1964

C.I.T., Madras v. Sivakasi Match Export Co.

Shah J.

so complied with, the taxing authorities would be bound to refuse to give the taxpayer the benefit claimed. When application for registration of the firm is made, the Income-tax Officer is entitled to ascertain whether the names of the partners in the instrument are of persons who have agreed to be partners, whether the shares are properly specified and whether the statement about the shares is real or is merely a cloak for distributing the profits in a different manner. If all persons who have in truth agreed to be partners have not signed the deed or their shares are not truly set out in the deed of partnership, it would be open to the Income-tax Officer to decline to register the deed, even if under the general law of partnership the rights and obligations of the partners *eo nomine* thereto may otherwise be adjusted. As a corollary to this, if the requirements relating to the form in which the petition is to be presented are not complied with, and the relevant information is withheld, the Income-tax Officer may be justified in refusing registration.

In my view the High Court was in error in holding on the question submitted that the registration of the assessee under s. 26-A of the Income-tax Act was wrongly refused.

The answer to the question referred to the High Court should be in the affirmative.

ORDER

In accordance with the opinion of the majority, the appeal is dismissed with costs.

Appeal dismissed

1964

April, 29.

COMMISSIONER OF INCOME-TAX KERALA AND COIMBATORE

v.

KRISHNA WARRIAR

(K. SUBBA RAO, J. C. SHAH, AND S. M. SIKRI JJ.)

Income Tax—Exemption from taxation—Business held in trust—Part of profits to be utilised for religious or charitable purposes—

Business, if property—Indian Income-tax Act, 1922 (11 *of* 1922), *s.* 4(3)(*i*).

A testator was carrying on business in Ayurvedic drugs under the name and style of Arya Vaidya Sala. Under his will his properties, including the business, were held under trust and the object of the trust was to utilise 60 per cent of the profits of the business for 20 years and 85 per cent thereafter for religious and charitable purposes. The assessment years in question fell within 20 years from the death of the testator and the question was whether the 60 per cent of the income from the trust properties was exempt from assessment to income-tax under s. 4(3)(i) of the Indian Income-tax Act, 1922. The Income-tax authorities rejected the claim for exemption and assessed the entire income from the said properties, on the ground that the substantive cl. (i) of s. 4(3) was not applicable to the case but only cl. (b) of the proviso and that the conditions laid down thereunder were not complied with.

HELD: (i) The business run under the name and style of Arya Vaidya Sala was property within the meaning of s. 4(3)(i) of the Indian Income-tax Act, 1922, and as the entire business was held in trust for utilising a part of its profits for religious or charitable purposes, the said income was exempt from assessment to income-tax under that section.

(ii) Cl. (b) of the proviso to s. 4(3)(i) was applicable only to a business not held in trust but carried on on behalf of a religious or charitable institution.

(iii) A business held in trust wholly or in part for religious or charitable purposes was not a business carried on on behalf of a religious or charitable institution.

(iv) The dichotomy between the two expressions "wholly" and "in part" in s. 4(3)(i) was not based upon the dedication of the whole or a fractional part of the property, but between the dedication of the said property the income from which was to be utilized wholly for religious or charitable purposes or in part for such purposes.

(v) The expression "such income" in the opening words of the proviso to s. 4(3)(i) meant "income accruing or arising in favour of the trust".

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 606—610 of 1963.

Appeals by special leave from the judgment dated January 20, 1961 of the Kerala High Court in Income-tax Referred Case No. 16 of 1959.

K. N. Rajagopal Sastri and *R. N. Sachthey,* for the appellant (in all the appeals).

1964

C.I.T.
v.
Krishna Warriar

S. T. Desai and *Sardar Bahadur*, for the respondent (in all the appeals).

April 29, 1964. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO J.—These appeals by special leave raise the question of the construction of the provisions of s. 4(3)(i) of the Indian Income-tax Act, 1922, hereinafter called the Act, as amended by the Indian Income-tax (Amendment) Act, 1953, hereinafter called the Amending Act.

The facts are as follows. One P. S. Warriar, an eminent Ayurvedic physician, carried on business in Ayurvedic drugs under the name and style of "Arya Vaidya Sala" and was also running a hospital named "Arya Sikitsa Sala" and a school called "Arya Vaidya Pata Sala". The said Warriar died on January 30, 1944, after executing a will wherein he created a trust in respect of his properties, including the Arya Vaidya Sala. He gave directions to the trustees appointed under the said will to conduct the said business and to disburse the income therefrom in certain proportions to the Arya Vaidya Sala, Arya Sikitsa Sala and Arya Vaidya Pata Sala and to his descendants. Broadly stated 60 per cent of the income was directed to be spent on the said three institutions and 40 per cent to be given to his descendants. Till the Amending Act came into force the Income-tax Department gave exemption from assessment for the 60 per cent of the income under s. 4(3)(i) of the Act; but, after the Amending Act came into force, which was given retrospective operation from April 1, 1952, the said Department refused to give exemption from assessment even in regard to the 60 per cent of the income. For the assessment years 1954-55 and 1955-56 the Income-tax Officer assessed the entire income from the said properties; and in respect of the income pertaining to the assessment years 1952-53 and 1953-54, which had already been assessed in the usual course giving exemption for the said 60 per cent of the income, the Income-tax Officer issued notices under s. 34 of the Act and by two separate orders dated September 28, 1956, assessed the said 60 per cent of the income on the basis of escaped assessment. On December 20, 1956,

for the assessment year 1956-57 the Income-tax Officer, in the like manner, assessed the entire income from the said properties. The appeals filed by the assessee against the said orders of assessment to the Appellate Assistant Commissioner were dismissed. The appeals filed against the orders of the Appellate Assistant Commissioner to the Income-tax Appellate Tribunal, Madras, were consolidated and by its order dated February 28, 1958, the said Tribunal allowed the appeals exempting 60 per cent of the said income from assessment to income-tax under s. 4(3)(i) of the Act. The references made to the High Court of Kerala were dismissed. Hence the present appeals.

Mr. Rajagopala Sastri, learned counsel for the Revenue, contends that under s. 4(3)(i) of the Act whereunder the said income is given exemption from taxation, the property wherefrom the income is derived shall have been held under trust wholly or in part for religious or charitable purposes, that the business run under the name and style of Arya Vaidya Sala was not capable of being held in trust, that even if it was capable of being held under trust, it was not wholly or in part so held in trust for religious or charitable purposes, as only a part of the income was directed to be spent for religious or charitable purposes and that in the circumstances cl. (b) of the proviso was attracted but the conditions laid down thereunder were not complied with.

Learned counsel for the respondent, Mr. S. T. Desai, contends that business is property within the meaning of s. 4(3)(i) of the Act and that it is held in trust in part for religious and charitable purposes and, therefore, the substantive part of the provision is attracted to the facts of the case and hence the proviso is excluded.

Before we construe the relevant provisions of the Act and consider the arguments advanced on either side, it would be convenient at the outset to read the material part of the will and to ascertain the scope of the bequest created thereunder. The will is marked as Annexure A2 in the case. The relevant parts of the Will read:

> "1. Will executed by Panniampalli Warriath deceased Parvathi *alias* Kunkikutty Warassiar's

1964

C.I.T.
v.
Krishna Warriar

Subba Rao J.

son Sri Sankunny Warriar known as Vaidyaratnam Sri P. S. Warriar, residing at Puthan Warian in Kottakkal Amsom and Desom of Ernad Taluk."

"7. Apart from the properties mentioned in Schedule B, C and D all other properties, movable as well as immovable, belonging to me I hereby constitute into a trust to be managed by the trustees as per the directions in the will. They are described in Schedule E, and on my demise those properties will vest in the trustees. It is my intention that except the properties mentioned in paras 4 and 5 (B, C & D Schedule), all my properties are to be included in the Trust and therefore, even if some item of property is left out by inadvertence, it is also to be deemed included in the Trust and vested in the Trustees."

"8. *Provisions regarding the Trust.* I hereby nominate the following persons as the first Board of Trustees:—

.....(Names of 7 persons given).

"9. The above Trust is to be managed and conducted according to the terms and conditions detailed below:—

(A to F) .....

G. The primary and chief objects of the Trust are to carry on for ever the two institutions *viz.*, the Arya Vaidya Sala and the Arya Vaidya Hospital on the lines followed now with the object of enlarging and increasing their scope and utility. The work of Arya Vaidya Sala now consists of,

1. preparation of Ayurvedic medicines,
2. sale of the same,
3. treatment of patients, receiving from them compensation according to their capacity and means,

4. to conduct research into Arya Vaidyam with a view to make it more and more useful to the public.

H. The following are the matters conducted in the institution called the Arya Vaidya Hospital.

1. To examine poor patients free of charge, to prescribe treatment for them and give medicines gratis (out-patient Department).

2. To take in at least 12 poor patients at any time, give them lodging and board and also free medicines and treatment free (the in-patient Department).

3. To carry out the said services with the help of an Arya Vaidyan and necessary operations with the help of an Allopathi doctor.

4. Give treatment and medicines to all persons seeking them, receiving from such of them as are able such remuneration as they can afford including cost of medicines. The Arya Vaidya Hospital is now carried on with the medicines supplied by and taken from the Arya Vaidya Sala and the incidental expenses are now met from out of the funds of the Arya Vaidya Sala.

J. The trustees are to run the above institutions according to the intentions expressed above with such modifications as the circumstances may warrant.

K. In the Arya Vaidya Patasala run under the auspices of the Arya Samajam, Aryavaidyam is taught in accordance with the service of Ayurveda. I have been meeting the expenses of the said institutions, not covered by its income. From out of the profits of Arya Vaidya Sala.

L. Out of the net profits of the Arya Vaidya Sala 25 per cent is to be devoted to the develop-

1964

C.I.T.
v.
Krishna Warriar

Subba Rao J.

ment of the Arya Vaidya Sala, 25 per cent for meeting the expenses of the Arya Vaidya Hospital and 25 per cent for division equally between the two tavazhies (this only for 25 years) out of the remaining 25 per cent a sum not exceeding 10 per cent may be according to requirements, utilised for the purposes of the Arya Vaidya Patasala. The balance, if any, that may remain out of the 10 per cent after disbursement to the Arya Vaidya Patasala, may be used for the Arya Vaidya Sala itself. The balance 15 per cent are to be deposited by the Trustees each year in approved banks as a Reserve fund for the two tavazhies for a period of 20 years and the fund thus accumulated inclusive of interest is to be divided equally among the two tavazhies equally *i.e.*, in moiety and it will be the duty of the Trustees to invest the same on the authority of immovable properties.

M. The Trustees are not bound to pay any amount to the said two tavazhies after the expiry of 20 years. The 40 per cent of the profit so earmarked for 20 years and so released after the expiry of 20 years are therefore to be utilised for the development of the Arya Vaidya Sala and Arya Vaidya Hospital according to the discretion of the Trustees.

E Schedule: All remaining properties constituted into the Trust.

It will be seen from the said recitals of the Will that the testator created a trust in respect of his entire properties, including those mentioned in Schedules B, C and D and specifically vested them in the trustees appointed thereunder. The properties so vested included the business carried on in the name and style of Arya Vaidya Sala. The main objects of the trust were to carry on the said two institutions, namely, Arya Vaidya Sala and Arya Vaidya Hospital

and also the other objects mentioned thereunder. Out of the income from the business so vested in the trustees, he directed the trustees to spend 25 per cent for the development of Arya Vaidya Sala, 25 per cent to meet the expenses of the Arya Vaidya Hospital, not exceeding 10 per cent for the Arya Vaidya Patasala, 25 per cent to be shared equally by the two branches of the family of the testor for a period of 20 years and thereafter to be utilized for the purpose of the Arya Vaidya Sala and Arya Vaidya Hospital and 15 per cent to be given to the said branches; that is to say, 60 per cent of the total properties for a period of 20 years from the demise of the testator should be utilized for religious and charitable purposes and thereafter 85 per cent to be utilized for the said purposes and the rest to be spent on non-religious and non-charitable purposes. Therefore, under the Will the E Schedule properties, including the business, were held under trust and the object of the trust was to utilize 60 per cent of the profits of the business for 20 years and 85 per cent thereafter for religious and charitable purposes. The assessment years in question fell within 20 years from the death of the testator and, therefore, we are concerned only with 60 per cent of the income from the trust properties. The question is whether the 60 per cent of the income from the trust properties is exempt from assessment to income-tax under s. 4(3)(i) of the Act. The relevant provisions of the Act read:

> *Section* 4. (3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:
>
> (i) any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto:
>
> Provided that such income shall be included in the total income .....
>
> (b) in the case of income derived from business carried on behalf of a religious or charit-

1964

C.I.T.
v.
Krishna Warriar

Subba Rao J.

able institutions, unless the income is applied wholly for the purpose of the institution and either—

(i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or

(ii) the work in connection with the business is mainly carried on by beneficiaries of the institution.

A brief history of the proviso may not be out of place here. Before the amendment of this clause by the Amending Act of 1953 the proviso was in the form of a separate substantive clause and was numbered as cl. (i-a). The said cl. (i-a) came under judicial scrutiny. It was argued on behalf of the Revenue that though a business was held under trust for religious or charitable purposes, it would fall under cl. (i-a) and the income therefrom could not be exempted from income-tax unless the conditions laid down in the said clause were complied with. In *Charitable Gadodia Swadeshi Stores* v. *Commissioner of Income-tax, Puniab*(1), the Lahore High Court rejected that contention, and one of the reasons given for the rejection was that if the said clause was intended to narrow down the scope of cl. (i), the said clause should have been added as a proviso to the old clause. Presumably on the basis of this suggestion the Amending Act of 1953 substituted cl. (i-a) by cl. (b) of the proviso. But it is not an inflexible rule of construction that a proviso in a statute should always be read as a limitation upon the effect of the main enactment. Generally the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso; but the clear language of the substantive provision as well as the proviso may establish that the proviso is not a qualifying clause of the main provisions, but is in itself a substantive provision. In the words of Maxwell, "the true principle is that the sound view of the enacting clause, the saving clause and the proviso taken and construed together is to prevail". So construed we find no difficulty, as we will indicate later

(1) (1944) 12 I.T.R. 385.

in our judgment, in holding that the said cl. (b) of the proviso deals with a case of business which is not vested in trust for religious or charitable purposes within the meaning of the substantive clause of s. 4(3)(i).

With this introductory remarks we shall proceed to construe the provisions of s. 4(3)(i) of the Act, along with cl. (b) of the Proviso. Under cl. (i), so far as it is relevant to the question raised before us, to earn the exemption the income shall have been derived from property under trust wholly or in part held for religious or charitable purposes. Under cl. (b) of the proviso to that clause, in the case of income derived from business carried on on behalf of a religious or charitable institution, unless the condition laid down thereunder are complied with, the said income cannot be exempted. If business is property and is held under trust wholly or partly for religious or charitable purposes, it falls squarely under the substantive part of cl. (i) and in that event cl. (b) of the proviso cannot be attracted, as under that clause of the proviso the business mentioned therein is not held under trust but one carried on on behalf of a religious or charitable institution. To take a business out of the substantive cl. (i) of s. 4(3) and place it in cl. (b) of the proviso, it is suggested that business is not property and that even if it is property the said property is not wholly or partly held in trust for religious or charitable purposes. That business is property is now well settled. The Privy Council in *In re Trustees of the Tribune*(1) did not question the view expressed by the Bombay High Court that business of running the newspaper Tribune was property held under trust for charitable purposes. This Court in *J. K. Trust, Bombay v. Commissioner of Income-tax..Excess profits Tax Bombay*(2) endorsed the said view and held that "property" is a term of the widest import and that business would undoubtedly be property unless there was something to the contrary in the enactment. If business was property, it could be held under trust for religious and charitable purposes. As the business of running the Arya Vaidya Sala vested under trust for religious and charitable purposes, it would fall under

(1) (1939) I.T.R. 415 (P.C.) (2) (1958) S.C.R. 65

1964

C.I.T.
v.
Krishna Warriar

Subba Rao J.

cl. (i), if the other conditions laid down therein were satisfied. The necessary condition for the application of cl. (i) of s. 4(3) of the Act is that the said property, namely, the business, shall have been wholly or in part held for religious or charitable purposes. As 40 per cent of the profits in the business would be given to purposes other than religious or charitable purposes it cannot be said that the business was held wholly for religious or charitable purposes. But as 60 per cent of the profits thereof would be spent for religious or charitable purposes, the question is whether it can be held that the business was held in trust in part for religious or charitable purposes. The argument advanced on behalf of the Revenue is that the expression "in part" in cl. (i) applies only to a case where an aliquot part of property is vested in trust and that is not legally possible in the case of business. It is said that a business is one and indivisible and, therefore, the subject-matter of trust can only be the share of the profits payable to a partner during the continuance of the partnership or after its dissolution. Reliance is placed in support of the said proposition on the decisions in *K. A. Ramachar* v. *Commissioner of Income-tax, Madras*(1), *David Burnet* v. *Charles P. Leininger*(2), *Mohammad Ibrahim Riza* v. *Commissioner of Income-tax, Nagpur*(3). The first two decisions dealt with a different problem, *viz.*, whether an assessee is liable to tax on his share of profits in a firm after setting or assigning the same in favour of a third party and the courts have held that the profits accrued to the assessee before the assignments could operate on them and he was liable to be assessed to tax on the said profits. In the third decision, the Judicial Committee held that there was no valid trust for charitable purposes, as the utilization of the income to charitable or secular purposes was left to the absolute discretion of the head of the community. None of the three decisions has any bearing on the question whether a business could be held in trust wholly or in part for religious or charitable purposes. That question falls to be considered on different considerations.

In our view, the expression "in part" does not refer to an aliquot part; if half a house is held in trust wholly for

(1) [1961] 3 S.C.R. 380 (2) (1932) 76 L.Ed. 665.
(3) (1930) 57 I.A. 260

religious or charitable purposes, it would be covered by the first part of the substantive clause of cl. (i), for in that event the subject-matter of the trust is only the said half of the house and that half is held wholly for religious or charitable purposes. The expression "in part", therefore, must apply to a case other than a property a part of which is wholly held for religious or charitable purposes. In India there are a variety of trusts wherein there is no complete dedication of the property but only a partial dedication. A property may be dedicated entirely to a religious or charitable institution or to a deity. This is an instance of complete dedication. A property may be dedicated to a deity, subject to a charge that a part of the income shall be given to the grantor's heirs. A property may be given to an individual subject to, or burdened with, a charge in favour of an idol or a religious institution or for charitable purposes. An owner of property may retain the property for himself but carve out a beneficial interest therefrom in favour of the public by way of easement or otherwise. There may be many other instance, where though there is a trust, it involves only a partial dedication of the property held under trust in the sense that only a part of the income of that property is utilized for religious or charitable purposes. The dichotomy between the two expressions "wholly" and "in part" is not based upon the dedication of the whole or a fractional part of the property, but between the dedication of the said property wholly for religious or charitable purposes or in part for such purposes. If so understood, the two limbs of the substantive clause fall into a piece. The first limb deals with a property or a part of it held in trust wholly for religious or charitable purposes, and the second limb provides for such a property held in trust partly for religious or charitable purposes. On the said reading of the provision it follows that the entire business of Arya Vaidya Sala is held in trust for utilizing 60 per cent of its profits *i.e.*, a part of the income, for religious or charitable purposes. The present case, therefore, falls squarely within the scope of the substantive part of cl. (i) of s. 4(3) of the Act.

Even so it is contended that cl. (b) of the proviso imposes further limitations before the exemption can be

1964

C.I.T.
v.
Krishna Warriar

Subba Rao J.

granted. But the said clause of the proviso only applies to the case of income derived from business carried on on behalf of a religious or charitable institution. A business held in trust wholly or in part for religious or charitable purposes is not a business carried on on behalf of a religious or charitable institution, for the business itself is held in trust. A few decisions cited at the Bar bringing out the distinction between the substantive part of cl. (i) of s. 4(3) and cl. (b) of the proviso may usefully be referred to at this stage. Where a business was held in trust for charitable purposes, a Division Bench of the Bombay High Court in *Dharma Vijiya Agency* v. *Commissioner of Income-tax, Bombay City*(1) held that it was not business which was carried on on behalf of religious or charitable institutions within the meaning of cl. (b) of the proviso. Shah J., after considering the relevant authorities and the provisions of the Act, observed:

> "In our view, the business referred to in cl. (b) of the proviso need not be business which is held for religious or charitable purposes, provided it is business carried on on behalf of a religious or charitable institution."

Desai J., stated thus:

> ".....it is impossible to equate the scope of proviso (b) with the scope of property consisting of business held under trust wholly for religious or charitable purposes. It must of necessity mean that we have in clause (i) a very wide category of business which is trust property, and we have in proviso (b) a restricted and a lesser category of business which is carried on by or on behalf of a religious or charitable institution."

A Division Bench of the Kerala High Court in *Dharmodayam Co.* v. *Commissioner of Income-tax, Kerala*(2) expressed much to the same effect. A Division Bench of the Madras High Court, in *Thiagesar Dharma Vanikam* v. *Commissioner*

(1) (1960) 38 I.T.R. 392, 405-466, 410.
(2) (1962) 45 I.T.R. 478.

of Income-tax, Madras(1), after considering the decisions of the various High Courts and the relevant provisions of the Act, observed:

> "When the trustee acts, it is only the trust that acts, as the trustee fully represents the trust. A business carried on on behalf of a trust rather indicates a business which is not held in trust, than a business of the trust run by the trustees."

It concluded thus:

> "In our opinion proviso (b) to section 4(3)(i) does not restrict the operation of the main provision in section 4(3)(i). If a trust carried on business and the business itself is held in trust and the income from such business is applied or accumulated for application for the purpose of the trust, which must of course be of a religious or a charitable character, the conditions prescribed in section 4(3)(i) are fulfilled and the income is exempt from taxation. This exemption cannot be defeated even if the business were to be conducted by somebody else acting on behalf of the trust. Proviso (b) to section 4(3)(i) has application only to businesses which are not held in trust, and the field of its operation is, therefore, distinct and separate from that covered by section 4(3)(i)."

Emphasis is laid upon the expression "such income" in the opening words of the proviso and a contention is raised that the income dealt with in the proviso is income derived from property held under trust. To state it differently, the adjective "such" in the expression "such income" refers back to the income in the substantive clause. There is some plausibility in the contention, but if the interpretation be accepted, we will be attributing an intention to the legislature to make a distinction between business and other property though both of them are held under trust. There is no acceptable reason for this distinction. That apart, the expression

(1) (1963) 50 I.T.R. 798, 807, 809.

1964

C.I.T.
v.
Krishna Warriar

Subba Rao J.

"such" may as well refer to the "income" in the opening sentence of sub-s. (3). The said sub-section says that the incomes mentioned thereunder shall not be included in the total income, but the proviso lifts the ban and says that such incomes shall be included in the total income if the conditions laid down are satisfied. We think that the expression "such income" only means the income accruing or arising in favour of the trust.

The legal position may briefly be stated thus. Clause (i) of s. 4(3) of the Act takes in every property or a fractional part of it held in trust wholly for religious or charitable purposes. It also takes in such property held only in part for such purposes. Business is also property within the meaning of the said clause. Clause (b) of the proviso to s. 4(3)(i) applies only to a business not held in trust but carried on on behalf of religious or charitable institutions.

For the foregoing reasons we hold that the High Court has correctly answered the question referred to it.

In the result, the appeals fail and are dismissed with costs. One set of hearing fees.

Appeal dismissed.

1964

April, 29.

JAGDISH CHANDER GUPTA

v.

KAJARIA TRADERS (INDIA) LTD.

(K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR JJ.)

Arbitration Act—Partnership agreement—Provision for referring to arbitration—Partnership not registered—Application in the High Court for appointment of arbitrator—If maintainable—Interpretation of statute—Ejusdem Generis—Noscitur a sociis—Indian Partnership Act, 1932 (9 *of* 1932), *s.* 69—*Arbitration Act,* 1940 (*Act* 10 *of* 1940), *s.* 8(2).

The respondent entered into a partnership agreement with the appellant. But this was not registered. There was an arbitration clause sti-