



Revenue Act, No. 4 of 1963, and hence under section 28 of the Act, is exempt from liability for Wealth Tax.

Cases referred to :—

*Inland Revenue Commissioner v. Eccentric Club Ltd.* (1924) K B 396.

*Steele v. Gourley & Davies* (1887) 3 T.L.R. 118.

*Graffe v. Evans* (1882) 8 Q.B.D. 373 ; 46 L.T. 347.

*Zebanog Club v. MacDonald* (1940) 1 All E.R. 454.

*Finch v. Oake* (1896) 1 Chancery 409 ; 73 L.T. 716 ; 65 L.J. ch. 624.

*Hopkins v. Marquis of Exeter* (1867) L.R. 5 Equity 63 ; 17 L.T. 368.

*Wise v. Perpetual Trustee Co.* (1903) A.C. 130 ; 87 L.T. 509 ; 19 T.L.R. 125.

*The Bohemian Club of Melbourne* (1819) 24 C.L.R. 334.

*Fletcher v. Income Tax Commissioner* (1971) 3 All E.R. 1185 ; (1972) 2 W.L.R. 14 ; (1972) A.C. 414.

**C**ASE STATED to the Supreme Court under the Inland Revenue Act, No. 4 of 1963.

*S. Ambalavanar*, with *Miss C. Joseph*, for the assessee-appellant.

*G. P. S. de Silva*, Deputy Solicitor-General, for the respondent.

*Cur. adv. vult.*

April 3, 1978. SHARVANANDA, J.

Section 28 of the Inland Revenue Act, No. 28 of 1963, exempts “any body of persons to which section 78 of the Act applies” from the application of the provisions relating to the imposition of wealth tax.

Section 78(1) applies to “a body of persons, corporate, or unincorporate, carrying on a club or similar institution”, and section 78(2) to “a body of persons, whether, corporate or unincorporate, carries on a trade association, chamber of commerce, or similar institution.”

The question that arises on this reference is whether an established political party, such as the United National Party, is an institution falling within the ambit of section 78(1) of the Inland Revenue Act and hence exempt from liability to wealth tax.

The United National Party is admittedly a political party, its objective (according to section 4 of its Constitution) being to “organise and maintain in Parliament and in the country a Political Party to put into effect the Policy and Programme accepted by the Party as contained in its Manifesto.” The membership of the Party is open to all its registered electors who accept the conditions of membership set out in Rule 3 of the Constitution. The following are its conditions :—

- (a) to accept the Principles, Policy and Programme of the party ;

- (b) to conform to the constitution and Standing Orders of the party ;
- (c) to give all possible support to the candidate nominated by the party and in no way to support any other person standing against such candidate ;
- (d) not to take part in any political activities which conflict or might conflict with the above undertakings.

Membership is confined to :

- (a) direct members, being those who pay an annual fee of Rs. 1 to the Treasurer of the Party on or before the 31st day of January every year ;
- (b) members of registered Branch Associations which have paid their respective annual Association membership fee of Rs. 10 to the Treasurer of the Party on or before the 31st day of January every year ;
- (c) members of registered Women's Branch Associations which have paid their respective annual Association membership fee of Rs. 5 to the Treasurer of the Party on or before the 31st day of January every year ;
- (d) members of registered Youth Branch Associations which have paid their respective annual Association membership fee of Rs. 5 to the Treasurer of the Party on or before the 31st day of January every year.

The United National Party is not a mushroom political party that surfaces when a Parliamentary Election is in the offing. It is a well established party, having been founded years ago, and has a political history.

Counsel for the United National Party, the assessee-appellant, submitted that the Party is an unincorporate body of persons carrying on an institution similar to a club within the meaning of section 78(1) and is hence not liable to wealth tax in terms of section 28 of the Inland Revenue Act.

A club is generally understood to mean a group of persons organised for social, literary, athletic, political or other purposes. In Halsbury's Laws of England (4th Ed. Vol. VI at p. 56), a club is defined as " a society of persons associated together not for the purpose of trade, but for social reasons, promotion of politics, sport, art, science, or literature, or for any other lawful purpose. " But trading activities will not destroy the nature of a club if they are merely incidental to the club's purposes. A

members' club is not ordinarily carried on with a view to profit and is not liable to income tax on the result of mutual transactions with its members. (See *Inland Revenue Commissioner v. Eccentric Club Ltd.*, (1924) K. B. 396). The association must be private and have some element of permanance. An unincorporated members' club is a society of persons, each of whom contributes to the funds out of which the expenses of the society are paid. The contribution is generally made by means of an entrance fee, or subscription fee, or both. The society is not a partnership, because the members are not associated with a view to profit. It does not have a legal existence apart from the members of which it is composed (*Steele v. Gourley & Davies*, (1886) 3 T.L.R. 118 at 119 per Day, J.). Subject to any rules to the contrary, the property and funds of a club belong to the members for the time being, jointly and in equal shares, and if provisions are supplied to a member at a given price, this does not constitute a sale as a member is a part-owner of the goods of the club, but is in effect a release by the other members of their interests in the goods supplied. In *Graffe v. Evans*, (1882) 8 Q.B.D. 373 at 378, Field, J. clarified the principle as follows:—

“I think the true construction of the rule (Rule 7: All property acquired by the club shall be vested in the trustees). is that the members were the joint owners of the general property in all the goods of the club and that the trustees were their agents with respect to the general property in the goods.”

In a club, the members for the time being are jointly entitled to all the property and funds, but it is only upon a dissolution that the individual interests of the members become capable of realisation. The property and assets of a club are usually vested in the trustees who are appointed in pursuance of the provisions in the rules. The holding of the property by the trustees is a holding for and on behalf of and not a holding antagonistic to the members of the club, *Zebanog Club v. MacDonald*, (1940) 1 A.E.R. 454. The management of the affairs of a club is generally entrusted to a committee of the members elected in accordance with the provisions of the rules.

It is fundamental to the concept of a club that the organisation is open only to individuals sharing a mutual interest. Every club is governed by rules which generally specify the purpose for which it is established and make provisions as to the admission of members, the payment of entrance fees and subscriptions,

resignation and expulsion of members, the management of the affairs of the club and holdings of meetings of members. The rules spell the contract between the members. The members are entitled to privileges of the club in accordance with the rules, so long as they duly pay their subscriptions and continue to be members. Clubs are societies, the members of which are continually changing and no member as such becomes liable, in the absence of a rule which impose that liability, to pay to the funds of the society any sum beyond the subscription which the rules require him to pay so long as he remains its member. Subject to any provisions in the rules to the contrary, a member of an unincorporated members' club may from time to time terminate his membership on advising the secretary of his intention to resign, *Finch v. Oake*, (1896) 1 Chancery 409. A member may be expelled if the rules of the club so provide. A member may be expelled under a rule which so provides if his conduct in the opinion of the committee is injurious to the character and interests of the club. In the case of a political club, pledging oneself to vote for a candidate of another party may reasonably be considered injurious to the interests to the club and may justify expulsion (see *Hopkins v. Marquis of Exeter*, (1867) L.R. 5 Equity 63).

Lord Lindley, in his judgment in *Wise v. Perpetual Trustee Co.*, (1903) A. C. 130 at 149, referred to the fundamental elements of a club :

“Clubs ..... are societies, the members of which are perpetually changing. They are not partnerships, they are not associations of gain, and the feature which distinguishes them from other societies is that no member as such becomes liable to pay to the funds of the society or to anyone else any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member. It is upon this fundamental condition, not usually expressed but understood by everyone, that clubs are formed, and this distinguishing feature has been often judicially recognised.”

Griffith, C. J. in *The Bohemian Club of Melbourne*, (1819) 24 C.L.R. 334 at 337, described a club as a voluntary association of persons who agree to maintain for their common personal benefit and not for profit an establishment the expenses of which are to be defrayed by equal contributions of an amount estimated to be sufficient to repay their expenses. Lord Wilberforce, delivering the judgment of the Privy Council in *Fletcher v. Income Tax Commissioner*, (1971) 3 A.E.R. 1185 at 1190, while quoting

with approval Griffith, C.J.'s description of a club, observed that though the Chief Justice referred to equal contributions, it was not an essential feature. <sup>e</sup>

A club differs fundamentally from a partnership. For a partnership to exist, there must be two or more principals carrying on business with a view to profit. On the other hand, the object of a club, is not acquisition of profit, and its members, as such, are not liable for one another's acts.

The basic feature of a business activity is that it has as its object the making of a profit. A club is not a form of business organisation. Since the primary purpose of making a profit is wanting, such a club is not a form of business organisation. But where the club is a proprietary one, that is to say it may be owned and operated by one or more persons who, in consideration of the payment of subscriptions, permit the members of the club to enjoy the facilities which they provide, in such an instance the proprietor is carrying on a business for profit. A proprietary club is of an entirely different nature from a members' club. It is a misnomer to describe such an institution as a club. The norm is a members' club. The concept of 'club' in its proper significance, embraces only a members' club. A proprietor's club is a contradiction in terms, and section 78 (3) of the Inland Revenue Act very properly excludes the application of section 78 (1) to proprietary clubs.

The above are the basic rules relating to a club. They are equally applicable to the constitution, management, membership and property of a political party. Thus the institutions of a club and of a political party, though their orientations may differ, have in law, a number of similar basic features. They are both associations of persons, combining for purposes other than carrying on a business, and acquisition of gain is quite alien to their object. The membership of a club is generally confined to persons sharing a common social interest, while membership of a political party is limited to those who accept the political principles, policy and programme of the party. The rights and duties of the members of a club depend upon its rules. Similarly, the constitution of a political party determines the rights and duties of its members, and the legal incidents relating to membership of a club apply equally to the members of a political party. The members for the time being of a political party are jointly entitled, as members of a club, to all the property and funds of that institution.

On the application of the above criteria to the circumstances of the United National Party, it would appear that it carries on an institution similar to a club within the meaning of section 78 (1) of the Inland Revenue Act and hence is exempt by section 28 from liability to wealth tax.

The Board of Review has held that the United National Party is not a club falling under section 78 (1), on the ground that a club represents an association of persons meeting together mainly for a social purpose (this could include sport or other common interest, such as gardening), and since the main objective of the United National Party is "to organise and maintain in Parliament and in the country a Political Party. . . ." such a party, "which formed the country's Government, or which intends to do so when in power, is too important an entity to be included by the Legislature under the connotation of 'club'." The Board has misconceived the contention of the assessee. What is claimed for the party is that, for the purposes of section 78 (1), not that it is a 'club', but that it is a 'similar institution'. This misconception vitiates the Board's conclusion. Further, the Board has unduly highlighted the difference in objectives for the purpose of determining the similarity in nature of the comparable institutions. The Board has failed to consider the similarities in character, constitution and structure of both the entities and has not addressed to itself the correct question. As stated earlier, the persons composing, a club or a political party are not commercially organised, and their activities are not profit oriented. They may incidentally carry on a trading activity to offset the expenses of their venture, but such activity is subordinated to their main purpose. Members are not entitled to any dividends and liability of a member is limited to his subscription. Though the members are jointly entitled to the property and funds of these organisations, it is only on their dissolution that the current members become entitled to the distribution of the assets. These common features tend to identify a political party as a "similar institution" akin to the legal status of a club. The fact that a political party's perspective or horizon is of national dimensions does not, in principle, make a difference to the argument.

The Deputy Solicitor-General, in the last resort, submitted that section 51 of the original Income Tax Ordinance anticipated the provisions of section 78 (1) of the Inland Revenue Act of 1963 and referred to a body of persons carrying on a club or similar institution and that since in 1932 there were no established political parties in Ceylon, it would not have been the intention

of the Legislature, when section 51 was first enacted in 1932, to include within the ambit of the section political parties. The assumption underlying this argument is questionable. It cannot be imagined that the legislators of 1932 could not have anticipated the evolution of political parties in Ceylon. Even if the institution of political parties was a subsequent development and is a new phenomenon in Ceylon politics, that fact does not debar it from claiming to be an institution similar to a club if it has attributes comparable to those of a club. The relevant question is: 'Does the nature, quality and status of a political party correspond to those of a club so as to be included in the same category of institutions for the purpose of the application of section 78 (1) ?' In the premises, this question admits only of an affirmative answer.

In my view, the question of law on which the opinion of this Court is sought has to be answered in favour of the assessee-appellant. The United National Party, as a political party, represents a 'similar institution' as a club within the meaning of section 78 (1) of the Inland Revenue Act and hence, under section 28 of the Act, is exempt from liability for wealth tax.

The appeal is allowed. The respondent shall pay the assessee-appellant costs fixed at Rs. 525. The appellant will also be entitled to a refund of the sum Rs. 50 paid under section 102 (1).

MALCOLM PERERA, J.—I agree.

WEERARATNE, J.—I agree.

*Appeal allowed.*