

PETITIONER:
SOLE TRUSTEE LOKA SHIKSHANA TURST

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, MYSORE

DATE OF JUDGMENT 28/08/1975

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
BEG, M. HAMEEDULLAH
GUPTA, A.C.

CITATION:
1976 AIR 10 1976 SCR (1) 461
1976 SCC (1) 254
CITATOR INFO :
R 1976 SC 384 (17)
RF 1976 SC 1836 (19)
RF 1977 SC 2211 (12)
RF 1978 SC 1443 (8)
R 1980 SC 387 (13, 16, 18, 21)
RF 1981 SC 1408 (9, 10)
R 1981 SC 1922 (8)
R 1982 SC 149 (244, 270)

ACT:

Income Tax Act, 1961, Section 2(15)-Definition of 'Charitable purpose'-'The advancement of any other object of general public utility not involving the carrying on of any activity for profit", meaning of-"Profit" if confined only to private profit.

Income Tax Act, 1961. Sections 2(15) and 11-"Education", meaning of- Appellant trust engaged in the business of printing and publication of newspaper and journals and making profits, if entitled to tax exemption.

HEADNOTE:

Section 2(15) of the Income-tax Act provides that 'charitable purpose' includes relief of the poor, education medical relief. and the advancement of any other object of general public utility.

The appellant is a sole trustee of the "Loka Shikshana Trust", holding properties mentioned in a schedule attached to a deed of trust executed on 19-2-1962 by himself purporting to re-declare a trust of 15-7-1935. The total assets of the earlier trust of 1935 consisted of a sum of Rs. 4308.109 only. Under the provisions the earlier trust of the trustee had carried on a lucrative business of printing at Belgaum, and, thereafter, he started publishing a daily newspaper. The value of the redeclared trust of 1962 stood at Rs. 2,97,658/-. Clause 2 of the trust deed provided that the object of the Trust shall be to educate the people of India in general and of Karnatak in particular by

- (a) establishing conducting and helping directly or indirectly institutions calculated to educate the people by spread of knowledge on all matters of general interest and welfare;

- (b) founding and running reading rooms and libraries and keeping and conducting printing houses and publishing or aiding the publication of books, booklets, leaflets, pamphlets, magazines etc., in Kannada and other languages, all these activities being started, conducted and carried on with the object of educating the people;
- (c) supplying the Kannada speaking people with an organ or organs of educated public opinion and conducting journals in Kannada and other language for the dissemination of useful news and information and for the ventilation of public opinion on matters of general public utility; and
- (d) helping directly or indirectly societies and institutions which have all or any of the aforesaid objects in view.

The Income-tax officer sent a communication to the trust on April 27, 1963 to the effect that, since the only activity of the trust was printing, publication, and sale of newspaper, weekly and monthly journal, the trust carried on an activity for profit. The claim of the sole trustee was rejected, and, having been unsuccessful through out the appellant has preferred this appeal after certification of the case under section 261 of the Income-tax Act, 1961.

Dismissing the appeal,

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HELD: (Per H. R. Khanna and A. C. Gupta, JJ.)

(1) It is not correct to say that the word "profit" in section 2(15) of the Act means private profit. The word used in the definition provision is profit and not private profit and it would not be permissible to read in the definition the word

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"private" as qualifying profit even though such word is not there. There is also no apparent justification or cogent reason for placing much a construction on the word "profit". [472B]

The words "general public utility" contained in the definition of charitable purpose are very wide. These words exclude objects of private gain [472C]

All India Spinners' Association v. Commissioner of Income-tax, (1944) 2 I.T.R. 482, relied on.

It is also not correct to say that the newly added words "not involving the carrying on of any activity for profit" merely qualify and affirm what was the position as it obtained under the definition in the Act of 1922. If the legislature intended that the concept of charitable purpose should be the same under the Act of 1961 as it was in the Act of 1922, there was no necessity for it to add the new words in the definition. The earlier definition did not involve any ambiguity, and the position in law was clear and admitted of no doubt after the pronouncement of the Judicial Committee in the Tribune case (1939) 7 ITR 415 and in the case of All India Spinners' Association. If despite that fact, the legislature added new words in the definition of charitable purpose, it would be contrary to all rules of construction to ignore the impact or the newly added words and to so construe the definition as if the newly added words were either not there or were intended to be otiose and redundant. [47CC-E]

(ii) The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling, or training given to the young in preparation for

the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has, not been used in that wide and extended sense according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But, that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill mind, and character of students by formal schooling. [469C-F]

(iii) The fact that the appellant trust is engaged in the business of printing and publication of newspaper and journals and the further fact that the afore-said activity yields or is one likely to yield profit and there are no restrictions on the appellant-trust earning profits in the course of its business would go to show that the purpose of the appellant-trust does not satisfy the requirement that it should be one "not involving the carrying on of any activity for profit." [471C-D]

In re The Trustees of the 'Tribune' (1939) 7 ITR 415, State of Gujarat v. M/s Raipur Mfg. Co., [1967] 1 S.C.R. 618, and Commissioner of Income-tax v. Lahore Electric Supply Co. Ltd., [1966] 60 I.T.R. 1, referred to.

(i) It has been declared repeatedly by the Courts, even before the addition of the words "not involving the carrying on of any activity for profit" to the definition of "charitable purpose", that activities motivated by private profit making fell outside the concept of charity altogether. It is more reasonable to infer that the words used clearly imposed a new qualification on public utilities entitled to exemption. It was obvious that, unless such a limitation was introduced, the fourth and last category would become too wide to prevent

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its abuse. Wide words so used could have been limited in scope by judicial interpretations ejusdem generis so as to confine the last category to objects similar to those in the previous categories and also subject to a dominant concept of charity which must govern all the four categories. But, the declaration of law by the Privy Council, in the Tribune case had barred this method of limiting an obviously wide category of profitable activities of general public utility found entitled to exemption. Hence, the only other way of cutting down the wide sweep of objects of "general public utility" entitled to exemption was by legislation. This, therefore, was the method Parliament adopted as is clear from the speech of the Finance Minister who introduced the amendment in Parliament. [482F-H]

Income Tax Commissioners v. Pemsel, [1891] A.C. 531,

583; Morice v. Bishop of Durham, (1805) 10 Ves. 522; All India Spinners' Association v. Commissioner of Income Tax, Bombay, 1944(12) ITR 482, 486; Commissioner of Income-Tax, Madras v. Andhra Chamber of Commerce, 1965(55) I.T.R. 722, 732; In re Grove-Gredy [1929] 1 Ch. 557, 582; Cape Brandy Syndicate v. I.R.C. [1921] 1 K.B. 64, 71; Rt. Hon'ble Jerald Lord Strickland v. Carmelo Mifud Bonnici, A.I.R. 1935 P.C. 34; The Englishman Ltd. v. Engineering Mazdoor Sang & Anr., A.I.R. 1975 S.C. p. 946 @ 949; Commissioner of Income-tax Gujarat v. Vadilal Lallubhai, 1972 (86) I.T.R. p. 2; Commissioner of Income-tax v. Sadora Devi, 1957 (32) I.T.R. 615 @-627 [1958] 1 I.S.C. 1 and In re the Tribune, (1939) 7 I.T.R. 415, referred to.

(ii) If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test is the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on "charity". If that obligation is there, the income becomes entitled to exemption. That is the most reliable test. The governing idea of charity must qualify purpose of every category enumerated in section 2(15) of the Act of 1961. [483 C-D]

(iii) Although the term 'education', as used in section 2(15) of the Act, seems wider and more comprehensive than education through educational institutions, such as Universities, whose income is given an exemption from income tax separately under section 10(22) of the Act, provided the educational institution concerned does not exist "for purposes of profit", yet the educational effects of a newspaper or publishing business are only indirect, problematical and quite incidental so that, without imposing any condition or qualification upon the nature of information to be disseminated or material to be published, the mere publication of news or views cannot be said to serve a purely or even predominantly educational purpose in its ordinary and usual sense. Judging from the facts set out in the trust deed itself, the sole trustee had managed to make the satisfaction of the needs mentioned in clause 2(c) a highly profitable business. The deed puts no condition upon the conduct of the newspaper and publishing business from which one could infer that it was to be on "no profit and no loss" basis. The High Court was right in coming to the conclusion that the appellant is not entitled to claim exemption from income-tax. [485-E-G, 486-D]

East India Industries (Madras) Pvt. Ltd. v. Commissioner of Income-tax Madras, 1967 (65) I.T.R. 611; Commissioner of Income-tax, Madras v. Andhra Chamber of Commerce, 1965 (55) I.T.R. 722; Md. Ibrahim Riza v. Commissioner of Income-tax, Nagpur, (1930) L.R. I.A. 260 and Commissioner of Income-tax, West Bengla II v. Indian Chamber of Commerce, 1971 (81) I.T.R. 147.

ARGUMENTS

For the appellant

(1) The objects clause of the Trust is so worded as to make it clear that the whole and sole object of the Trust is education of the people of India

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in general and of Karnatak in particular by the four means or modes set out in that clause. Those four means or modes are not separate objects of the Trust but are merely the instrumentalities prescribed by the Settlor for achieving the specified object of education. Even assuming for the purpose of argument that sub-clauses (a) to (d) of clause 4 of the Trust Deed are separate and distinct objects of the

Trust, clause (c) which covers a newspaper or a journal is itself an object falling within the category of "education".

(2) The words added in the 1961 Act "not involving the carrying on of any activity for profit" go only with the last head viz "any other object of general public utility" and not with the first three heads. This is put beyond doubt by the comma which appears after each of the first three heads, there being no comma after the fourth head.

(3) The present case falls within the second head of "charitable purpose", viz. education. The ruling of the Privy Council in the Tribune case 1939 I.T.R. 415 does not apply to the facts of the present case.

(4) Assuming that the case does not fall within the category of "education" it falls within the last head "any other object of general public utility, and the qualifying words "not involving the carrying on of any activity for profit" are satisfied. First the word "profit" means private gain, and the qualifying words merely say expressly what was implicit in the 1922 Act (1939 I.T.R. 415 at 423, and 1944 I.T.R. 482 at 488). Even assuming the word "profit" covers profit for the Trust, involving no private gain, the qualifying words are still satisfied. They require that the object of the Trust should not involve, i.e. entail that the trustees should carry on the activity for profit. No such condition about making profit is imposed by the trust deed. That profit may result from the activities of the Trust in a particular year is wholly irrelevant. Profit making is not the motive of the Trust.

(5) Provisions of section 11 of the Act clearly reveal that it is implicit in the very scheme of the Act that a business undertaking can be held in trust for an object of general public utility.
For the respondent

(i) The decision of the Privy Council in the Tribune case squarely applies to the facts of the present case; (ii) For ascertaining that true meaning of the expression "not involving the carrying on of an activity for profit" it was not only permissible but only proper for the Courts to refer to parliamentary debates and other proceedings of the legislature. (iii) Where a business undertaking is held as property of the Trust and income resulting therefrom is wholly applied for charitable purposes such as education, medical relief of the poor, or for any other object of general public utility but with which object the production or income is not linked it would be still exempt. But if that income is utilised only for the purposes of advancing the very object from the advancement of which it is derived it would cease to be exempt. The means and processes adopted by the Trustee for the advancement of the object were such as rendered the object itself as non-charitable. (iv) The expression "activity for profit" was much wider in scope than merely a business activity. The legislature had intentionally used the expression "activity" instead of business because in some cases the income produced from the activity may not be legally assessable under the provisions of the Income-tax Act, 1961 under the head "Income, profits and gains of business" (Section 28). The expression 'activity for profit' in the context meant activity for profit making; (v) Since the advancement of education was being achieved by means involving the carrying on of an activity for profit, the Trust would still be denied exemption. In other words, the qualifying words added to the definition at the end did not govern merely the last category of charity i.e. the object of general public utility but equally governed the earlier three well known

categories namely medical relief, relief of the poor, and education. The effect of the qualifying words "not involving the carrying on an activity for profit" was to deny exemption to trusts which carried on a profit-making activity for advancing the object of general public utility.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2130 and 2131 of 1970.

From the Judgment and order dated the 12th February, 1970 of the Mysore High Court in I.T.R.C. Nos. 5 and 6 of 1968.

N. A. Palkhivala, and Vineet Kumar, for the appellant.

G. S. Sharma and S. P. Nayar for the respondent.

N. A. Palkhivala, S. T. Desai, A. G. Meneses, Mrs. A. K. Verma, P. N. Monga, J. B. Dadachani for the Intervener-Tribunal Trust Chandigarh.

V. S. Desai and J. Ramanlurthi for Intervener-Saurashtra Trust, Bombay.

The Judgment of H. R. Khanna and A. C. Gupta, JJ. was delivered by Khanna, J. M. H. Beg, J. gave a separate opinion.

KHANNA, J.-The detailed facts of this case have been given in the judgment of our learned brother Beg J. and need not be repeated. The question of law which was referred to the High Court and which has been answered in the negative against the assessee appellant is as follows:

"Whether on the facts and in the circumstances of the case, the income, of the Lok Shikshana Trust was entitled to exemption under section 11 of the Income-tax Act, 1961, read with section 2(15) of the same Act, for the assessment year 1962-63-?"

"Charitable purpose" was defined in section 4(3) of the Indian Income-tax Act, 1922 was as under:

"In this sub-section 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility."

The definition of "charitable purpose" as given in section 2(15) of the Income-tax Act, 1961 (hereinafter referred to as the Act) with which we are concerned reads as under:

"(15) 'Charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

It would appear from the above that in the definition of "charitable purpose" as given in the Act the words "not involving the carrying on of any activity for profit" have been added at the end of the definition as given in the Act of 1922. We shall see as to what is the effect of the above addition

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In order to see as to whether the appellant-trust is for a charitable purpose, we may first go into the question as to what is the object of the appellant-trust. According to Mr. Palkhivala, learned counsel for the appellant, the object of the appellant-trust is education, while the stand of Mr. Sharma on behalf of the revenue is that not education but the last mentioned category in section 2(15), viz., the advancement of any other object of general public utility, is the object of the appellant-trust. The reason for the above divergence in the stands of Mr. Palkhivala and Mr.

Sharma is that according to Mr. Palkhivala, the concluding words of the definition in section 2(15) of the Act "not involving the carrying on of any activity for profit" do not qualify the first three categories of relief of the poor, education, or medical relief but qualify only the fourth category of "advancement of any other object of general public utility". Once the object of the appellant- trust is held to be education, the word trust would, according to Mr. Palkhivala, be held to be for a public purpose as defined in section 2(15) of the Act. In such an event, it would be immaterial whether the object of the trust involves or does not involve the carrying on of any activity for profit. As against that? Mr. Sharma has controverted the submission that the concluding words of the definition, viz., "not involving the carrying on of any activity for profit" qualify only the fourth category of "advancement of any other object of general public utility". According to Mr. Sharma, the concluding words qualify the first three categories of relief of the poor, education and medical relief also. In any case, submits Mr. Sharma, the object of the appellant trust falls in the fourth category of the definition, namely. "any other object of general public utility." It is, in my opinion, not necessary to express opinion in this case on the question as to whether the words "not involving the carrying on of any activity for profit" qualify the fourth object, viz., the advancement of any other object of general public utility, or whether they also qualify the other three objects of relief of the poor, education and medical relief, because we are of the view that the object of the appellant-trust was not education but any other object of general public utility. Clauses 2, 6, 10, 14, 16 and 18 of the trust deed of the appellant read as under.:

"2. The object of the Trust shall be to educate the people of India in general and of Karnatak in particular by

- (a) establishing, conducting and helping directly or indirectly institutions calculated to educate the people by spread of knowledge on all matters of general interest and welfare:
- (b) founding and running reading rooms and libraries and keeping and conducting printing houses and publishing or aiding the publication of books, booklets, leaf lets, pamphlets, magazines etc., in Kannada and other languages, all these activities being started, conducted and carried on with the object of educating the people:
- (c) supplying the Kannada speaking people with an organ or organs of educated public opinion and conducting journals in Kannada and other language for the dissemination of useful news and information and for the ventilation of public opinion on matters of general public utility; and
- (d) helping directly or indirectly societies and institutions which have all or any of the aforesaid objects in view."

6. The original Trustee shall have power and authority to spend and utilise the money and the property of the Trust for any of the purposes of this Trust in such manner as to him may appear proper. The original Trustee shall be entitled to operate all the Banking accounts of the Trust.

10. The original Trustee shall have full power to take over on such terms as he may deem fit such concern or concerns or undertakings as, in his opinion, are congenial or conducive to any of the purposes of the Trust.

14. The original Trustee shall be entitled to appoint a Manager or Managers of institutions of the Trust, Editor or Editors and other subordinates for the purposes of carrying out the printing and publication of any newspaper or newspapers, weeklies, monthlies magazines, books or other publications, and shall have power from time to time to delegate To any one or more persons by Power of Attorney or otherwise any one or more of the following powers.

- (a) To open one or more banking accounts, to operate the same and to deposit and withdraw moneys from the same;
- (b) To give receipts or discharges for money or property Received by them or any one of them in the course of business carried on by the Trust;
- (c) To buy or sell paper, ink, machines, books and materials required for the purposes of the business of the Trust;
- (d) To enter into contracts with agents, dealers and others in the course of the business of the Trust;
- (e) To employ or remove subordinates and workers necessary for the work;
- (f) and generally to do all things necessary and expedient in carrying out the business entrusted to him or Them.

16. The original Trustee or Trustees shall not take any remuneration for discharging his or their duties as a Trustee or Trustees provided that this provision shall not preclude a

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Trustee or Trustees from being paid out of the Trust fund such remuneration as may be deemed proper for carrying out any work and duty in connection with the conduct or management of institutions of the Trust, or with the business of printing, publishing or other activities carried on by the Trust. A Trustee shall be entitled to be paid an expenses that may be incurred by him in connection with his duties as a Trustee including travelling and other expenses.

18. The original Trustee or other Trustees shall not be responsible for any loss occasioned to the Trust in respect of any business or dealings carried on behalf of the Trust unless the same is due to his own fraud or misappropriation or breach of trust and every trustee shall be indemnified by and out of the funds and moneys of the Trust against any loss or damage which the Trustee might suffer in regard to any act, deed, or omission of his in the performance of his duties as a Trustee, including any fines or penalties imposed under the Factory Act or any Labour Legislation or Press Act or any other similar enactment."

The income-tax officer sent a communication to the trust on April 27, 1963 to the effect that since the only activity of the trust was printing, publication and sale of newspaper, weekly and monthly journal, the trust carried on an activity for profit and was not entitled to exemption. In reply to that notice the Sole Trustee stated that the above mentioned activities of the trust were covered by clause (c) of the

objects clause of the trust deed. It was added that the above object did not involve the carrying on of any activity for profit. In a further communication dated June 26, 1964 the Sole Trustee wrote:

"The Trust has four objects in its objects clause one of which is to supply the Kannada speaking people with an organ or organs of educated public opinion etc. (clause 2(c) of Trust Deed). Under this clause we conduct the publication of newspapers. This has not been agreed upon by your honour as a Charitable purpose and we have accordingly preferred appeals for relief.

The main object of the Trust is education and this may be achieved by conducting and helping educational institutions having the similar objects as of our l'rust. These are all charitable objects. In case the Trust has a surplus income it cannot be spent on any object other than the objects of the Trust. For the present we have been educating the Kannada speaking people through newspapers and journals and we shall be taking up the other ways and means of education as noted in our trust deed as and when it is possible for Trust. We have no option at all except to spend our income on the objects of our Trust which are all charitable without any doubt or ambiguity."

We have set out above the relevant clauses of the trust deed and the material part of the communications sent by the Sole Trustee. It would

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appear therefrom that though a number of objects, including the setting up of educational institutions, were mentioned in the trust deed' as the objects of the trust, supplying the Kannada speaking people with an organ of educated public Opinion was also one of those objects. The communication sent by the Sole Trustee to the income-tax officer shows that the trust at present is carrying out only the last mentioned object of the trust, namely, supplying the Kannada speaking people with an organ or organs of educated public opinion. The concentration so far of the activities of the trust only on that object is in pursuance of clause 6 of the trust deed, according to which original trustee shall have power and authority to spend and utilise the money and the property of the trust for any of the purposes of the trust in such manner as to him may appear proper.

The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Like wise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, your get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this

in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.

The question as to whether a trust the object of which is to supply the people with an organ of educated public opinion should be considered to be one for education or for any other object of public utility was considered by the Judicial Committee in the case of *In re The Trustees of the 'Tribune'*. In that case a person who owned a press and a newspaper created by his will by which his property in the stock and goodwill of the press and newspaper was made to vest permanently in a committee of certain members. It was the duty of the said committee of trustees under the will "to maintain the said press and news paper in an efficient condition, and to keep up the liberal policy of the said newspaper, devoting the surplus income of the said press and newspaper after defraying all current expenses in improving the said newspaper and placing it on a footing of permanency". It was also

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provided by an arrangement made subsequently that in case the paper ceased to function or for any other reason the surplus of the income could not be applied to the object mentioned above, the same should be applied for the maintenance of a college which had been established out of the funds of another trust created by the same testator. There was surplus income in the hands of the trustees after defraying the expenses of the press and the newspaper. Question arose as to whether that income was liable to be assessed in the hands of the trustees. The Judicial Committee held that the object of the settlor was to supply the province of the Punjab with an organ of educated public opinion and this was prima facie an object of general public utility. Their Lordships unequivocally expressed the view that they were not prepared to hold that the property referred to in the various paragraphs of the will was held for the purpose of "education" in the sense that word was used in section 4 of the Indian Income-tax Act of 1922. The above decision of the Judicial Committee applies directly to the present case and in view of this decision, we would hold that the object of the appellant-trust was "the advancement of any other object of general public utility".

It has been pointed out in the earlier part of the judgment that in the definition of charitable purpose as given in section 2(15) of the Act the words "not involving the carrying on of any activity for profit" have been added at the end of the definition as it was given in section 4(3) of the Indian Income-tax Act, 1922. The position as it existed under the Act of 1922 was that once the purpose of the trust was relief of the poor, education medical relief or the advancement of any other object of general public utility. the trust was considered to be for a charitable purpose. As a result of the addition of the words "not involving the carrying on of any activity for profit" at the end of the definition in section 2(15) of the Act even if the purpose of the trust is "advancement of any other object of general public utility", it would not be considered to be "charitable purpose" unless it is shown that the above purpose does not involve the carrying on of any activity for profit. The result thus of the change in the definition is that in order to bring a case within the fourth category of charitable purpose, it would be necessary to show that (1)

the purpose of the trust is advancement of any other object of general public utility, and (2) the above purpose does not involve the carrying on of any activity for profit. Both the above conditions must be fulfilled before the purpose of the trust can be held to be charitable purpose. It is not necessary for the decision of this case, as already mentioned above, to go into the question as to whether the words "not involving the carrying on of any activity for profit" also qualify the first three categories of charitable purpose, namely relief of the poor, education and medical relief.

Question then arises as to whether the purpose of the appellant-trust can be considered to be one not involving the carrying on of any activity for profit. So far as this question is concerned, we find that the appellant-trust started with a sum of Rs. 4,308, 10 As. 9 Pies. The schedule attached to the trust deed dated April 10, 1947 shows that the assets of the trust consisted of printing machines, accessories, motor-cars, building, stocks of paper and other miscellaneous things. The total value of

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the assets was Rs. 2,97,658, out of which the value of the building sites and the buildings was Rs. 47,500. As against that, the liabilities of the trust amounted to Rs. 1,24,086. The net value of the assets of the trust rose in 1947 to a figure of Rs. 1,73,571, 14 As. 4 Pies. For the assessment year 1962-63, which is the year under appeal, the total receipts of the trust were of the amount of Rs. 22,55,077. The main sources of the receipts were sales of newspapers and magazines through agents, receipts on account of advertisements, receipts for job printing bills besides some other minor items. "As against the receipts, the major items of expenditure were the purchase of newsprint, paper, printing types, printing and other material, the salaries and allowances of the staff, remuneration to news agencies and railway freight. There can, therefore, be no doubt that the trust has been carrying on the business of publishing newspaper and weekly and monthly magazines. The profits from the aforesaid business would also apparently account for the manifold increase in the value of the assets of the trust. The emphasis on business activity of the trust is also manifest from clauses 6, 10, 14, 16 and 18 of the trust deed reproduced above. The fact that the appellant trust is engaged in the business of printing and publication of newspaper and journals and the further fact that the aforesaid activity yields or is one likely to yield profit and there are no restrictions on the appellant trust earning profits in the course of its business would go to show that the purpose of the appellant-trust does not satisfy the requirement that it should be one "not involving the carrying on of any activity for profit".

It is true that there are some business activities like mutual insurance and co-operative stores of which profit making is not an essential ingredient, but that is so because of a self-imposed and innate restriction on making profit in the carrying on of that particular type of business. Ordinarily profit motive is a normal incidence of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit. The expression "business", as observed by Shah J. speaking for the Court in the case of State of Gujarat v. M/s. Raipur. Mfg. Co., though extensively used in

taxing statutes, is word of indefinite import. In taxing statutes, it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive. By the use of the expression "profit motive" it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in

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the course of his activity. In the case of Commissioner of Income-tax v. Lahore Electric Supply Co. Ltd. Sarkar J. speaking for the majority observed that business as contemplated by section 10 of the Indian Income-tax Act, 1922, is an activity capable of producing a profit which can be taxed. In the case of the appellant-trust the activity of the trust, as already observed earlier, has in fact been yielding profits and that apparently accounts for the increase in the value of its assets.

We are not impressed by the submission of the learned counsel for the appellant that profit under section 2(15) of the Act means private profit. The word used in the definition given in the above provision is profit and not private profit and it would not be permissible to read in the above definition the word "private" as qualifying profit even though such word is not there. There is also no apparent justification or cogent reason for placing such a construction on the word "profit". The words "general public utility" contained in the definition of charitable purpose are very wide. These words, as held by the Judicial Committee in the case of All India Spinners' Association v. Commissioner of Income-tax, exclude objects of private gain. It is also difficult to subscribe to the view that the newly added words "not involving the carrying on of any activity for profit" merely qualify and affirm what was the position as it obtained under the definition given in the Act of 1922. If the legislature intended that the concept of charitable purpose should be the same under the Act of 1961 as it was in the Act of 1922, there was no necessity for it to add the new words in the definition. The earlier definition did not involve any ambiguity and the position in law was clear and admitted of no doubt after the pronouncement of the Judicial Committee in the cases of Tribune and All India Spinners' Association (supra). If despite that fact, the legislature added new words in the definition of charitable purpose, it would be contrary to all rules of construction to ignore the impact of the newly added words and to so construe the definition as if the newly added words were either not there or were intended to be otiose and redundant.

The appeals fail and are dismissed but in the circumstances without costs.

BEG, J. The question, answered in the negative in this case by the Mysore High Court, which is now before us after certification of the case under Section 261 of the Income tax Act, 1961 (hereinafter referred to as 'the Act'), was

framed by the Income-tax Tribunal as follows:-

"Whether on the facts and in the circumstances of the case, the income of the Loka Shikshana Trust was entitled to exemption under Sec. 11 of the Income tax Act, 1961 read with Sec. 2(15) of the same Act, for the assessment year 1962-63".

The appellant is a sole trustee of the "Loka Shikshana Trust", holding properties mentioned in a schedule attached to a deed of trust executed on 19-2-1962 by himself purporting to re-declare a trust of 15-7-1935. The total assets of the earlier trust of 1935, known as the

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"National Literature Publications Trust", consisted of a sum of Rs. 4308.10.9 only. It appears that, under the provisions of the earlier trust, the trustee had carried on a lucrative business of printing, under the name of "Karnatak Prakashana Mandal", at Belgaum, and, thereafter, it was shifted to Hubli where he started publishing a daily newspaper called "Samyukta Karnatak". The printing business must have been lucrative because investments of profits from it, together with some possible "donations", expanded the assets of the redeclared trust of 1962 so much that the schedule attached to the trust deed of 1962 shows their value to be Rs. 2,97,658/-. After deducting the total liabilities of the trust, shown as Rs. 1,24,086.10 annas, the net value of the assets is given as Rs. 1,73,571.14.4.

Even if the obvious inference from statements found in the trust deed of 1962 which is part of the statement of the case, showing the assets of the trust of 1953 as well as of the re-declared trust of 196, that the trustee was carrying on a fairly lucrative business, the profits of which had been utilised for building up its assets, could possibly be ignored, we find, from the statement of the accounts submitted by the appellant trustee himself to the Income-tax Department for the assessment year 1962-63, with which we are concerned, that the trust had made quite considerable profits from various activities carried on as a part of its ordinary and regular business. Here, a gross income of Rs. 22,55,077.46 np is shown. This included Rs. 12,31,954.54 from sales of newspapers and magazines through agents, Rs. 7,29,249.27 from advertisements and notices alone, Rs. 1,27,422.53 as payments of "job printing bills". The sales of its newspapers and journals through retailers brought in Rs. 66,010.68 np. The subscribers of newspapers and journals contributed Rs. 51,7803.74. "Profits" from sales of other publications are shown as Rs. 5040.05 np. Income from "sundry receipts" is given as Rs. 2964.57 np. "profits from the sale of a van and machinery are shown as Rs. 4829.83. Some other income is shown as Rs. 2337.95 Interest on investments is shown as Rs. 1762.71. A glance at items of expenditure shows that nothing was spent for which a deduction could not be claimed by any private concern carrying on a profitable business. These, items of expense consisted of money spent on repairs, of buildings, payments of taxes, purchases of newsprint and other kinds of paper, ink, photographic materials, blocks, binding, stitching and packing materials, payments of salaries, wages and allowances to the staff. After deducting the total expenditure of Rs. 4,92,246.81 from the gross income, the net income for the year is shown as Rs. 30,376.80 np. for which exemption from Income-tax is claimed by the appellant on the ground that it is protected from taxation by Section 11 read with Section 2(15) of the Act.

The trust deed of 1962, which, as already stated, is a part of the statement of the case, gives the past history of

the trust, in the course of a fairly long preamble. It contains the following passage giving some idea of the activities, of the trust, the composition of its present assets as well as of utilisation of its income since 1935:

"AND WHEREAS in furtherance of the objects contained in the said deed of Trust dated 15th July, 1935, I took

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over on 17-7-1935 a concern called the Karnatak Prakashana Mandal, Belgaum, and conducted a printing Press for some time at Belgaum, and thereafter, at Hubli, and printed and published a daily paper "Samyukta Karnatak", and a weekly paper called "Weekly Samyukta Karnatak", which was later called "Karmaveer", and also published certain books, pamphlet, and other literature, as a result whereof the property of the trust increased from time to time, and the said property is today comprised of printing presses, buildings, land and other property which is set out in the schedule hereunder written".

The trust deed also contains a reference to what necessitated a redeclaration of the trust. An amended meaning of "charitable purpose", given in Section 2(15) of the Act of 1961, must have given rise to some doubts in the minds of the maker of the trust about the taxability of the income of the trust which was exempted from payment of income-tax in the past. He said:

"And whereas doubts have arisen regarding the legal validity of the Trust declared in the aforesaid Deed of Trust dated 15th July 1935.

AND whereas it became necessary to take steps to remove the said doubts and to prevent similar doubts arising in future, I, Ranganath Ramachandra Diwakar who has been the only Trustee of the National Literature Publication Trust declared as aforesaid, have obtained legal opinion in the matter of the said Trust and I am desirous, with a view to carrying out public purposes of a charitable nature of re-declaring the Trusts in accordance with the legal opinion obtained by me as aforesaid, on which I hold and shall continue to hold the original Trust amount of Rs. 4,308:10.9, and all contributions, additions, accumulations, and acquisitions to the same which are now comprised in the Schedule hereunder written and all the properties, funds, assets, and any conversions or reconversions thereof and the investment in which the same may from time to time be held".

The objects of the trust are set out as follows:

"2. The object of the Trust shall be to educate the people of India in general and of Karnatak in particular by,

(a) establishing, conducting and helping directly or in directly institutions calculated to educate the people by spread of knowledge on all matters of general interest and welfare;

(b) founding and running reading rooms and libraries and keeping and conducting printing houses and publishing or aiding the publication of books, booklets, leaflets, pamphlets, magazines etc. in Kannada and other languages all these activities being started, conducted, and carried on with the object of educating the people:

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(c) supplying the Kannada speaking people with an organ or organs of educated public opinion and

conducting journals in Kannada and other languages for the dissemination of useful news and information and for the ventilation of public opinion on matters of general public utility; and

(d) helping directly or indirectly societies and institutions which have all or any of the aforesaid objects in view".

In addition to the power which the sole trustee had to collect donations and subscriptions for the trust, he had all the powers which the sole manager of a business may have in order to carry it on profitably. He had the power of transferring trust properties and funds if he thought "it expedient in the interest of the objects of the Trust, to transfer the assets and liabilities of this Trust to any other Charitable Trust or institution conducted by such Trust which in the opinion of the original Trustee or the Board of Trustee has objects similar to the objects of this Trust and is capable of carrying out the objects and purposes of this Trust either fully or partially" (Paragraph 17 of the Trust deed). Although, the "original trustee" was not "to take any remuneration" for discharging his duties as a trustee, yet, he was not precluded "from being paid out of the Trust fund such remuneration as may be deemed propellor carrying out any work and duty in connection with the conduct or management of institutions of the Trust, or with the business of printing, publishing or other activities carried on by the Trust". He was to be paid expenses incurred in travelling or otherwise in connection with his duties as a trustee (paragraph 16 of the Trust deed).

The "original trustee" could invest trust monies and profits "in any investment authorised by law for the investment of Trust funds or in shares, or securities or debentures of Limited Companies in India or outside" (para 4 of the Trust deed). He had the "power to mortgage, sell, transfer and give on lease or to otherwise deal with the Trust property or any portion thereof for the purpose of the Trust and to borrow monies or raise loans for the purpose of the Trust whenever he may deem it necessary to do so" (para 8 of the Trust deed). Furthermore, the Trustee had the "power and authority to spend and utilise the money and the property of the Trust for any of the purposes of this Trust in such manner as to him may appear proper".

It appears to us that, with this profit making background of the trust, its loosely stated objects the wide powers of the sole trustee, and the apparently profitable mode of conducting business, just like any commercial concern, disclosed not only by the terms of the trust but by the statement of total expenditure and income by the trustee it is very difficult to see what educational or other charitable purpose the trust was serving unless the dissemination of information and expression of opinions through the publications of the trust was in itself treated as the really educational and charitable purpose.

The principal arguments advanced on behalf of the appellant-trustee are: firstly paragraph 2(c) of the Trust deed only enables the trustee

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to supply the Kannada speaking people with organs or means for express educated public opinion as a mode of serving the real and expressly mentioned purpose of "education" which must control and determine the true nature of the activities of the trust so that profit making, as an incidental consequence of these activities, was quite immaterial; and, secondly, even if the activities of the trust did not fall within the separate category of, "education" as such, in

which case profit yielding became quite irrelevant, but fell under the more general or the 4th and last category of purposes of general public utility specified in Section 2(15) of the Act, the mere fact that the conduct of the printing business was profitable sometimes or even constantly was not enough to make it an activity carried on "for profit". The first contention rests on the assumption that an express mention of a dominant though general purpose of "education" will enable the Courts to supervise the execution of such a trust as one intended solely for educational purposes. The second submission, accepted by the Income-tax Tribunal but rejected by the High Court, implies that the profit-making motive must be specifically and expressly made the object of an activity which is of obvious utility to the public before exemption from taxation can be denied to such an activity. In other words, the added qualification or condition imposed upon a work of "general public utility", before it could pass the test of a charitable purpose, made no difference to the law. According to learned Counsel for the appellant, the amendment was meant to make explicit what was previously only implicit in the law as it stood. The argument thus is that the amendment only clarified without actually changing the law on the subject.

The last paragraph of clause (3) of Section 4 of the Indian Income-tax Act of 1922 (hereinafter referred to as 'the Act of 1922') laid down:

" 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained, in clause (i) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income from property held under a trust or other legal obligation for private religious purposes which does not enure for the benefit of the public".

It will be noticed that the provision set out above did not really define a "charitable purpose" but purports only to indicate a concept of charity which would include the four categories of objects mentioned there. The four-fold classification of charitable purposes has a history in English law. A statute of Elizabeth I which "was not directed so much to the definition of charity as to the correction of abuses which had grown up in the administration of trusts of a charitable nature" (See: Tudor on "Charities" six End. p. 2) had a preamble containing; an illustrative list of charitable objects which was never treated as exhaustive. It, however, became the practice of Courts "to refer to the preamble as a sort of index or chart in order to determine whether or not a given purpose was charitable". Thus, a purpose was considered, in the eye of law, to be charitable only if it came within the letter or the spirit and inendment of the preamble of the statute of Elizabeth.

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To give a semblance of order to the rather confusing mass of case law which had accumulated on the subject, attempts were made to ; classify purposes which had obtained recognition by Courts as charitable. Lord Macnaghten, in Income Tax Commissioners v. Pemsel adopted a four-fold classification of charitable purposes which had been first put forward in the course of an argument by Sir Samuel Romilly in Morice v. Bishop of Durham. These were (1) Relief of poverty, (2) advancement of education; (3) advancement of religion; (4) other purposes beneficial to the community not falling under any of the pre ceding heads

The last or the residuary category seemed very wide and general. Properly speaking, such a wide category would be interpreted, if it were found in a statute, ejusdem generis with the previous three categories, which were less wide and more specific. The framers of our Act of 1922 must have been attracted by this classification which they adopted with some modifications, "Medical relief" was apparently substituted for "advancement of religion". In *All India Spinners' Association v. Commissioner of Income-tax, Bombay*(3), Lord Wright, while considering the meaning of Sec 4(3) of the 1922 Act, observed (at P. 486)

"The Act of 43 Elizabeth (1601) contained in a preamble a list of charitable objects which fell within the Act, and this was taken as a sort of chart or scheme which the Courts adopted as a groundwork for developing the law, in doing so they made liberal use of analogies so that the modern English law can only be ascertained by considering a mass of particular decisions often difficult to reconcile. It is true that Section 4(3) of the Act has largely been influenced by Lord Macnaghten's definition of charity in *Pemsel v. Commissioners for Special Purposes of Income-tax* (1891) A.C. 531 at p. 583, but that definition has no statutory authority and is not precisely followed in the most material particular; the words of the section are 'for the advancement of any other object of general public utility', whereas Lord Macnaghten's words were 'other purposes beneficial to the community'. The difference in language, particularly the inclusion in the Indian Act of the word 'public' is of importance."

The trend of judicial pronouncements was to construe the words "general public utility", in Section 4(3) of the Act of 1922, very widely. The only serious limitation put on the character of a "general public utility" seems to have been that it clearly excluded the object of private profit making. Thus, in the *All India Spinners' Association* case (supra), the Privy Council, while holding that the "primary object" of the Association appeared to be "the relief of the poor", said (at p. 488):

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"That would be enough prima facie to satisfy the statute. But there is good ground for holding that the purposes of the Association included the advancement of other purposes of general public utility. These last are very wide words. Their exact scope may require on other occasion very careful consideration. They were applied in the *Tribune Press* case (1939) 66 I.A. 241; 7 I.T.R. (415) without any very precise definition to the production of the newspaper in question under the conditions fixed by the testator's will. The Board stated (at p. 256) that:

'the object of the paper might be described as the object of supplying the province with an organ of educated public opinion'.

and that it should prima facie be held to be an object of general-public utility. These words, their Lordship this would exclude the object of private gain, such as an under taking for commercial profit though all the same it would subserve general public utility. But private profit was eliminated in this case".

In *Commissioner of Income-Tax, Madras v. Andhra Chamber of Commerce*, this Court interpreting Section 4(3) of the 1922, Act, held (at p. 732):

"The expression 'object of general public utility' in section 4(3) would prima facie include all objects

which promote the welfare of the general public". Decision of some cases seems to have revolved round the question whether the body of beneficiaries was large enough to constitute the purpose one of "public utility".

Some of the decisions on income for which exemption was claimed on the ground that it was meant for a charitable purpose falling within the wide residuary class perhaps travelled even beyond the "bursting point" to which, according to Lord Russell of Killowen, English Courts had stretched the concept of charity [See: In re Grove Grady]. At any rate, the reason which induced our Government to make an amendment by Section 2(15) of the Act of 1961 was thus stated by the Finance Minister Shri Morarji Desai, in the course of his speech in Parliament explaining the proposed amendment (see: Lok Sabha Debate dated 18-8-1961)(3):

"The other objective of the Select Committee, limiting the exemption only to trusts and institutions whose object is a genuine charitable purpose has been achieved by amending the definition in clause 2(15). The definition of 'charitable' purpose in that clause is at present so widely worded that

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it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them, namely, the news paper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit' should be added to the definition". (p. 3074).

Mr. Palkhivala objected strongly to any reference to the speech of the Finance Minister, who proposed the amendment, for the purpose of finding out the object of the amendment. He contended that speeches made by Members of Parliament in the course of debates on provisions enacted were not to be looked at for interpreting the language of the enactment to which we should confine ourselves. He relied on the well known dictum of Rowlatt J., in *Cape Brandy Syndicate v. I.R.C.*, when that learned Judge said:

"In a taxing Act one has to look at what is clearly said one can only look fairly at the language used".

It was contended that, as the meaning of words used in Section 2(15) was very clear we need go no further. I am not able to accept this over-simplification of the problem before us. To say that the concept of a charitable purpose, either before or after the amendment we are considering, was at all clear or free from considerable ambiguity and difficulty would be to ignore the plethora of not always consistent case law which one can find on the subject and to minimize the difficulties of Courts. "Charitable purpose" has never been at all clearly defined or exhaustively illustrated. We have, therefore, to discover the mischief aimed at by the amendment.

It is true that it is dangerous and may be misleading to gather the meaning of the words used in an enactment merely from what was said by any speaker in the course of a debate in Parliament on the subject. Such a speech cannot be used to defeat or detract from a meaning which clearly emerges from a consideration of the enacting words actually used. But, in the case before us, the real meaning and purpose of the words used cannot be understood at all

satisfactorily without referring to the past history of legislation on the subject and the speech of the mover of the amendment who was, undoubtedly, in the best position to explain what defect in the law the amendment had sought to remove. It was not just the speech of any member in Parliament. It was the considered statement of the Finance Minister who was proposing the amendment for a particular reason which he clearly indicated. If the reason given by him only elucidates what is also deducible from the words used in the amended provision, we do not see why we should refuse to take it into

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consideration as an aid to a correct interpretation. It harmonises with and clarifies the real intent of the words used. Must we, in such circumstances, ignore it ?

We find that Section 57, sub-s (4) of the Evidence Act not only enables but enjoins Courts to take judicial notice of the course of proceedings in Parliament assuming, of course, that it is relevant. It is true that the correctness of what is stated on a question of fact, in the course of Parliamentary proceedings, can only be proved by somebody who had direct knowledge of the fact stated. There is, however, a distinction between the fact that a particular statement giving the purpose of an enactment was made in Parliament, of which judicial notice can be taken as part of the proceedings, and the truth of a disputable matter of fact stated in the course of proceedings, which has to be proved aliunde, that is to say, apart from the fact that a statement about it was made in the course of proceedings in Parliament (See: *Rt. Hon'ble Jerald Lord Strickland v. Carmeld Mifud Bonnici, The Englishman Ltd. v. Lajpat Rai*).

In the case before us, a reference was made merely to the fact that a certain reason was given by the Finance Minister, who proposed an amendment, for making the amendment. What we can take judicial notice of is the fact that such a statement of the reason was given in the course of such a speech. The question whether the object stated was properly expressed by the language of Section 2(15) of the Act is a matter which we have to decide for ourselves as a question of law. Interpretation of a statutory provision is always a question of law on which the reasons stated by the mover of the amendment can only be used as an aid in interpretation if we think, as I do in the instant case, that it helps us considerably in understanding the meaning of the amended law. We find no bar against such a use of the speech.

In *Anandji Haridas & Co. Pvt. Ltd. v. Engineering Mazdoor Sangh & Anr.*, a Division Bench of this Court observed (at p. 949)

"As a general principle of interpretation, where the words of a statute are plain, precise, and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence such as Parliamentary Debates, Reports of the Committees of the Legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible or more than one meaning or shades of meaning, that external evidence as to the evils, if any, which the statute was intended to remedy, or of the circumstances which led to the passing of the statute may

be looked into for the purpose of ascertaining the object which the Legislature had in view in using the words in question".

The Finance Minister's speech tells us that the Government was accepting the recommendations of the Select Committee to which the Bill which became the Act of 1961 had been referred. One of the recommendations was:

"The Committee is of the opinion that the advancement of an object of general public utility which involves the carrying on of any activity for profit should not come within the ambit of a charitable purpose".

[See Gazette of India Extraordinary Part II, Section 2, p. 677(4)].

In Commissioner of Income-tax, Gujarat v. Vadilal Lallubhai, this Court, following its earlier decision in Commissioner of Income-tax v. Sadora Devi did not consider it at all inappropriate to refer to a Select Committee's Report for finding out the reason behind an ambiguous provision so as to be able to apply the Mischief Rule. It is too late in the day for Mr. Palkhivala to object to the adoption of such a course in an attempt to apply the Mischief Rule to find out the reason behind an amendment of the law.

The case on which Mr. Palkhivala, the learned Counsel for the appellant, relies most strongly for support to his client's case on merits is: In Re the 'Tribune'(3), where the Privy Council, allowing an appeal from a Full Bench decision of the Lahore High Court, held that the income a Trust, the object of which was described as "supplying the province with an organ of an educated public opinion", was entitled to exemption on the ground that it was a trust for a purpose of "General public utility" and not just for propagating any political views. It was also held there that such a trust would not fall within the category of Trusts for education in the sense in which that term appears in Section 4 of the Act of 1922. The Privy Council, after observing that the Chief Justice and Addison, J., of the Lahore High Court, had laid some stress on the fact "that the Tribune newspaper charges its readers and advertisers at ordinary commercial rates for the advantages which it affords", said (at p. 422):

"As against this the evidence or finding do not disclose that any profit was made by the newspaper or press before 1918 and it is at least certain that neither was founded for private profit whether to the testator or any other person. By the terms of the trust it is not to be carried on for profit to any individual. It cannot, in their

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Lordships' opinion, be regarded as an element necessarily present in any purpose of general public utility, that it should provide something for nothing or for less than it costs or for less than the ordinary price. An eleemosynary element is not essential even in the strict English view of charitable uses (Commissioners v. University College of North Wales (1909) 5 Tax Cas. 408, 414)".

It seems clear to us that the amended provisions, Section 2(15) in the Act of 1961, was directed at a change of law as it was declared by the Privy Council in the Tribune case (supra). The amended provision reads as follows:

"S. 2(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the

advancement of any other object of general public utility not involving the carrying on of any activity for profit;"

It is apparent that, even now, charitable purpose has not been defined. The four-fold classification, which was there in the Act of 1922, is there even in the amended provision, but the last or general category of objects of "general public utility" is now qualified by the need to show that it did not involve profit making. The question before us, therefore is: What is the meaning or purpose of introducing the limitation "not involving the carrying on of any activity for profit"? The contention of Mr. Palkhivala is that it merely indicates that, as was held in the Tribune case (supra) and other cases, the purpose must not be private profit making or, in other words, the benefit must be to an object of "general public utility". This involves reading of the word "private" before "profit" which is quite unjustifiable. Furthermore, if that was the sole purpose of the amendment, we think that the amendment was not necessary at all. It had been declared repeatedly by the Courts even before the amendment that activities motivated by private profit making fell outside the concept of charity altogether. We think that it is more reasonable to infer that the words used clearly imposed a new qualification on public utilities entitled to exemption. It was obvious that, unless such a limitation was introduced, the fourth and last category would become too wide to prevent its abuse. Wide words so used could have been limited in scope by judicial interpretations ejusdem generis so as to confine the last category to objects similar to those in the previous categories and also subject to a dominant concept of charity which must govern all the four categories. But, the declaration of law by the Privy Council, in the Tribune case (supra), had barred this method of limiting an obviously wide category of profitable activities of general public utility found entitled to exemption. Hence, the only other way of cutting down the wide sweep of objects of "general public utility" entitled to exemption was by legislation. This, therefore, was the method Parliament adopted as is clear from the speech of the Finance Minister who introduced the amendment in Parliament.

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The word "involve" does not, it seems to me, necessitate the bringing out of the profit motive of an activity expressly in the deed of trust as was suggested by the learned Counsel for the appellant. The dictionary meaning of the word 'involve' is: "to entangle; to include; to contain; to imply" (see; The Shorter Oxford English Dictionary-III Edn. p. 1042). All profit making, even as a mere by-product, would have been covered by the word "involving", which is of wide import, if this word had stood alone and by itself without further qualifications by the context. The use of the words "for profit", however, shows that the involvement of profit making should be of such a degree or to such an extent as to enable us to infer it to be the real object. As a rule, if the terms of the trust permit its operation "for profit", they become prima facie evidence of a purpose falling outside charity. They would indicate the object of profit-making unless and until it is shown that terms of the trust compel the trustee to utilise the profits of business also for charity. This means that the test introduced by the amendment is: Does the purpose of a trust restrict spending the income of a profitable activity exclusively or primarily upon what is "charity" in law? If the profits must necessarily feed a charitable

purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on "charity". If that obligation is there, the income becomes entitled to exemption. That, in our opinion, is the most reliable test.

The difficult question, however, still remains: what is the meaning of "charitable purpose" which is only indicated but not defined by Section 2(15) of the Act? It seems to me that a common concept or element of "charity" is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yields profit, provided that profit has to be used up for what is recognised as charity. The very concept of charity denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. Its essence is selflessness. In a truly charitable activity any possible benefit to the person who does the charitable act is merely incidental or even accidental and immaterial. The action which flows from charitable thinking is not directed towards benefitting one's self. It is always directed at benefitting others. It is this direction of thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really charitable.

We think that this governing idea of charity must qualify purpose of every category enumerated in Section 2(15) of the Act of 1961. We think that the words introduced by the Act of 1961 to qualify the last and widest category of objects of public utility were really intended to bring out what has to be the dominant characteristic of

each and every category of charity. They were intended to bring the last and most general category in line with the nature of activities considered truly charitable and mentioned in the earlier categories.

Coming now to the deed of trust before us, we find that the word "education" is mentioned by the maker of the trust in a rather ceremonial or ritualistic fashion as a label for what he considers to be charitable object. The third set of objects, in clause 2 of the deed does not appear to be stated there merely as a means of serving the general purpose of "education" separable from these objects in clause (c). On the other hand, there are strong grounds for believing, in the light of other provisions and profit making activities and background of the trust, that the object of education was mentioned in the deed only as a convenient cloak to conceal and serve the real and dominant purpose of clause 2(c) which was to run a profitable newspaper and publishing business without paying the tax on it. Just as mere making of profit as a consequence or incident of altruistic activity is not decisive of the real purpose or object of the activity, so also the carrying on of a business for profit does not cease to be so merely because losses are actually incurred in certain years or because those who carry it on call it "education". It would be difficult to find any commercial activity which makes profits always or which expressly gives out that its existence depends upon profit making although, in practice, and, ultimately, its continuance may depend on profit making. A newly started business may, initially, have to run

at a loss; but, at a later stage, it may earn magnificent profits. Therefore, test of the real character or purpose of an activity cannot be whether its continuance is made to depend upon profits resulting from it or not. Such a test would be artificial and specious. I do not think that the qualification introduced by Section 2(15) of the Act of 1961 was intended to compel Courts to look for the conditions on which continuance of activities of public utility is made to depend. If profit making results from them and these profits can be utilised for non-charitable purposes the trust which makes this possible would not be exempt from paying income-tax.

In the trust deed before us, as we have already indicated, the trustee had not only wide powers of utilisation of trust funds for purposes of the trust but could divert its assets as well as any of the funds of the Trust to other institutions whose objects are "similar to the objects" of the trust and of "carrying out the objects and purposes of this trust either fully or partially". The whole deed appears to me to be cleverly drafted so as to make the purpose of clause 2(c) resemble the one which was held to be protected from income-tax in the Tribune case (supra). Indeed the very language used by the Privy Council in the Tribune case (supra), for describing the objects of the Trust in that case, seems to have been kept in view by the draftsman of the trust deed before us. And, we find that the power of diverting the assets and income of the Trust although couched in language which seems designed to counsel their real effect is decisive on the question whether the trust is either wholly or predominantly for a charitable purpose or not. The trustees is given the power of deciding what

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purpose is allowed to or like an object covered by the trust and how it is to be served by a diversion of trust properties and funds. If the trustee is given the power to determine the proportion of such diversion, as he is given here, the trust could not be said to be wholly charitable. He could divert as much as to make the charitable part or aspect, if any, purely illusory. Indeed, this was the law even before the qualifying words introduced by the 1961 Act. [See: East India Industries (Madras) Pvt. Ltd. v. Commissioner of Income-tax, Madras(1), Commissioner of Income-tax, Madras v. Andhra Chamber of Commerce(2), Md. Ibrahim Riza v. Commissioner of Income-tax, Nagpur(3)]. Such a "trust" would be of doubtful validity, but I refrain from further comment or any pronouncement upon the validity of such a trust as that was neither a question referred to the High Court in this case nor argued anywhere.

The amendment of the 1961 Act considered by us compels closer scrutiny of deeds of ostensibly charitable trusts with a view to discovering their real purposes by analysing the effects of their terms and what they permit. It narrows the scope of exemption from income-tax granted at least under the last and widest category of charitable trusts mentioned in Section 2(15) of the Act as was held in Commissioner of Income-tax, West Bengal II v. Indian Chamber of Commerce(4).

We are in agreement with the view expressed in the Tribune case (supra) to the extent that we think that a trust such as the one considered there does not, just like the trust before us, fall within the category of education, as such, mentioned in the statutory elucidation of charity, which was repeated in the 1961 Act, with an added qualification of the last and widest category. Although the

term "education", as used in Section 2(15) of the Act, seems wider and more comprehensive than education through educational institutions, such as Universities, whose income is given an exemption from income-tax separately under Section 10(22), provided the educational institution concerned does not exist "for purposes of profit", yet, it seems to me that the educational effects of a newspaper or publishing business are only indirect, problematical, and quite incidental so that, without imposing any condition or qualification upon the nature of information to be disseminated or material to be published, the mere publication of news or views cannot be said to serve a purely or even a predominantly educational purpose in its ordinary and usual sense.

The purposes with which we are concerned no doubt parade under the guise or caption of "education". They are found stated in clause 2(c) of the deed. This clause speaks of a supply of "organs of educated public opinion" to Kanada speaking people and of a presumed need for "useful" information and "ventilation" of views on "matters of public utility". It is left to the Trustee to decide which class of people is "educated" so as to be permitted to voice its views through these organs. He is also to decide what is "useful" and what is harmful and what is a matter of "general public utility". If, as it seems to

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us to be the position here, the Trustee is the sole judge of how these presumed needs are to be satisfied, he could certainly cater for them in a manner which could be considered debased or offensive by people of good taste with a proper sense of values. I do not mean to cast the slightest reflection on the manner in which the appellant trustee conducts his business or on the quality or value of materials found in his newspapers or other publications. We have no evidence and no finding on these aspects of the case before us. All I would like to point out here is that the trust leaves it entirely to the sweet will of the sole trustee to decide all questions relating to policy or the way in which the needs mentioned in clause 2(c) are to be met. Provision for their satisfaction could be made in a manner which could be very lucrative. This is the most relevant consideration in ascertaining the purpose of the trust from the point of view of profit making.

Judging from the facts set out in the trust deed itself, the sole trustee had managed to make the satisfaction of the needs mentioned above a highly profitable business. The deed puts no condition upon the conduct of the newspaper and publishing business from which we could infer that it was to be on "no profit and no loss" basis. I mention this as the learned Counsel for the appellant repeatedly asserted that this was the really basic purpose and principle for the conduct of the business of the trust before us. This assertion seems to be based on nothing more substantial than that the trust deed itself does not expressly make profit making the object of the trust. But, as I have already indicated, the absence of such a condition from the trust deed could not determine its true character. That character is determined for more certainly and convincingly by the absence of terms which could eliminate or prevent profit making from becoming the real or dominant purpose of the trust. It is what the provisions of the trust make possible or permit coupled with what had been actually done as without any illegality in the way of profit making, in the case before us, under the cover of the provisions of the deed, which enable us to decipher the meaning and

determine the predominantly profit-making character of the trust.

For the reasons given above, I think that judgment of the Mysore High Court must be and is affirmed, but, in the circumstances of the case, the parties will bear their own costs.

V.M.K.

Appeals dismissed.

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JUDIS