Supreme Court of India
Commissioner Of Income Tax, West ... vs Tollygunge Club Ltd on 15 March, 1977
Equivalent citations: 1977 AIR 1343, 1977 SCR (3) 225
Author: P Bhagwati
Bench: Bhagwati, P.N.

PETITIONER:
COMMISSIONER OF INCOME TAX, WEST BENGAL

Vs.

RESPONDENT:
TOLLYGUNGE CLUB LTD.

DATE OF JUDGMENT15/03/1977

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
FAZALALI, SYED MURTAZA

CITATION:
1977 AIR 1343 1977 SCR (3) 225
1977 SCC (2) 790
CITATOR INFO :
R 1979 SC 346 (5,17)

ACT:
Income-tax Act, 1922--S. 15B-Diversion of income or diversion of source--Charity surcharge whether income--Obligation in the nature of trust, how to be created.

HEADNOTE:
The assessee was a Company limited by guarantee anti owned a Social end Sports Club one of whose. activities consisted of conducting horse. races with amateur riders. It charged for admission into-the enclosure of the club admission fee 10 the guests introduced by the members of the club as well as to the members of the public. It also charged a surcharge of eight annas solely earmarked for local charities. That was done pursuant to a resolution passed at the meeting of the General Body providing that the surcharge of eight annas on the entrance ticket should be earmarked for local charities.
The Income Tax Officer prior to the assessment year 1960-61 did not treat the receipts on account of surcharge as trading receipts of the assessee and bring them to tax as income of the assessee. While making the assessment for the as-

sessment year 1960-61, the Income Tax Officer took the view that the receipts on account of surcharge were revenue receipts in the hands of assessee and they could not be excluded from the total income of the assessee merely on the ground that they were applied for charitable purposes. It was common ground that the amounts received by way of surcharge had in fact been disbursed to local charities. The Income Tax Officer treated the receipts on account of surcharge as income of the assessee and allowed rebate under s. 15B in respect of the amounts actually disbursed in favour of local charities. The Appellate Assistant Commissioner confirmed the order of the Income Tax Officer on the ground that a person who wished to gain admission to the enclosure of the club had to pay the surcharge whether he was willing to contribute to the charity or not and the amount of the surcharge was therefore a part of the price charged by the assessee for admission and it was accordingly a revenue receipt in the hands of the assessee. On further appeal, the Tribunal held that the surcharge was levied on admission ticket for the purpose of charity and hence the receipts in respect of the surcharge were not income of the assessee at the point of time when they reached its hands and being earmarked for charity they never belonged to the assessee.

The High Court on a reference made by the Tribunal agreed with the view taken by the Tribunal holding that since the surcharge was charged by the assessee and paid by the race goers for the specific purpose of being applied to local charities pursuant to, the resolution passed by the general meeting of the assessee, there was at the time of receipts of the amounts in respect of the surcharge, a legally enforcible obligation on the assessee to apply them to local charities and those amounts accordingly did not reach assessee as its income but were diverted to local charities before they reached the assessee.

Dismissing the appeal,

HELD: (1) Income tax is a tax on income. Every receipt by the assessee is not necessarily income in his hands. It is only when it bears the character of income at the time when it reaches the hands of the assessee that it becomes exigible to tax. [228 E]

London County Council v.Attorney General [1901] AC 26.

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(2) The assumptions of the Revenue that the surcharge was received as part of the price for admission to the dab enclosure and that there was no legally enforcible obligation on the assessee to spend the amounts on charity are erroneous. The admission to the enclosure was the occasion and not the consideration for.the surcharge taken from the race-goers. It is not a correct analysis of the nature of the legal relationship to say that there was nothing more than a mere desire or intention on the part of the assessee to apply the amounts received on account of surcharge to the local charities without any legally enforcible obligation.

The resolution was passed at the general meeting of the assessee and pursuant to that resolution the surcharge was paid by the race-goers and received by the assessee for the specific purpose of being applied to local charities. The surcharge when paid was clearly impressed with an obligation in the nature of trust for being applied tot the benefit of local charities. A trust may be created by any language sufficient to show the intention and no technical words are necessary. [228A-H, 229A-G]

C.I.T v. Thakar Das Bhargava, 40 I.T.R. 301, followed.

(3) In the present case, the surcharge being impressed with an obligation the nature of trust for being applied to local charities was by this obligation diverted before it reached the hands of the assessee and at no stage it became a part of the income of the assessee. The amount of sur-charge never reached the assessee as parts of its income. [230 G-H]

C.I.T. v. Sitaldas Tirathdas, 41 I.T.R. 367, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICATION: Civil Appeal No. 578 of 1972.

(From the Judgment and Order dated 17-4-1969 of the Calcutta High Court in Income Tax Reference No. 71/65) S.C. Manchanda and R.N. Sachthey, for the appellant. Sukumar Mitra, D.N. Mukherjee and N.R. Chaudhary, for the respondent.

The Judgment of the Court was delivered by BHAGWATI, J. This is an appeal on a certificate of fitness granted by the High Court of Calcutta under section 66A, sub-section (2) of the Indian Income-tax Act, 1922. The facts giving rise to the appeal are few and may be briefly stated as follows.

The assessee is Tollygunge Club Ltd., a company limited by guarantee, and it owns a social and sports club one of whose activities consists of conducting Gymkhana races, that is, horse races with .amateur riders. It charges for admis- sion into the enclosure of the Club at the time of the races, admission fee to the guests introduced by the members of the Club as well as to the members of the public. There is no dispute between the parties that the admission fee received by the assessee constitutes trading receipt in the hands of the assessee exigible to tax. But it appears that on 28th February, 1945 a resolution was passed at the meet- ing of the General Body of the Club for levying a surcharge of eight annas over and above the admission fee., the pro- ceeds of which were to go to the Red Cross Fund. This resolution was subsequently varied by another resolution dated 30th January, 1950 and the new resolution provided that the surcharge of eight annas on entrance ticket should be earmarked "for local charities and not solely for the Indian Red Cross". The assessee accordingly issued to every entrant to the enclosure on the race course two tickets, one an admission ticket for admis- sion to the enclosure of the Club and the other, a separate ticket in respect of the surcharge of eight annas for local charities. The slip in respect of the surcharge of eight annas was in the following term:

> "Surcharge on admission to The Tollygunge Gymkhana Races for Local Charities Rs. 4/8 Enclosure Surcharge RS. -/8/-"

The receipts from the surcharge were not credited to the profit and loss account but they were carried directly to a separate account styled 'Charity Account'. These receipts on account of surcharge were not treated as trading receipts of the assessee and were not brought to tax as income of the assessee in the assessment years perior to the assess- ment year 1960-61. But while making assessment for the assessment year 1960-61, the Income Tax Officer took the view that receipts on account of surcharge were revenue receipts in the hands of the assessee and they would not be excluded from the total Income of the assessee merely on the ground that they were applied for charitable purposes. It may be pointed out at this stage that it was not dis- puted before the Revenue authorities that the amounts rea- lised by way of surcharge had been disbursed to local chari- ties and in fact a list was filed showing the local chari- ties in whose favour such disbursement had been made. The Income Tax Officer treated the disbursement of the amounts received on account of surcharge as application of the income belonging to the assessee and he accordingly included these receipts in the total income of the assessee, but allowed rebate under section 15B on the amounts actually disbursed in favour of local charities during the account- ing year. This view taken by the Income Tax Officer was affirmed on appeal by the Appellate Assistant Commissioner who held that a person who wished to gain admission to the enclosure of the Club on any racing day had to pay the surcharge whether he was willing to contributes to the charity or not and as such the amount of the surcharge was a part of the price charged by the assessee for admission to the enclosure and it was, therefore, a revenue receipt in the hands of the assessee. This was followed by a further appeal to the Tribunal and this time the assessee was suc- cessful. The Tribunal held that the surchange was levied on admission tickets for the purpose of charity and hence the receipts in respect of the surcharge were not income of the assessee at the point of time when they reached its hands and being "earmarked for charity", they "never belonged to the assessee" and were hence not includi- ble in the taxable income of the assessee. The Tribunal accordingly directed that the receipt of the surcharge credited to the charity account should be deleted from the total income of the assessee.

The Commissioner then moved the Tribunal for stating a case to the High Court on the question of law which arose out of the. order of the Tribunal. The Tribunal was of the opinion that a question of law did arise out of its order and hence it formulated a question in the following terms:

> "Whether, on the facts and in the circum- stances of the case, the Appellate Tribunal was right in holding that the assessee's receipts from the surcharge levied on admis-

sion tickets for purposes of charity could not be included in the assessee's taxable income for the assessment year 1960-617", and referred it to the High Court for its opinion. The High Court agreed with the view taken by the Tribunal and held that since the surcharge on admission tickets was charged by the assessee and paid by the race-goers for the specific purpose of being applied to local charities pusuant to the resolution passed by the general meeting of the assessee, there was, at the time of receipt of the amounts in respect of the surcharge, a legally enforceable obligation on the assessee to apply them to local charities and those amounts accordingly did not reach the assessee as its income but were diverted to local charities before they reached the assessee. The correctness of

this deci- sion is questioned by the Commissioner in the present appeal under section 66A, sub-section (2) of the Act. It is familiar learning and yet Lord Magnaughten had to draw our attention to it in London County Council v. Attor- ney General (1) that income tax is a tax on income. It is what reaches the assessee as income that is in- tended to be charged to tax under the Act. Every receipt by the assessee is not necessarily income in his hands. It is only when it bears the character of income at the time when it reaches the hands of the assessee that it be- comes exigible to tax. The quest on which, wherefore, arises for determination here is whether the amounts re- ceived on account of surcharge reached the hands of the assessee as its income. The argument of the Revenue was that these amounts were received by the assessee as part of the price for admission into the enclosure of the Club and merely because the assessee expressed its desire or inten- tion to apply them to local charities, they did not cease to be the income of the assessee. This argument is based on two assumptions: first, that the amounts .on account of surcharge were received as part of the price for admission to the Club enclosure, and secondly, that it was merely a voluntary desire on the part of the assessee to use these amounts for private charities and there was no legally enforceable obligation on the assessee to do so. These two assumptions are in a way inter-related, each depending on and to some extent supporting the other, but in our view neither of them is well founded. It is not correct to say that merely because surcharge is levied from every race-goer who wants admission to the enclosure of the Club, it becomes a part of the price for admission. The (1) [1901] A.C.26.

test is not whether every race-goers seeking admittance to the enclosure of the Club is required to pay the surcharge but what is it for which the surcharge is taken. Is it taken as part of the price for admission, or for some other purpose, such as, benefit of local charities ? Sup- pose every race-goer seeking admittance to the Club enclosure were told that in addition to the price of the admission ticket he would have to contribute a certain amount to a recognised charity, could it be contended that the amount which he is required to contribute to charity--and we are deliberately using the word 're- quired' because otherwise he would not be able to secure admittance to the Club enclosure is part of the price for admission ? 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 admission. 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 admis- sion 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 specif- ic purpose of being applied to local charities. Secondly, it is not a correct analysis of the nature of the legal relationship, to say that there was nothing more than mere desire or intention on the part of the assessee to apply the amounts received on account of surcharge to local charities, without any legally enforceable obligation bind- ing it to do so. We may straightaway concede that if nothing more had been done by the assessee than merely passing a resolution deciding to utilise a part of the admission fee received by it to charitable purposes, no legal obligation would have been created obliging the asses- see to utilise this amount for the purpose of charity. Such a resolution would have left it open to the assessee to

alter it or to rescind it and it would have been nothing but an expression of the desire or intention of the assessee to apply the amount for charitable purposes. But here a resolu- tion was passed at the general meeting of the. assessee for levying the surcharge for local charities and pursuant to this resolution, the surcharge was paid by the race-goers and received by the assessee for the specific purpose of being applied to local charities. The surcharge when paid was clearly impressed with an obligation in the nature of trust for being applied for the benefit of local charities. It is settled law, as observed, by this Court in C.I.T. v. Thakar Das Bhargava (1) that a trust may be created by any language sufficient to show the intention and no techni- cal words are necessary and it may even be created by the use of words which are primarily words of condition. The only requisites which must be satisfied are that there should be "purposes independent of the donee to which the subject-matter of the gift is required to be applied (2) 40 I.T.R. 301.

and an obligation on the donee to satisfy those purposes". When the race-goers paid the surcharge to the assessee, they did so far a specific purpose ,and thereby imposed an obligation on the assessee to utilise it for local chari- ties.

The question then arises whether this obligation to utilise the surcharge for local charities was an obligation to apply the surcharge to local charities after it reached the assessee as its income or it was diverted for being applied to local charities before it was resolved by the assessee. Did it involve an application by the assessee of a part of its income to local charities, or was it rather an allocation of a receipt for local charities before it became income in the hands of the assessee ? The true test for determining this question is, to use the words of Hi- dayatullah, J., in C.I.T. v. Sitaldas Tirathdas(1) whether the amount sought to be deducted, in truth, reaches the assessee as his income. The learned Judge proceeded to explain this test in the following words:

> "In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obliga- tions, no doubt, there are in every case, but it is the: nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply but of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is. de- ductible : but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in the law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his in- come, but for and on behalf of the person to whom it is payable. In our opinion, the present case is one in which the wife and children. of the assessee who continued to be members of the family received a portion of the income of the assessee, after the asses- see had received the income as his own. The case once is one of application of a portion of the income to discharge an obligation and not a case in which by an overriding charge the assessee became only a collector of another's income".

It is clear on the application of this test that in the present case, the surcharge being impressed with an obliga- tion in the nature of trust for being applied to local charities was by this obligation diverted before it reached the hands of the assessee and at no stage, it became a part of the income of the assessee. When the assessee received the amounts on account of surcharge, they were 'impressed with a legal (1) 41 I.T.R 367.

obligation to be applied for the benefit of local charities and they never reached the assessee as part of its income. The case clearly fell within the rule in Raja Bijoy Singh Dudhuria v.C.I.T.(1) and the surcharge received by the assessee could not be regarded as income assessable to tax.

Before we end the discussion of this question, we must refer to the decision of this Court in Thakar Das Bharga- va's case (supra) on which strong reliance was placed on behalf of the Revenue. The assessee in this case was an advocate who agreed to defend certain accused persons in a criminal trial on condition that he would be provided with a sum of Rs. 40,000/- for creating a public charitable trust. When the trial was over, the assessee-was paid a sum of Rs. 32,500/- and he created a trust of that amount by exe- cuting a trust deed. The question arose whether this sum of Rs. 32,500/- was liable to be taxed as part of the professional income of the assessee. This question was answered by the High Court in favour of the assessee but the view taken by the High Court was reversed by this Court on appeal. This Court pointed out that the findings of the Tribunal clearly showed "that the persons who paid the sum of Rs.32,500/- did not use any words of an imperative nature creating a trust or an obligation. They were anxious to have the services of the assessee in Farrukhnagar case; the assessee was at first unwilling to give his services and later he agreed, proposing that he would himself create a charitable trust out of the money paid to him for defend- ing the accused persons in the Farrukhnagar case." Con- siderable reliance was placed by this Court on the recital in the trust deed where the assessee had said "that he was receiving his professional income as an advocate accruing after June 1944 for payment of taxes and charity and accord- ingly when he received his professional income in the Farrukhnagar case he created a charitable trust out of the money so received." It was also emphasised by this Court that it was not stated any where "that the persons who paid the money created a trust or imposed a legally enforceable obligation on the assessee" and even in the affidavit made by the assessee there was "no suggestion that the persons who paid the money created the trust or imposed an obliga- tion on the assessee" and it was "the asessees own voluntary desire that he would create a trust out of the fees paid to him for defending the accused persons in the Farrukhnagar case" and "such a voluntary desire on the part of the asses- see created no trust, nor did it give rise to any legally enforceable obligation". This Court accordingly held that "the money when it was received by the assessee was his professional income, though the assessee had expressed a desire earlier to create a charitable trust out of the money when received by him". It wilt be seen from what is stated above' that when the accused person paid a sum of RS. 32,500/- to the assessee, they paid it by way of fees and they did not impose any obligation on the assessee that this amount should be utilised only for the purpose of charity. It was merely a voluntary desire on the part of the assessee that he would create a trust out of the amount of fees paid to him and until the (1) [1933] 1 I.T.R. 135 A.I.R. 1933 P.C. 145. 16--240SC1/77 trust was created by the assessee, there was no legal obli- gation to utilise that amount for charity. That is why this Court held that the amount when received by the assessee was income in his hand and the creation of trust was merely application of the amount after it reached his hands as his income. This

Court by approving the following observations of the Appellate Assistant Commissioner that "if the accused persons had themselves resolved to create a charitable trust in memory of the professional aid rendered to them by the appellant and had made the assessee trustee for the money so paid to him for that purpose, it could, perhaps, be argued that the money paid was earmarked for charity ab initio but of this there was no indication anywhere" clearly suggested that if the money paid by the accused persons had been "earmarked for charity ab initio" it would have been possible to say that they had made the assessee trustee for the money so paid to him and in that event the conclusion would have been that the money did not reach the hands of the assessee as his income. Here, the surcharge paid by the race-goers was earmarked for local charities ab initio and the surcharge was received by the assessee with a legal obligation to apply it to local charities. The decision of this Court in Thakar Das Bhargava's case (supra), therefore, far from militating against the contention of the assessee, supports it.

We must accordingly hold that the High Court was right in answering the question referred to it in favour of the assessee and in this view, the appeal must stand dismissed with costs.

P.H.P. Appeal dismissed.