

CIVIL REFERENCE.

Before Falshaw and Kapur, JJ.

THE COMMISSIONER OF INCOME-TAX PUNJAB,—
Petitioner.

versus

PT. THAKUR DASS BHARGAVA, HISSAR,—Respondent.

Income-tax Act (XI of 1922)—Sections 3 and 4—Receipt of money earmarked for charitable trust purposes, whether income and as such liable to Income-tax—Trusts—Charitable—How accounted—Whether writing or formation necessary.

1953

August 3rd

T.D.B., a lawyer, who had practically retired from active practice, agreed to defend the accused on the condition that they and their friends would provide Rs. 40,000 for charitable purposes for which a trust will be created by him. In July, 1945, T.D.B. was paid Rs. 32,500. On 6th August, 1945, T.D.B. executed a Trust Deed with this fund as nucleus. The Income-tax authorities treated this sum as professional income and liable to income-tax. The Income-tax Appellate Tribunal did not treat this as professional income and liable to income-tax and referred the following question for the opinion of the High Court under section 66(1):—

“Whether the sum of Rs. 32,500 received by the assessee in the circumstances set out in the Trust Deed later executed by him on the 6th August 1945, was his professional income taxable in his hands or was it money received by him on behalf of a trust and not in his capacity as an individual”.

Held, that in the circumstances such as these where a sum of money is clothed with a trust that sum received by the assessee cannot be held to be his income but was received with a specific purpose of creating a trust. This receipt was, therefore, not his taxable income for he received it on behalf of a trust and not in his capacity as an individual.

Held further, that no technical words are necessary for the creation of such a trust which is created by the use of words which are primarily words of condition. The receipt of the money by T.D.B. with the express condition of its being utilized for the purposes of a public charitable trust placed him in a fiduciary relationship *vis-a-vis* the money and in equity this sum became the subject matter of a trust.

This case is referred by the Income-tax Appellate Tribunal of Delhi, under section 66(1) of the Indian Income-tax Act, 1922 (Act XI of 1922), as amended by the Income-tax (Amendment) Act, 1939 (Act VII of 1939), with his letter No. 365 of 51/52, for decision of following points:—

“Whether the sum of Rs. 32,500, received by the Assessee in the circumstances set out in the Trust-Deed later executed by him on 6th August, 1945, was his professional income taxable in his hands, or was it money received by him on behalf of a trust and not in his capacity as an individual.”

S. M. SIKRI, ADVOCATE-GENERAL AND H. R. MAHAJAN, AND
RAJINDAR SACHAR, for Petitioner.

D. N. AWASTHY, for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J. This is a case stated by the Income-tax Appellate Tribunal of Delhi in which the following question has been referred for the opinion of this Court:—

“Whether the sum of Rs. 32,500 received by the assessee in the circumstances set out in the Trust Deed later executed by him on 6th August 1945, was his professional income taxable in his hands, or was it money received by him on behalf of a trust and not in his capacity as an individual”.

The assessee in this case is Pandit Thakar Das Bhargava, an advocate of Hissar, and the amount in dispute in the present case is a sum of Rs. 32,500 which was paid in the accounting year ending 31st March 1946. Pandit Bhargava was an advocate of some eminence on the criminal side, but had almost given up his practice. There was a Hindu-Muslim riot case in Farrukhnagar where several persons were killed and some Hindus of Farrukhnagar were prosecuted for murder. Some leading Hindus of the Gurgaon District “approached” Pandit Bhargava to conduct the case but he refused as he was not in active practice. Ultimately he was persuaded to accept the brief to defend the accused in the Farrukhnagar case in the Sessions

Court "on condition that the accused and their friends provided Rs. 40,000 for a charitable trust which he would create. He did defend the accused who paid a sum of Rs. 32,500 in July 1945. On the 6th August 1945, he executed the following deed of trust :—

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"I, Pandit Thakur Das Bhargava, Advocate,
.....do hereby declare as follows :—

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I, the executant, have decreased my legal practice for the last few years and I reserved my professional income as an Advocate accruing after June, 1944, for payments of taxes and charity. Accordingly, I have been acting on that. In the Farrukhnagar District Gurgaon case Crown vs. Chuttan Lal, etc., the relatives and the accused expressed a strong desire to get the case conducted by me during its trial. At last on their persistence and promise that they would provide me with Rs. 40,000 for charitable purposes and I would create a public charitable trust thereof I agreed to conduct the case. The case is now over. The accused and their relatives have given me Rs. 32,500 for charity and creating a Trust. The said amount has been deposited in the Bank. If they pay any other amount, that will also be included in that. Accordingly I create this Trust with the following conditions and with the said amount and any other amount which may be realized afterwards or included in the Trust :—....."

In their order passed on appeal the Income-tax Appellate Tribunal held :—

"The income in this case did not at any stage arise to the assessee. Keeping in mind the express stipulation made by

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the assessee when he accepted the brief, there was a voluntary trust created, which had to be and was subsequently reduced into writing after the money was subscribed. The payments received from the accused and other persons were received on behalf of the trust and not by the assessee in his capacity as an individual. In this view, we delete the sum of Rs. 32,500 from the assessment."

In the statement of the case an extract from the trust deed has been given but the translation is not correct and we had the whole of the deed translated by the official Translators and I have quoted from the official translation.

The words of the deed of trust and the letter, Appendix A, show quite clearly that the agreement between the friends of the clients in Farukhnagar case and the tax-payer was that they were to provide Rs. 40,000 "for charitable purposes" and the tax-payer was to create a public trust and on this condition he agreed to defend the case. That amount was deposited according to the assessee in a bank and it was specifically charged with certain trusts. On this material the Income-tax Appellate Tribunal came to the conclusion that this was never the income of the assessee at any stage and that there was a voluntary trust created which was subsequently reduced into writing. On these findings it cannot be said that this sum of Rs. 32,500 which was given to the assessee for the purpose of being utilised for a public charitable trust ever became the income of the assessee. "A trust may be created by any language sufficient to show the intention and no technical words are necessary and it has frequently been held to be created by the use of words which are primarily words of condition" (see Tudor on Charities, page 52). In the present case when the money was received by Pandit Thakur Das Bhargava it was received with the express condition of its being utilised for the purposes of a public trust and,

therefore, Pandit Thakur Das Bhargava had a fiduciary relation in regard to this property and in equity this sum became the subject-matter of a trust.

In American Jurisprudence, Volume 54, in section 4 at page 22, there is a passage which defines what a trust is :—

“Every person who receives money to be paid to another, or to be applied to a particular purpose to which he does not apply it, is a trustee and may be sued either at law for money had and received, or in equity as a trustee for a breach of trust. Indeed, in its literal significance the word ‘trust’ implies the nurturing and sheltering of a sacred confidence. In its more technical significance the word still implies such confidence in a relationship involving a trustee, beneficiary, and a trust consisting in property.”

As has been stated in Tudor on Charities at page 52, “a trust is also frequently held to be created by the use of words which are primarily words of condition. If I give an estate to A upon condition that he shall apply the rents for the benefit of B, that is a trust to all intents and purposes.” In *Salisbury v. Denton* (1), where a bequest of a fund was placed at the disposal of testator’s widow by her will therewith to apply a part to the foundation of a charity school.....and under such restrictions as she may prescribe, it was held that this was sufficient to create a trust.

The Court of Chancery favoured charity to the extent of exempting gifts to charitable objects from certain of its rules as to the validity of trusts. “The extent of the privileges accorded to charity by the early Chancellors may be reduced to this

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that they endowed charity with a fictitious person-ality, and treated it as an artificial legatee or *cestui que trust*", Tudor on Charities, p. 2. In *Mills v. Farmer* (1), Lord Eldon observed:—

“Where a legacy is given so as to denote that charity is the legatee, the Court does not hold that the mode is of the substance of the legacy, but will effectuate the gift to charity as the substance, providing a mode for that legatee to take which is not provided for any other legatee”.

In circumstances such as these where a sum of money is clothed with a trust that sum received by the assessee cannot be held to be his income but was received with a specific purpose of creating a trust and this will be governed by the rule laid down by their Lordships of the Privy Council in *Bijay Singh Dudhuria v. Commissioner of Income-tax, Calcutta* (2), where by a decree a maintenance allowance was charged upon an ancestral estate in favour of a step-mother and it was held that to the extent of payment to the step-mother what the assessee received was not his income. At page 1034 Lord Macmillan said :—

“When the Act by section 3 subjects to charge ‘all income’ of an individual, it is what reaches the individual as income which it is intended to charge. In the present case the decree of the Court by charging the appellant’s whole resources with a specific payment to his step-mother has to that extent diverted his income from him and has directed it to his step-mother; to that extent what he receives for her is not his income. It is not a case of the application by the appellant of part of his income in a particular way; it is rather the allocation of a sum out of his revenue before it becomes income in his hands”.

(1) (1815) 19 Ves. 483, 486

(2) I.L.R. 60 Cal. 1029

Relying on these cases I am of the opinion that this sum of money received by the assessee was not received by him as professional income but was received on behalf of a trust and not in his capacity as an individual. I would answer the question accordingly. As the Commissioner of Income-tax has failed, he will pay the costs of the assessee. Counsel's fee Rs. 250.

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FALSHAW, J.—I agree.

Kapur, J.
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