

1965

*Present : Tambiah, J., and Sirimane, J.*

THE COMMISSIONER OF INLAND REVENUE, Appellant, and  
A. L. J. CROOS RAJ CHANDRA, Respondent

*S. C. 1/64—Income Tax BRA 316*

*Income tax—“ Trust of a public character ”—“ Charitable purpose ”—“ Includes ”*  
*—Income Tax Ordinance (Cap. 242), ss. 2, 7 (1) (d)—Trusts Ordinance,*  
*s. 99 (1).*

Section 7 (1) (d) of the Income Tax Ordinance, before it was amended by Act No. 44 of 1958, was as follows :—

“ There shall be exempt from the tax the income of any institution or trust of a public character established solely for charitable purposes.”

The term “ charitable purpose ” is defined in section 2 of the Income Tax Ordinance as follows :—

“ ‘ Charitable purpose ’ includes relief of the poor, education and medical relief.”

*Held*, that the word “ includes ” in the context of the definition of “ charitable purpose ” in section 2 of the Income Tax Ordinance must be given its ordinary extensive meaning and should not be construed as the equivalent of “ means ”. The word “ established ” in section 7 (1) (d) of the Income Tax Ordinance read with the interpretation clause defining charitable purpose must be given the same meaning as the words “ charitable purposes ” mentioned in section 99 of the Trusts Ordinance.

*Commissioner of Income Tax v. Baddrawathie Fernando Charitable Trust* (63 N. L. R. 409) and *Ceylon Tea Propaganda Board v. Commissioner of Income Tax* (67 N. L. R. 1) not followed.

*Held further*, that a trust the objects of which are either for the benefit of the public or a section of the public is a trust of a public character within the meaning of section 7 (1) (d) of the Income Tax Ordinance. Even the performance of masses for the benefit of certain individuals necessarily benefits a section of the public, namely, the worshippers at the church at which the masses are conducted.

CASE stated under section 78 of the Income Tax Ordinance.

*M. Kanagasunderam*, Crown Counsel, for Appellant.

*H. W. Jayewardene, Q.C.*, with *G. T. Samerawickreme, N. R. M. Daluwatte* and *B. Eliyathamby*, for Respondent.

*Cur. adv. vult.*

January 22, 1965. TAMBIAH, J.—

This is a case stated by the Board of Review under section 78 of the Income Tax Ordinance (Cap. 242).

By Last Will No. 4691 of 14.12.1899, John Leo de Croos granted and set apart the rents and profits of certain properties and directed that out of the income and profits from these properties, charitable purposes should be carried out in the following manner :—

- (a) A girls' school shall be built at Etukal on the land which the testator had bought.
- (b) The Etukal cemetery of St. Sylvester shall be enclosed with a substantial wall.
- (c) One of the altars in St. Mary's Church, Negombo, shall be built or got out from Europe at the testator's expense, the expense thereof to be given to the Parish Priest.
- (d) Yearly alms giving and masses on a grand scale for the testator, his father, his mother and his wife in the places where they are buried shall be given and celebrated.
- (e) Ten masses for the testator's mother, ten masses for the testator, ten masses for his wife, to be celebrated. The expenses to be sent to the Kandy Parish Priest to be divided among the churches.
- (f) Rupees two thousand to be given to Bishop Panjani for the benefit of the church in his Diocese.
- (g) On the anniversary day of the death of the testator, his father, mother and wife, clothes shall be distributed among beggars.
- (h) Once a month beggars shall be given a substantial feed.
- (i) To pay dowry suitable to the social position of each recipient and to give in marriage girls whose parents are unable to afford the dowry irrespective of religion, nationality, caste or class in each case from rupees one hundred to one thousand at the discretion of the executor and no more.

The objects set out in sub-paragraphs (a), (b), (c) and (f) above, were executed many years ago. Thereafter, the income and profits from the said properties were utilised for furthering the remaining objects

set out in the instrument of trust. The trust created by the said Will is known by the name of John Leo Trust and Will, hereinafter referred to as the "John Leo Trust".

Since 1943 the assessee has been the sole trustee of the John Leo Trust. The income received by the assessee and the disbursements made by the assessee in each of the years preceding the three years of assessment, viz., 1956-57, 1957-58 and 1958-59 are set out in paragraph 8 of the petition in which the case is stated.

The case stated arises out of the assessment for the periods mentioned above. The Board of Review, by their order, a copy of which is marked as X1, held that, excluding a sum of Rs. 835 the income derived by the assessee for the periods referred to, was exempt from Income Tax as it was income from a trust of a public character established *solely for charitable purposes*.

The questions of law on which the opinion of this court is sought are as follows :

- (a) whether in respect of the years of assessment 1956-57, 1957-58 and 1958-59, there was a trust of a public character established *solely for charitable purposes*.
- (b) whether the whole of the income of the said trust is exempt from being taxed under the Income Tax Ordinance.

The answers to the questions of law set out by the Board of Review depend on the proper construction to be placed on the provisions of section 7 (1) (d) of the Income Tax Ordinance, before it was amended by Act No. 44 of 1958.

The said provisions are as follows :

"There shall be exempt from tax the income from any institution or trust of a public character established *solely for charitable purposes*."

"Charitable purposes" is defined in the Income Tax Ordinance as follows :

"Charitable purposes include relief of the poor, education and medical relief."

The learned Crown Counsel conceded that the trust is of a public character. Further, the fact that the trust is of a public character is borne out by the objects set out which are either for the benefit of the public or a section thereof. Lord Greene M. R. in the case of *Re Compton*<sup>1</sup>, quoting from Tudor's Charities (5th Edition, p. 11), put the matter succinctly as follows :

"It is a universal rule that the law recognises no purpose as charitable unless it is of a public character. That is to say a purpose . . . must be directed to the benefit of the community or a section of the community."

<sup>1</sup> (1945) Ch. D. 123 at 128.

Citing this dictum with approval, Lord Radcliffe said (vide *Falil Abdul Caffoor v. The Income Tax Commissioner*<sup>1</sup>): “There is no significant difference between the meaning of ‘a public character’ and the meaning of ‘for the benefit of the public or any section of it’. The two phrases are often used interchangeably in English decisions and textbooks.”

A consideration of the various objects set out in the Will creating the John Leo Trust shows beyond any doubt that the objects mentioned therein are either for the benefit of the public or a section of the public. Even the performance of masses for the benefit of certain individuals necessarily benefits a section of the public, namely, the worshippers at the church at which the masses are conducted. Trusts for the performance of masses are not void (vide *Bourne v. Kerne*<sup>2</sup>) and benefits a section of the public who take part in it. The fact that the John Leo Trust was of a public nature was not only rightly conceded by the learned Crown Counsel but is also supported by authorities.

The only question that is pressed before us is whether the John Leo Trust was not established solely for charitable purposes within the meaning of section 7 (1) (d) of the Income Tax Ordinance before it was amended.

As stated earlier, the phrase “charitable purposes” is defined so as to include relief of the poor, education and medical reliefs. It was contended on behalf of the Crown that the word “includes” should be construed as “means” in this context. In support of his contention, the learned Crown Counsel relied on two cases, namely, the *Commissioner of Income Tax v. Baddrawathie Fernando Charitable Trust*<sup>3</sup> and an unreported case, *The Ceylon Tea Propaganda Board v. The Commissioner of Income Tax*<sup>4</sup>. In both these cases, the Supreme Court, in effect, interpreted the word “includes”, in this context as the equivalent of “means”. For reasons which I would set out below, I am unable to agree with this construction.

In the first case, Weerasooriya J. said, (vide 63 N.L.R. at p. 413), “We were referred by learned counsel on both sides to various definitions in section 2 where the word ‘includes’ is used in different senses. Although the word ‘means’ is used in some of the definitions, the word ‘includes’ appears to be used in other instances as the equivalent of ‘means’ — see for example, the definition of ‘commissioner’, ‘receiver’, ‘trade’, and ‘trustee’. The word is also sometimes used in an extensive sense, as in the definition of ‘business’, ‘ordinance’, and ‘person’. The lack of uniformity in the sense in which the word ‘includes’ is used in section 2 renders it unsafe, in my opinion, to construe the meaning of the word in the definition of ‘charitable purpose’ by reference to the meaning which it bears when used in the definition of other terms.”

<sup>1</sup> (1961) 63 N. L. R. 56 at 65.

<sup>2</sup> (1919) A. C. 815.

<sup>3</sup> (1961) 63 N. L. R. 409.

<sup>4</sup> (1963) 67 N. L. R. 1.

Both in the *Commissioner of Income Tax v. Baddrawathie Fernando Charitable Trusts* (supra) and *The Ceylon Tea Propaganda Board v. The Commissioner of Inland Revenue* (supra), this court construed the word “includes” as “means”. Therefore it is necessary to consider at some length the meaning of this word in this context.

Whenever the word “includes” is used in a statute, the normal meaning to be attached to the word is that it enumerates categories of classes which will not be included in the concept of the term which precedes it (vide *Ludovici v. Nicholas Appu*<sup>1</sup>; *The Corporation of Portsmouth v. Smith*<sup>2</sup> and *Emperor v. Ramanjiya*<sup>3</sup>).

In the case of *Dilworth v. Commissioner for Land and Income Tax*<sup>4</sup> the Privy Council was called upon to interpret the word “includes” in the following sentence in section 2 of the Land and Income Assessment Act of 1891 (an Act of New Zealand): “charitable purpose includes devises, bequests and legacies of real or personal properties respectively of whatever description to public institutions such as libraries, museums, institutions for the promotion of science, arts, colleges, schools or hospitals, etc.” Section 3 of the same Act exempted charitable devices or bequests from Income Tax. In interpreting these words, Lord Watson who delivered the opinion of the Judicial Committee said, (vide 1899 Appeal Cases, at 105, 106) “Section 2 is, beyond all question, an interpretation clause and must have been intended by the Legislature to be taken into account in construing the expression ‘charitable device or bequests’, as it occurs in section 3. It is not said in terms that a ‘charitable bequest’ shall be one or other things which are enumerated, but it shall include them.”

“The word ‘include’ is generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute and when so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word ‘includes’ is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to ‘mean and include’ and in that case it may afford an exhaustive explanation of the meaning which, for the purpose of the Act, must invariably be attached to these words or expressions.”

A careful perusal of section 2 of the Income Tax Ordinance shows that there is a clear cut scheme which underlies the definitions and that there is no haphazard arrangement or lack of uniformity in which the term “includes” is used. In this section, there are some terms defined by the use of the word “means”. In such cases, it is meant to be an

<sup>1</sup> (1900) 4 N. L. R. p 12 at 15.

<sup>2</sup> 13 Q. B. D. 195.

<sup>3</sup> 2 I. L. R. (Madras) 6 at p 7.

<sup>4</sup> (1899) A. C. 99.

exhaustive definition. Examples of such words are “active partner”, “assessable income”, “assessor”, “assistant assessor”, “authorised representative”, “banker”, etc. The word “includes” is used in some definitions as the equivalent of means but, in such cases, it is significant that the word that precedes the word “includes” is also placed after the word “includes”. Thus for example, the word “receiver” is defined as follows: “Receiver includes any receiver, or liquidator, etc.” The word “trade” is defined as follows: “Trade includes trade and manufacture, etc.” The word “trustee” is defined as follows: “Trustee includes any trustee, guardian, curator, etc.”

When there are words or phrases preceding the word “includes” and the same words or phrases are placed immediately after it, it becomes necessary, in the context, to construe the word “includes” as equivalent of “means and includes”.

Under the third category the function of the word “includes” is merely enumerative. In such cases, the term is placed preceding the word “includes” and is followed by a number of other terms which, in common parlance, may not connote the term which precedes the word “includes”. Thus, the word “business” is defined as “Business includes agricultural undertakings”. In common parlance, agricultural undertakings will not be construed as business. It is in this sense that the phrase “charitable purposes” is to be construed.

Charitable purpose is a concept which has a definite meaning under the Statute Law of Ceylon. The terms that follow the word “includes” enumerate those classes which may not be included in the term “charitable trusts”. I am fortified in my view on the construction to be placed on the words “charitable purpose” by the dictum of Lord Radcliffe, who delivered the opinion of the Privy Council in *Falil Abdul Caffoor v. The Commissioner of Income Tax* (supra). He said, “It is necessary now to turn to the question of exemption. To qualify at all there must be an income of an ‘established’ trust. Having regard to the nature of the Abdul Caffoor Trust, it cannot be validly established unless it falls within the definition of ‘charitable trusts’ which is contained in section 99 (1) of the Trusts Ordinance, 1918. This definition includes any trust ‘for the benefit of the public or any section of the public’, falling within any one of a number of categories which extend to such purposes as the relief of poverty and the advancement of education or knowledge. To satisfy the definition contained in the Income Tax Ordinance, therefore, the Abdul Caffoor trust must be a charitable trust ‘of a public character’; to be a subsisting charitable trust at all, it must be trust for the benefit of the public or some section of it.

In order to determine this question, their Lordships think that the following principles may safely be applied in the interpretation of the Ceylon Ordinance. First, the general principles of English Law that govern charitable trusts can be invoked. It seems plain that both the conception of a trust itself and the conception of what constitutes a

charitable trust have been influenced by the English Law. Secondly, there is no necessity to include the general principles of English Law that appear to be specially associated with English local conditions or English history; or which now appear to be anomalous incidents of the general law. Thirdly, there is no significant difference between the meaning of 'of a public character' and the meaning of 'for the benefit of the public or any section of it'. The two phrases are often used interchangeably in English decisions and textbooks—see e.g., the quotation from Tudor's *Charities* (5th Edition, p. 11) cited by Lord Greene M. R. in *Re Compton's case*. It is a universal rule that the law recognises no purpose as *charitable* unless it is of a public character. That is to say, a purpose must be directed to the benefit of the public or a section of the community. Charitable trusts must be 'trusts of a public nature' (vide Lord MacNaughton's dictum in *Pemsel's case*). Fourthly, although educational purposes are themselves charitable purposes, no trust under which beneficiaries are defined by reference to purely personal relationships with a name can be a valid charitable gift. If, therefore, persons for whose benefit an educational trust is created, derive their title to the benefit by proving their qualifications in this way, whether as descendants of a named person or an employee of a named company, the trust must be regarded merely as a family trust and not as one for the benefit of the community (vide *Re Compton* (supra); *Oppenheim v. Tobacco Securities Trust Co. Ltd.*)."

Although the relevant part of this dictum is obiter, I would respectfully agree with the views expressed by Lord Radcliffe on the identical provisions of the Income Tax Ordinance that this Court has been called upon to interpret. The views taken by Lord Radcliffe accord with the well-known rules and canons of construction that should be applied in interpreting statutes. When the Legislature has provided an interpretation clause, one should not embark on a voyage of discovery to seek the supposed intention of the draughtsman who, for a variety of reasons, might have omitted certain portions for earlier definitions or included them later on in order to make the meaning of certain words clear.

Some of the reasons given by Weerasooriya J., in the interpretation adopted by him may be examined. In the course of his judgment, Weerasooriya J., states as follows: "In defining 'charitable purposes' in section 2 of the Income Tax Ordinance, the draughtsman left out entirely the purposes mentioned in category (c) of the definition of a charitable trust in section 99 (1) of the Trusts Ordinance (namely the advancement of religion, or the maintenance of religious rites and practices)".

From this omission he infers that the definition of "charitable purpose" in section 2 of the Income Tax Ordinance was intended to exclude from its ambit the advancement of religion or the maintenance of religious rites and practices. Weerasooriya J. further stated: "I am confirmed

in this opinion by the distinction drawn in section 7 (1) (c), as originally enacted, between religious and charitable purposes, which were treated as separate categories. Section 7 (1) (c) drew a distinction between a religious and a charitable institution. In view of these distinctions, it would have been incongruous if 'charitable purpose' in section 2 was defined as including religious purposes."

In this connection it is important to bear in mind that there can be a religious purpose or performance of religious rites purely for the benefit of a particular person or specified individuals in view of the religious practices prevailing in this country. Thus, a person may create a trust and direct the trustee to give a specified sum to a particular individual or other named individual so as to enable them to perform pilgrimages to a particular shrine. A more common example is for a person to create a trust and earmark a certain portion of the income for the performance of special rites to the Gods in order to obtain favours for himself or his close relations. The Hindus often perform "arichināi" which is purely intended to invoke the blessings of the deity for the benefit of an individual. Such trusts do not benefit the public or a section of the public and therefore is not a public religious purpose. As contended by the counsel for the appellant, a distinction must be drawn between a public religious purpose and a private religious purpose. It was perhaps the intention of the draughtsman not to exempt charities which were intended to benefit only an individual or particular named individuals. Since the term charitable purpose is sufficient enough to include public religious purposes or performances of religious rites for public purposes, to avoid tautology, the draughtsman might have omitted religious purposes. Further, by omitting the words "religious purposes" the draughtsman might have intended not to exempt private charities which were intended only to benefit a particular individual or individuals and which did not confer any benefit on the public or a section of the public.

In the case of *The Ceylon Tea Propaganda Board v. The Commissioner of Income Tax* (supra) similar views were advanced by Fernando J., in construing the relevant words of the Income Tax Ordinance referred to earlier. In the course of his judgment, he said: "The categorisation of charitable purposes into four divisions stated in *Pemsel's case* was not unfamiliar to the Legislature of Ceylon, for we find in section 99 of the Trusts Ordinance that the same four categories are included in the definition of charitable trusts with alterations apparently considered necessary for the Law of Ceylon. It is most likely that the same definition of charitable trust was examined at the time of the enactment of the Income Tax Ordinance, and if there had been any intention that the expression 'charitable purpose' should have the same wide meaning as in the Trusts Ordinance, it is strange that the old definition was neither incorporated in the Income Tax Ordinance nor adopted by reference."



The reasons given by me earlier apply equally to the observations made by Fernando J. When the phrase “charitable purpose” was wide enough to catch up all categories set out in section 99 of the Trusts Ordinance, it was quite unnecessary for the draughtsman to include again all the specialized categories referred to in the Trusts Ordinance. If the intention of the draughtsman was not to exempt charities, which were created for the performance of the religious rites purely for the benefit of an individual or individuals, the omission of the phrase “religious purpose” in the definition of section 2 of the amended Income Tax Ordinance can well be understood.

In both cases referred to above, the dictum of Lord Radcliffe in *Abdul Caffoor's case* was not referred to or considered. Counsel for the appellant submitted that at the time these decisions were delivered, the decision of the Privy Council was not available in Ceylon. I am of the view that the phrase “established” in section 7 (1) (d) of the Income Tax Ordinance read with the interpretation clause defining charitable purpose in section 2 of the Income Tax Ordinance must be given the same meaning as the words “charitable purposes” set out in section 99 of the Trusts Ordinance.

The inclusion of all the different categories of charitable purposes as defined in section 99 of the Trusts Ordinance in the Income Tax Amendment Act 11 of 1958 does not show that a deliberate change was brought about by this amending Act. Category C of section 99 of the Trusts Ordinance was specially included in the definition of charitable purposes in the Income Tax Act. To avoid all doubts such a change could have been brought about regarding the construction to be placed on section 2 of the Income Tax Ordinance before it was amended.

Even if one should entertain any doubts, taxing statutes must be construed strictly (vide *John Cox v. Harris Rabbit*<sup>1</sup>). As I had occasion to state earlier (vide 64 N.L.R. 403) express and unambiguous language is absolutely indispensable in statutes passed for the purpose of imposing a tax. In a taxing statute, if two constructions are possible, one in favour of the assessee and the other in favour of the assessor, the court should adopt the construction favourable to the assessee.

The first question of law referred to us, therefore, must be answered in the affirmative. If the first question is answered in the affirmative, as conceded by the learned Crown Counsel, it necessarily follows that the second question should also be answered in the affirmative. I hold that the Board of Review was not justified in asking the assessee to pay the sum of Rs. 835. The appeal is dismissed with costs.

SIRIMANE, J.—I agree.

*Appeal dismissed.*

<sup>1</sup> (1877-78) L. R. 3 A. C. p. 474.