear that the former is indefinite and equivocal while the latter has only one meaning, namely, anything given for charitable or pious purpose. The Marathi expression 'Dharmakhaten' means the head of accounts under which pious or charitable gifts are entered. From the above discussion it appears to us clear that though there is some justification for holding that a gift to 'Dharma' simpliciter would be invalid on ground of vagueness and uncertainty, a gift to 'Dharmada' (Dharmadaya) would be definite, the object being certain, namely, for religious, or charitable purposes. In common parlance, therefore, the expression 'Dharmada' or 'Dharmadaya' cannot be said to be vague or uncertain and as such a gift to 'D-harmada' (Dharmadaya) would not be invalid for vagueness or uncertainty Counsel for the Revenue" however, strongly relied upon the decision of the Bombay High Court in Devshankar v. Moti Ram (supra) where that Court has taken the view that a bequest in favour of 'Dharmada' is void by reason of uncertainty. After going through the arguments of counsel in that case and the decision of the Court, it appears to us clear that the Court has accorded a literal and derivative meaning to the word 'Dharmada' in that 'Dharmada' means property set apart for 'Dharma' and having regard to such derivative Meaning accorded to that expression, the Court has taken the view that there is no real distinction between a bequest to be expended on 'Dharmada' and a bequest for 'Dharma'. As against its literal and derivative meaning, the expression 'Dharmada' (Dharmadaya) in common parlance means, as mentioned in Prof. Wilson's Glossary and Molesworth's Dictionary, an endowment or gift for religious or charitable purposes and we are inclined to accept the latter popular meaning that is invariably accorded by Orientalists to the expression 'Dharmada' (Dharmadaya) and as such in our view a gift to 'Dharmada' or payment for 'Dharmada' must be regarded as a gift or payment for religious or charitable purposes and such a gift or payment would not be invalid for vagueness or uncertainty.

Apart from the fact that the concept of 'Dhramada' or 'Dhramada in common parlance means anything given in charity or for religious or charitable purposes, it cannot be disputed that among the trading or commercial community in various parts of this country a gift or payment for 'Dharmada' is by custom invariably regarded as a gift to charitable purposes. In Thakur Das Shyam Sundar v. Additional Commissioner of Income-Tax U.P. and Another (supra), a Full Bench decision of The Allahabad High Court, the question was whether, when the assessee, who carried on business as a commission agent, charged on every transaction of sale of goods worth Rs. 100/- a sum of 15 paise from the person to whom goods were sold and 10 paise from the person whose goods were sold as 'Dharmada' and credited the amounts thus collected. in a separate 'Dharmada' account which was

held by him, to be utilized specifically and exclusively for charitable purposes, the amounts so collected by him were liable to be included in his assessable income or not ? The High Court held that the said amounts were not includible in the assessable income and were not chargeable to income-tax. The High Court took the view that in order to determine whether a particular receipt, by whatever name it was called, was or Was not the income. Of a4 assessee, its real nature and quality had to be considered and if it was received under a custom, the answer to the question depended on the nature of the obligation created by the custom. The assessee's specific case was that in the District of Shahjahanpur there was a custom according to which the commission agents realised 'Dharmada' from their constituents and spent the same on charity and this specific case was not controverted by the Revenue, presumably because the Revenue was aware that such a custom did obtain in the trading community. It was contended on behalf of the Revenue that the ownership of the fund realised by way of Dharmada' rested entirely in the assessee who was free to spend the. amount according to his own discretion, and, therefore, the assessee's position qua the 'Dharmada' account was not that of a trustee. Rejecting this contention the Allahabad High Court observed thus:

> "We are unable to accept the submission that as the owner, ship of the amounts credited to the 'dharmada' account vests in the petitioner and it enjoys some discretion with regard to its disposal it cannot be said that its position is not that of a trustee. The question whether the position of the petitioner, when he received the amount, was that of a trustee or not will depend upon the actual custom which obliged the constituents to pay dharmada. As stated earlier, the petitioner's case that the amount realised as dharmada has got to be spent on charity has not been controverted by the respondents. Under the law relating to trust, legal ownership over the. trust fund and the power to control and dispose it of always vests in the trus- tee. Accordingly, merely because in this case the legal owner ship over the amount deposited as dharmada vested in the peti tioner, it cannot be said that its position was not that of a trustee. Discretion vested in a trustee to spend the trust amount over charities will not affect the character of the deposit."

The above Full Bench decision of the Allahabad High Court, it can fairly be said, amounts to a judicial recognition of the custom of collecting 'Dharmada' amounts by traders from their customers or constituents which casts an obligation on the traders to spend the same only on some charitable purpose. In other words, a gift or payment for 'Dharmada' is by commercial or trading custom invariably regarded as a gift for charitable purposes and as such there is no question of there being any vagueness or uncertainty about the object for which such gift or payment has to be utilized. Counsel for the Revenue sought to contend that the custom referred to in Thakur Das Shyam Sunder's case (supra) should be regarded as being prevalent only in the District of Shahjahanpur from which the case arose. It is not possible to accept this contention, for, it is common knowledge that such customary levy for 'Dharmada' is frequently collected by traders from their customers in several parts of the country. similar custom creating the obligation to spend the 'Dharmada' amounts exclusively on charitable purposes was invoked or resorted to by the Punjab & Haryana High Court in the case of Commissioner of Income- Tax, Amritsar v. Gheru Lal Bal Chand (supra) where the assessee who carried on business in Districts of Abohar. Hissar and Malaut in Punjab & Haryana realised 'Dharmada' amounts from his constituents and the Court held that the assessee

was acting more or less as a trustee of such amounts and as such these were not includible in his assessable income.

Having regard to the above discussion, we are clearly of the view that a gift to 'Dharmada' or 'Dharmadaya' both in common parlance as well as by the customary meaning attached thereto among the commer-

cial and trading community cannot be regarded as void or invalid on account of vagueness or uncertainty, and it is, therefore, clear that when the customers or brokers paid the impugned amounts to the assessee ear-marking them for 'Dharmada' it must be held that these payments were validly ear-marked for charitable purposes. In other words, right from inception these amounts were received and held by the assessee under an obligation to spend the same for charitable purposes only, with the result that these receipts cannot be regarded as forming any income ofthe assessee.

The next aspect requiring consideration is whether because of the compulsory nature of the levy the impugned amounts charged to the customers and received by the assessee Could be regarded as a part of the price or a surcharge on the price as contended by the counsel for the Revenue ? In our view, this question is covered by the decision of this Court in Tollygounge Club case (supra). In the case the respondent club conducted horse races with amateur riders and charged fees for admission into the enclosure of the club at the time of the races; a resolution was passed in 1945 at the general body meeting of the club for levying a surcharge; of eight annas over and above the admission fees, the proceeds of which were to go to the Red Cross Fund; this resolution was varied by another resolution dated January 30, 1950 to the effect that the surcharge should be ear-marked "for local charities and not solely for the Indian Red Cross"; every entrant was issued two tickets, one, an admission ticket for admission to the enclosure of the club, and the other, a separate ticket in respect of the surcharge of eight annas for local charities; the question was whether receipts on account of the surcharge were to be treated as the respondent's income for the assessment year 1960-61; the Appellate Tribunal and the High Court on a reference held that the respondent's receipts from the surcharge levied on admission tickets for purposes of charity could not be included in the respondent's taxable income. On further appeal, this Court held, confirming the decision of the High Court, that the surcharge was not a part of the price for admission but was a payment made for the specific purpose of being applied to local charities. At page 780 of the report this Court has observed thus:

> "The surcharge is undoubtedly a payment which a race goer is required to make in addition to the price of admission ticket if he wants to witness the race from the Club enclosure, but on that account it does not become part of the price for add- mission. The admission to the enclosure is the occasion and not the consideration for the surcharge taken from the race goer. It is true that but for this insistence on payment of the surcharge at the time of admission to the enclosure, the race-goer might not have paid any amount for local charities. But that does not render the payment of the surcharge involuntary, because it is out of his own volition that he seeks admittance to the enclosure and if he wants such admittance, he has to pay not only the price of the admission ticket but also the surcharge for local charities. The surcharge is clearly

> not a part of the price for admission but it is a payment made for the specific purpose of being applied to local charities."

On parity of reasoning the 'Dharmada' amounts paid by the customers cannot be regarded as part of price or a surcharge on price of goods purchased by the customers. The amount of 'Dharmada' is undoubtedly a payment which a customer is required to pay in addition to the price of the goods which he purchases from the assessee but the purchase of the goods by the customer would be the occasion and not the consideration for the 'Dharmada' amount taken from the customer. It is true that without payment of 'Dharmada' amount the customer may not be able to purchase the goods from the assessee but that would not make the payment of 'Dharmada' amount involuntary inasmuch as it is out of his own volition that he purchases yarn and cotton from the assessee. The 'Dharmada' amount is, therefore, clearly not a part of the price, but a payment for the specific purpose of being spent on charitable purposes. The two decisions on which reliance was placed by counsel for the Revenue, namely, Poosarla Sambamurthi's case (supra) and Pandaria Pillai's case (supra) are clearly distinguishable and inapplicable to the facts of this case inasmuch,as both the decisions were rendered under sales-tax legislation where the question that was required to be considered was whether the realisations for 'Dharmam' (charitable purpose) in the former case or 'Mahimai' (religious purpose) in the latter case would fall within the definition of 'turnover' as contained in the concerned legislation and it was held that such realisations were includible in the assessee's turnover. We do not wish to express any opinion on the correctness of these decisions. Suffice it to state that these ratio of these decisions cannot apply to the instant case. Since! the realisation in question in the present case are not a part of the price or surcharge on the price but payments for the specific purpose of being spent on charitable purposes, they cannot be regarded as trading receipts of the assessee.

Dealing with the factual aspects on the basis of which counsel for the Revenue sought to support the, Tribunal's finding that no trust could be said to have been created by the customers it will be apparent from the above discussion that none of the aspects are such as would lend support to the inference drawn by the Tribunal. We have already dealt with the alleged compulsory nature of the levy and have pointed out that the 'Dharmada' amounts cannot be said to have been paid involuntarily by the customers and in any case the compulsory nature of the payments, if there be any, cannot impress the receipts with the character of being trading receipts. Further, it is not possible to accept the submission that the customers being illiterate did not appreciate that they were paying the amounts with a view to create a trust, especially when it has been found that such payments were made pursuant,to a custom which obtained in the commercial and trading community; indeed, being a customary levy the constituents or customers whether literate or illiterate would be knowing that the additional payment over and above ;he price were meant for being spent by the assessee for charitable purposes. Further, the fact that the assessee would be having some discretion as regards the manner in which and the time when it should spend the 'Dharmada' amounts for charitable purposes would not detract the position the assessee held qua such amounts, namely, that it was under the obligation to utilize them exclusively for charitable purposes. It is true that the assessee did not keep these amounts in a separate bank account but admittedly a separate 'Dharmada' account was maintained in the books in which every receipt was credited and payment made there out on charity was debited and the High Court had clearly found

that these amounts were never credited in the trading account nor were carried to the profit and loss statement. Having regard to this position, it seems to us clear that the Tribunal's finding that no trust could be said to have been created by the customers in respect of the impugned amounts will have to be regarded as erroneous.

In the result, after considering both the aspects, we are of the view that the impugned realisations made by the assessee from its customers for 'Dharmada' being validly ear-marked for charity or charitable purpose could not be regarded as the assessee's income chargeable to income-tax. The ultimate. conclusion of the High Court, is, therefore, confirmed and the appeals are dismissed with costs.

N.V.K. Appeals dismissed.