PETITIONER:
TRUSTEES OF HEH NIZAMS PILGRIMAGE MONEY TRUST, HYDERABAD

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME TAX, ANDHRA PRADESH, HYDERABAD

DATE OF JUDGMENT: 20/04/2000

BENCH:
D.P.Wadhwa, S.S.M.Quadri

JUDGMENT:

SYED SHAH MOHAMMED QUADRI,J.

These appeals arise out of two reference cases under Section 27(1) of the Wealth-tax Act, 1957 decided by the High Court of Andhra Pradesh, give rise to a common question of law. The appellants are the assessees. Civil Appeal No.2328 of 1995 is against the order of the Division Bench of the High Court in R.C.No.192 of 1980 dated March 24, 1987 [reported in 171 ITR 323] pertaining to the Assessment Years 1974- 75 and 1975-76. Following the said order, the High Court disposed of R.C. No.292 of 1982 for the Assessment Years 1976-77 and 1977-78 which gave rise to Civil Appeal Nos.9269-9270 of 1995. H.E.H. the Nizam of Hyderabad created a trust with a corpus fund of Rs.22,20,000/-, named H.E.H. the Nizams Pilgrimage Money Trust on November 2, 1950. The objects of the Trust, inter alia, are that during lifetime of H.E.H. the Nizam to meet expenses of Haj Pilgrimage of himself and members of his family accompanying him on such pilgrimage and expenses on visits to holy places of Hedjaz and Iraq and also for making religious offerings at such places as the settlor in his absolute discretion might think fit; that after the death of the Nizam the net income and the unspent accumulations of income, if any, shall be spent or utilised by the trustees for all or any of the religious or charitable purposes specified in clause 3(e) of the said trust deed. H.E.H. the Nizam died on February 24, 1967. During his lifetime, he did not go either for Haj or on any other pilgrimage. After his death, the said Trust became a Public Charitable and Religious Trust and the trustees held the corpus and accumulations of income of the Trust thereunder. But the trustees could not have spent the income of the Trust property in Hedjaz or Iraq under clause 3(e) in view of the restriction imposed by the Government of India on sending monies outside India. After obtaining legal opinion, the trustees passed a resolution dated May 22, 1968 to spend the income of the Trust property including accumulations thereof only on objects and purposes specified in sub-clauses (v), (vi) and (viii) of clause 3(e) within the territory of India. They read as under : 3. The Trustees shall hold and stand possessed of the Trust Fund UPON TRUST :-

(a) to (d) *** *** ***

(e) On and after the death of the Settlor to hold the Trust Fund or the balance thereof then remaining and the

unspent accumulations (If any) of the income of the Trust Fund and the investment thereof upon trust to expend or utilise the net income of the Trust Fund as well as the accumulations (if any) of the income thereof made during the Settlors lifetime and the investments thereof for all or any one or more of the following religious or charitable objects and purposes at Hedjaz and/or Iraq in such manner as the Trustees may in their absolute discretion think proper :-

(i) to (iv) *** ***

(v) for constructing, establishing and maintaining dispensaries or hospitals or wards in hospitals and otherwise for medical aid and relief;

(vi) for constructing, establishing, maintaining and running schools, madressas and other educational institutions and otherwise for advancement of education;

(vii) *** ***

(viii) for such other religious or charitable purposes as the Trustees may in their absolute discretion think fit in such manner and to such extent as they may think fit.

Thereafter, they filed an application before the Chief Judge, City Civil Court, Hyderabad seeking relief under Section 34 of the Indian Trusts Act (for short, the Trusts Act). On September 29, 1973, the Chief Judge, City Civil Court, Hyderabad allowed the application and directed the trustees to utilise the income of the Trust fund including the accumulated income for the objects and purposes specified in aforementioned sub-clauses of clause 3(e) within the territory of India. In assessment proceedings, under the Wealth Tax Act, 1957 (for short the Act) for the Assessment Years 1974-75 and 1975-76, the trustees claimed exemption under Section 5(1)(i) thereof on the ground that the properties/assets were held in Trust for public purposes of charitable and religious nature in India in view of the said order of learned Chief Judge, City Civil Court, Hyderabad. The Wealth Tax Officer rejected the claim. The Appellate Assistant Commissioner, however, took the view that by virtue of the order of the Chief Judge, City Civil Court, the properties of the Trust were entitled to exemption under Section 5(1)(i) of the Act from the date of the order. The Revenue carried the matter in appeal before the Income-tax Appellate Tribunal. Holding that the assessee was not entitled to exemptions under Section 5(1)(i) of the Act, the Tribunal set aside the order of the Appellate Assistant Commissioner and allowed the appeal of the Revenue. At the instance of the assessee, the Tribunal referred the following question of law to the High Court for its opinion: Whether on the facts and in the circumstances of the case and on a proper construction of the scope and effect of the judgment of the Chief Judge of the City Civil Court, Hyderbad in the proceedings under section 34 of the Indian Trust Act, the Tribunal is correct in holding that as on the relevant valuation dates corresponding to the assessment years 1974-75 and 1975-76 the corpus of the Trust Fund cannot be said to have been held in trust for charitable or religious purposes in India and the assessee-Trust is, therefore, not entitled to exemption under Section 5(1)(i) of the Wealth-tax Act, 1957 in respect of the corpus of the Trust Fund?

The High Court on construction of the trust deed and Section 5(1)(i) of the Act held that all the objects and purposes of the Trust were intended to be performed outside India and neither the resolution of the trustees nor the order of the Chief Judge, City Civil Court, alter that position. In that view of the matter, the High Court answered the question in the affirmative, i.e., in favour of the Revenue and against the assessee by the impugned order. The contention of Mr.P.Murli Krishnan, learned counsel for the appellant-assessees, is that as the situs of the Trust property is in India, so the property is exempted under Section 5(1)(i) of the Act irrespective of where the income thereof is utilised; therefore, the High Court was in error in answering the question in favour of the Revenue. Mr.M.L.Verma, learned senior counsel appearing for the Revenue, argued that the exemption under the said provision was rightly denied to the assessee as the income of the Trust was required to be spent for religious and charitable purposes outside India. The question whether the Trust property enjoys exemption, under Section 5(1)(i) of the Act, depends on its true interpretation. The provision is in the following terms : 5(1). Subject to the provisions of sub-section (1A) wealth tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee :

(i) any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature in India;

Provided that nothing contained in this clause shall apply to any property forming part of any business not being a business referred to in clause (a) or clause (b) of sub-section 4(A) of Section 11 of the Income Tax Act in respect of which separate books of account are maintained or a business carried on by an institution, fund or trust referred to in clause (22) or clause (22A) or clause (23B) or clause (23C) of Section 10 of that Act.

A perusal of the provision shows that wealth tax is not payable in respect of any property held by the assessee under the Trust or other legal obligation for any public purpose of a charitable or religious nature in India. There is no controversy that to claim exemption under this provision : (i) the property must be held under a trust or legal obligation and that (ii) it must be for a public purpose of charitable or religious nature. What is, however, contended by Mr. Murli Krishnan is that it is enough if the situs of the Trust property is in India and that the public purpose of a charitable or religious nature need not be performed in India. On a plain reading of the provision, it is evident that the situs of the property held in Trust is irrelevant; what is relevant for granting exemption is that the public purpose of charitable or religious nature should be in India. It may be pointed out that the words in India are used in clause (i) not after the words any property but after the words for any public purpose of a charitable or religious nature. This leaves no room to contend that exemption is available to a property situated in India even if it is held for any public purpose of a charitable or religious nature outside India. This being the position, the contention of the learned counsel is devoid of any substance and it is rejected. It is next contended that after the resolution of the Board of Trustees

dated 22.5.1968 which has the approval of the Chief Judge, City Civil Court, the property must be deemed to be held for charitable or religious purposes in India. A perusal of the judgment shows that it is passed under Section 34 of the Trusts Act. There is no gainsaying that the Trusts Act applies only to private trusts and admittedly after the death of the settlor on February 24, 1967, the Trust became a public charitable and religious Trust. However, the learned counsel submitted that Section 34 of the Trusts Act might be taken as wrongly mentioned and the order passed by the court be treated as on a suit/petition for change of the objects of the Trust by applying the doctrine of Cypres to save the Trust from failing. He relied on the decisions of this Court in Sheikh Abdul Kayum Vs. Mulla Alibhai [1963 (3) SCR 623] and State of Uttar Pradesh Vs. Bansi Dhar and Ors. [1974 (1) SCC 446]. The principle laid down in those cases is that the general principles of trust adumbrated in the provisions of the Trusts Act can be applied by invoking the universal rules of equity and good conscience even though provisions of the Trusts Act proprio vigore do not apply to public charitable trusts. A caveat is added therein that care must certainly be exercised not to import by analogy what is not germane to the general law of trust. In the case first-mentioned, fiduciary relationship of a trustee and in the case second-mentioned, the principle of resultant trust in favour of the settlor were involved. In the instant case, no general principle of law of trusts is embodied in Section 34 of the Trusts Act which is a special provision conferring jurisdiction on the courts to pass appropriate order in the management of the Trust. We cannot also accept the contention of the learned counsel that the application under Section 34 of the Trusts Act be treated as a suit under Section 92 of the Code of Civil Procedure for reasons more than one. Suffice it to say that the application purported to be under Section 34 of the Trusts Act does not satisfy requirements of Section 92 of the Code of Civil Procedure. Mr. Verma has relied on the judgment of this Court in State of Uttar Pradesh Vs. Bansi Dhar & Ors. (supra) to support his contention that application of the doctrine of cypres would not arise in this case. It cannot be disputed that when to give effect to a charitable and religious trust is impossible or impracticable initially or becomes so subsequently, the court will save the trust from failing by invoking the cypres doctrine and utilise the Trust property for some other charitable and religious purpose as near as possible to the object of the Trust mentioned by the settlor. But having regard to the nature of the present proceedings the question of invoking doctrine of cypres does not arise, therefore, we do not propose to deal with that aspect. From the above discussion, it follows that the judgment of the Chief Judge, City Civil Court, Hyderabad does not have the effect of altering the object of the Trust. Therefore, the second contention of the learned counsel for the appellant also fails. For the foregoing reasons we hold that the High Court has rightly answered the question in favour of the Revenue. The Judgments and orders under appeal do not suffer from any illegality. The appeals are without any merits and they are accordingly dismissed with costs.