IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MRS. JUSTICE AYESHA A. MALIK
MR. JUSTICE AQEEL AHMED ABBASI

C.P.L.As.985-K, 986-K, 987-K, 988-K, 989-K, 990-K of 2023 and 628-K of 2024
(Against judgment/order dated 08.05.2023 and 06.05.2024 passed by the High Court of Sindh, Karachi in Income Tax Cases Nos.633 to 638 of 2001 and Income Tax Reference Application No.220 of 2008, respectively.)

Pakistan Stock Exchange Limited ... **Petitioner** (in all cases)

vs

Commissioner Inland Revenue Zone -VI, Karachi ... **Respondents** (in all cases)

For the Petitioner : Mr. Abdul Ghaffar Khan, AOR (in all cases *via* video-link, Karachi)

For the Respondents : Mr. Munawar Ali Memon, ASC
Mrs. Abida Parveen Channar, AOR
Mr. M. Masood, Addl. Commissioner, (*via* video-link, Karachi)
Dr. Ishtiaq, D.G. (Law)

Date of Hearing : 21.04.2025

JUDGMENT

Munib Akhtar, J.: These leave petitions, seven in number and filed by the same petitioner, arise in relation to income tax law. Six arise under the Income Tax Ordinance, 1979 ("1979 Ordinance") and one under the Income Tax Ordinance, 2001 ("2001 Ordinance"). However, the same question of law is presented, i.e., whether the petitioner was entitled to a certain exemption from tax on its income. As regards the petitions relating to the 1979 Ordinance the assessment years are, sequentially, from 1993-94 to 1998-99. The petition arising under the 2001 Ordinance relates to the tax year 2003.

2. The entitlement to exemption that is the common question raised is essentially cast in the same terms under both statutes. Under the 1979 Ordinance this was clause (93) of Part I of the Second Schedule. Under the 2001 Ordinance it was clause (59) of Part I of the Second Schedule thereto. It will be convenient to set out both clauses (as presently relevant) in tabular form:

1979 Ordinance	2001 Ordinance
(93) Any income which is derived from investments in securities of the Federal Government and house property held under trust or other legal obligations wholly, or in part only, for religious or charitable purposes and is actually applied or finally set apart for application thereto.	(59) Any income which is derived from investments in securities of the Federal Government, profit on debt from financial institutions, grant received from Federal Government or Provincial Government or District Government, foreign grants and house property held under trust or other legal obligations wholly, or in part only, for religious or charitable purposes and is actually applied or finally set apart for application thereto: ...

It is common ground (and we so proceed) that in the facts and circumstances of the case the two exemption clauses are the same. We will therefore consider the respective submissions of the parties with reference to clause (93) of the 1979 Ordinance, which is herein after referred to as the "exemption clause". Both statutes also carry identical definitions of "charitable purposes", in the respective clauses of their second sections, being in the following terms:

> "'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;"

This is herein after referred to as the "definition clause". Finally, (since the case law relates to that statute) we may note that the Income Tax Act, 1922 ("1922 Act") included provisions similar to the above in its s. 4(3)(i), which will be set out later.

3. The learned Appellate Tribunal found in favor of the petitioner in respect of all the assessment years under the 1979 Ordinance by means of a common order dated 26.07.2000. After a detailed consideration, inter alia, of the relevant authorities it was concluded that the petitioner's case did, as claimed, fall under clause (93). The case under the 2001 Ordinance was likewise decided in the petitioner's favor by order dated 31.07.2007, where reliance was simply placed on the earlier order. That decision is herein after referred to as the "order of the Tribunal".

4. The Commissioner (herein after referred to as the "Department") filed tax references in the High Court which were decided in its favor, in relation to the 1979 Ordinance, by means of the impugned judgment dated 08.05.2023. In respect of the tax year 2003 the learned High Court simply followed this decision in the impugned order dated 06.05.2024. Thus, the principal decision, herein after referred to as the "impugned decision", is the former.

5. Before us learned counsel for the petitioner submitted that the correct conclusion had been arrived at in the order of the Tribunal and that the learned High Court had erred materially in reversing the same by means of the impugned decision. Learned counsel for the Department took the contrary approach, supporting the acceptance of the tax references by the High Court. Learned counsel also submitted written submissions in support of their respective positions.

6. Briefly put, the learned High Court concluded that the exemption clause did not apply because the definition clause (and in particular the last portion thereof) had no application in the facts and circumstances of the case. Thus it was observed in para 10 of the impugned decision as follows:

> "Primarily, from the specified portions of that building/property the individuals are looking after their own monetary interests and revenue component, so generated, either as a commission in trade of securities or as license fee for operating from a particular portion of that property or rent for occupying the cubical/portions, as in the case of Banks operating on payment of

> consideration, in no way termed to be an activity to keep the respondent under the umbrella of charitable activity or an act towards "advancement of any other object of general public utility.""

7. We have considered the respective submissions of the parties, the case law referred to and the record. We begin by recalling that the principles in relation to exemptions are clear. As set out in *Oxford University Press v Commissioner of Income Tax* 2019 SCMR 235 (para 9) they are as follows:

> "... Firstly, the onus lies on the taxpayer to show that his case comes within the exemption. Secondly, if two reasonable interpretations are possible the one against the taxpayer will be adopted. But, thirdly, if the taxpayer's case comes fairly within the scope of the exemption then he cannot be denied the benefit of the same on the basis of any supposed intention to the contrary of the legislature or authority granting it."

It is in the light of these principles that the petitions fall to be decided. Before proceeding further, we may note that sometimes there may be a certain tension between the first and third aspects of the principles noted above. This may arise especially where the exemption clause comprises of more than one "element". Ordinarily, and the referent here would be the first aspect, it will be for the claimant to show that each "element" is established in the facts and circumstances of the case. Nonetheless, and the referent here would be the third aspect, the question of whether the exemption claimed is indeed applicable is to be decided on examining the clause as a whole and in its totality. In other words, it should be kept in mind when analyzing the exemption that it is not pulled apart into its "components" and broken up into underlying "elements" in a manner such that the integrity or unity of the whole is lost. The wood should not be missed for the trees. This caution is relevant for present purposes because, as will be seen in a moment, the exemption clause with which we are here concerned does comprise of more than one "component".

8. Viewed analytically, the exemption clause can be said to contain three "elements". The income for which exemption is sought (i) must be from "investments in securities of the Federal Government and house property"; (ii) either the said sources of

income or the income itself must be “held under trust or other legal obligations wholly, or in part only, for religious or charitable purposes”; and (iii) the income must be “actually applied or finally set apart for application thereto”.

9. Insofar as the first “element” is concerned, it appears to be clear that the income in question was derived from “house property”. We can therefore move on to the second “element”, which has been the principal point of dispute between the parties. This itself can be regarded as having two “sub-components”: (i) the income must be held under trust or “other legal obligations”, which must (ii) be “wholly, or in part only, for ... charitable purposes” (it being common ground that no “religious” purposes are involved here). The discussion must therefore begin by considering these aspects of the exemption clause.

10. We start by noting that no claim is made by the petitioner that the sources of income in question or the income so derived were held in trust. Therefore the first question that needs to be addressed is whether they or the income derived from them was under any “legal obligations”, either in whole or in part only, which could be regarded as “charitable purposes”. Now, the petitioner is (or at any rate was during the periods involved) organized as an entity registered under the companies’ legislation as a company limited by guarantee. As is well known, every company is required by law to have a memorandum of association, which must contain what is known as the “objects” clause, which sets out the objects for which the company is set up. It became a practice, right from the “dawn” of the modern era of company law (which of course dates back now to around 150 years if not more) for companies to set out long lists of what were the “objects” for which they were organized. These lists were sub-clauses of the objects clause, typically running into many (which could be up to several dozen) such paragraphs. The reason why this was done was because of the *ultra vires* doctrine, which stipulated that an “object” carried out by a company not set out in its objects clause (or any act or thing done not reasonably incidental

thereto) was void. The strictness of this doctrine and the severely adverse consequences that followed if it became applicable was the driver behind companies setting out, in paragraph after paragraph, what it was that the company could do. But this led to objections that the "true" objects of the company (i.e., those for which it was "really" set up) got lost and disappeared in a morass that had little, if anything, to do with the position actually on the ground. Partly in response to this, the courts sought to interpret the sub-clauses of the objects clause as comprising of only a few (and sometimes only one) "true" object(s) (usually being the first few paragraphs of the clause) for which the company in question was brought into existence. The remaining sub-clauses were regarded simply as "powers" conferred on the company to achieve the "true" object(s). If therefore a matter fell outside the "true" object so ascertained the *ultra vires* doctrine could still apply. This is usually referred to as the "main objects" rule. This in turn led to companies incorporating a paragraph of the following nature (containing some or all of the elements herein stated) at the end of the objects clause:

> "The objects set forth in any sub-clause of this clause shall not, except when the context expressly so requires, be in anywise limited or restricted by reference to or inference from the terms of any other sub-clause or by the name of the company. None of such sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause of this clause, but the company shall have full power to exercise all or any of the powers conferred by any part of this clause in any part of the world, and notwithstanding that the business, undertaking, property, or acts proposed to be transacted, acquired, dealt with, or performed do not fall within the objects of the first sub-clause of this clause."

As will be seen, the purpose of this paragraph was to make each sub-clause of the objects clause independent of the others, with each being on its own a separate and distinct "object" for which the company was set up or in which the company could engage. This gave the company's acts and activities the widest canvass possible, as long as the action or activity in question could be found in any of the several

paragraphs contained in the objects clause. And that was indeed the case more often than not.

11. The lawfulness of a paragraph such as the foregoing rounding off the objects clause came to be considered by the House of Lords in *Cotman v Brougham* [1918] AC 514, [1918-19] All ER Rep 265, [1918] UKHL 358. (The paragraph set out herein above is indeed taken from the decision (see at pg. 517)). Not without some reluctance (see, e.g., the comments of Lord Wrenbury at pp. 522-3), their Lordships accepted the validity of the clause. In his concurring speech, Lord Parker explained the position as follows (pp. 520-1; emphasis supplied):

> "... The question whether or not a transaction is *ultra vires* is a question of law between the company and a third party. The truth is that the statement of a company's objects in its memorandum is intended to serve a double purpose. In the first place it gives protection to subscribers, who learn from it the purposes to which their money can be applied. In the second place, it gives protection to persons who deal with the company and who can infer from it the extent of the company's powers. The narrower the objects expressed in the memorandum the less is the subscribers' risk, but the wider such objects the greater is the security of those who transact business with the company. Moreover, experience soon showed that persons who transact business with companies do not like having to depend on inference when the validity of a proposed transaction is in question. Even a power to borrow money could not always be safely inferred, much less such a power as that of underwriting shares in another company. Thus arose the practice of specifying powers as objects—a practice rendered possible by the fact that there is no statutory limit on the number of objects which may be specified. But even thus a person proposing to deal with a company could not be absolutely safe, for powers specified as objects might be read as ancillary to and exerciseable only for the purpose of attaining what might be held to be the company's main or paramount object, and on this construction no one could be quite certain whether the Court would not hold any proposed transaction to be *ultra vires*. At any rate all the surrounding circumstances would require investigation. Fresh clauses were framed to meet this difficulty, and the result is the modern memorandum of association with its multifarious list of objects and powers specified as objects, *and its clauses designed to prevent any specified object being read as ancillary to some other object*. For the purpose of determining whether a company's substratum be gone it may be necessary to distinguish between power and object, and to determine what is the main or paramount object of the company, but I do not think this

> is necessary where a transaction is impeached as *ultra vires*. A person who deals with a company is entitled to assume that a company can do everything which it is expressly authorised to do by its memorandum of association, and need not investigate the equities between the company and its shareholders."

12. The result of *Cotman v Brougham* has been that a paragraph of the nature therein contained will be given due effect and allow for each of the sub-paragraphs of the objects clause to be read independently of, and separately from, each other. Such a clause need not be an exact replica of what was validated by the decision; it suffices for it to substantially contain the essence thereof, howsoever worded. Otherwise of course, the interpretation of the objects clause would be subject to the "main objects" rule, already set out above. But it should be kept in mind that even where the memorandum contains a *Cotman v Brougham* clause it has been held that some paragraphs of the objects clause are simply impossible of being construed except as a power, having no conceivable independent or separate existence in and of themselves. Thus, a paragraph stating that the company may borrow money has been held only to be a power and not an object in and of itself. In *Re Introductions Ltd.* [1968] 2 All ER 1221 the power to borrow money was sub-clause (N) of the objects clause, which concluded with the following words: "It is hereby expressly declared that each of the preceding sub-clauses shall be construed independently of and shall be in no way limited by reference to any other sub-clause and that the objects set out in each sub-clause are independent objects of the company". This was regarded as a *Cotman v Brougham* clause but it was nonetheless held at pg. 1227 as follows (emphasis supplied):

> "The question is, in my judgment, whether it is legitimate to interpret sub-cl. (N) in conjunction with the concluding paragraph of the objects clause in that way.
>
> *Now to borrow money, by itself, without intending to use the money for any purpose, would be a senseless operation*.... Borrowing is only a sensible activity if it is associated with some use to which the borrowed money is proposed and intended to be put, and if one were to treat sub-cl. (N) as conferring on the plaintiff company the power to do something in isolation from any other activities at all as its sole activity, *sub-cl. (N) becomes an*

> *irrational clause*. Although one does not find, in this sub-clause of the memorandum, any words expressly referring to any other businesses or activities of the plaintiff company, the very nature of the transaction contemplated by sub-el. (N) infers, I think, that the company must have in view purposes to which the money shall be applied. That is to say, that the power to borrow or raise money is a power to borrow or raise money for the purposes of the plaintiff company... Moreover, notwithstanding the provision in the concluding paragraph of the objects clause—that sub-cl. (N) is to be treated as an independent object of the plaintiff company—*I think that, on the true construction of that sub-clause, it is apparent that it is one of the sub-clauses which falls into the category of sub-clauses which relate to matters incapable of being read as independent objects in the sense that they authorise the plaintiff company to undertake some activity as its sole activity*."

The judgment was affirmed on appeal: see the decision of the Court of Appeal at [1969] 1 All ER 887. Reference may also be made to *Anglo Overseas Agencies Ltd. v Green and another* [1960] 3 All ER 244.

13. When the petitioner's memorandum of association is considered in light of the above, it is found that its objects clause (clause IV) comprises of several sub-clauses, being in all thirty such paragraphs. Clause IV is then rounded off by a concluding paragraph the material part of which states as follows:

> "... and the intention is that the objects set forth in such of the several paragraphs of this clause shall have the widest possible construction, and shall be in no way limited or restricted by reference to or inference from the terms of any other paragraph of this Clause or the name of the Exchange."

In our view, the foregoing is in the nature of a *Cotman v Brougham* clause such that the various sub-clauses, subject to the limitation noted above, are each to be regarded as separate and distinct objects which can be pursued by the petitioner independently of each other. Of these, the second sub-clause has been relied upon by the petitioner for purposes of the exemption clause:

> "(2) To maintain high standards of commercial honor and integrity, to promote and inculcate honorable practices and just and equitable principles of trade and

> business, to discourage and to suppress malpractices, to settle and decide points of practice, disputes, questions of usage, custom and courtesy in the conduct of trade and business."

In the order of the Tribunal, after considering a number of authorities both from our own and the Indian jurisdiction, it was held that there was indeed a "charitable purpose" within the meaning of the definition clause. The Department of course disputed this conclusion and the learned High Court agreed in the impugned decision.

14. Before proceeding to consider the rival submissions in this regard, it is important to keep in mind that in and of itself it would not be enough for the petitioner simply to show that the foregoing sub-clause was a "charitable purpose". For it must be remembered that the exemption clause requires that the sources of income or the income be held under some "legal obligation", either wholly or in part, for a "charitable purpose". In other words there must be such an obligation for the income to be expended on such a purpose, even if only in part. In the context of a company, that would require that it be under a legal obligation not to distribute the income among its shareholders or members. And as is well known it is quite common for companies limited by guarantee to have such a restriction embedded in their memorandum of association. This is indeed the situation at hand. Thus, clause VII provides in material part as follows:

> "VII. NOTWITHSTANDING anything contained herein the Income & Property of the Exchange whensoever derived shall be applied solely towards the promotion of the objects of the Exchange as set forth herein and no portion thereof shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise, howsoever, by way of profit to the persons who at any time are or have been Members of the Exchange or to any of them or to any person claiming through any of them except in the case of winding up of the Exchange...."

15. In our view, a combined reading of the foregoing portions of the memorandum of association establishes that there is (by reason of clause VII) a "legal obligation" within the meaning of the exemption clause on the petitioner to expend its income only in order to achieve the purposes set out in the objects

clause and since each paragraph thereof is (by reason of the *Cotman v Brougham* clause set out in the concluding part) separate, that income can be expended in whole or in part on what is set out in each paragraph independently and separately from the others. This is of course subject to the limitation noted above in relation to a *Cotman v Brougham* clause to which we will return later. For the time being we proceed to consider whether sub-clause (2) of the objects clause can be a "charitable purpose" within the meaning of the definition clause. This requires an examination of the relevant case law.

16. In our view the discussion can conveniently focus on a decision of the Sindh High Court reported as *Commissioner of Income Tax v Merchant Navy Club* 2004 PTD 1304. This decision was rendered after the order of the Tribunal but considered many of the authorities therein examined, especially those from our own jurisdiction. The case arose under the 1922 Act and as noted above that statute had similar provisions, in subsection (3)(i) of s. 4. These may now be referred to, as presently relevant:

> "(3) Subject to the provisions of this Act, any income, profits or gains falling within the following classes shall not to such extent as may be specified in this subsection or prescribed in this behalf, be included in the total income of the person receiving them:-
>
> > (*i*) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto: ...
>
> *Explanation*. The expression 'charitable purposes' ... includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;..."

It will be seen that the definition of "charitable purpose" is identical in all three statutes and the terms of the exemption set out in the 1922 Act are also similar to those now under consideration.

17. In the reported case the assessee was organized as a club for the benefit of seamen. The claim for exemption under the

foregoing provision was denied by the income tax officer and the departmental appellate authority but accepted on further appeal by the Appellate Tribunal. The relevant portion of the Tribunal's reasoning is reproduced at pg. 1306 of the judgment:

> ""Both the officers below, in our opinion, have fallen into an error in holding that the assessee was not a charitable society in that the officers and sea-men for whose benefit it was established were not the sufficient segment of society. In our opinion, the officers and sea-men constitute a very pertinent segment of society and the object provides for the accommodation, recreation and their general welfare and particularly to provide a comfortable home at a moderate charge, cannot but be said to be a charitable purpose. Likewise, the other objects of the society, such as to, provide a refuge to the officers and sea-men who are shipwrecked and in distress and to impart useful knowledge to them in suitable manner etc., are obviously covered by the term 'charitable purpose' and manifestly fall within the purview of the expression 'objects of general public utility'. The section of community, in the instant case, to be benefited is sufficiently defined and identifiable by common quality uniting them (the beneficiaries) into a class. We are satisfied from the material record that the income of the assessee was admittedly derived from the property owned by the assessee and by carrying on the business for charitable purposes and the income so derived has been utilized solely for achievement of the purposes set out in the Memorandum of Association. The Explanation appended to section 3 defines the expression 'charitable purposes' not exhaustively but inclusively and according to it the advancement of any other object of general utility falls within the ambit thereof."

18. After a detailed review of the authorities from our own jurisdiction (including the decisions of this Court reported as *Commissioner of Income Tax v Muhammad Abdur Rauf Khan* PLD 1963 SC 209, *Hamdard Dawakhana v Commissioner of Income Tax* PLD 1980 SC 84 and *Fauji Foundation v Shamimur Rehman* PLD 1983 SC 457) and also case law from the Indian and English jurisdictions as well as treatises on income tax, it was concluded as follows (pp. 1323-4; emphasis supplied):

> "We agree with the proposition laid down in the judgments cited above that the expression 'charitable purpose' carries a broader and extended connotation. The definition given in the Explanation to section 4(3) of the Repealed Act, to the effect that it includes relief to the poor, education, medical relief and the advancement of any other object of general pubic utility, is inclusive and is not exhaustive, conclusive or exclusive. The words 'advancement of any

> other object of general public utility' are of very wide amplitude which has to be interpreted liberally when examined in its true spirit. *The expression 'charitable purpose' as used in a statute shall always be susceptible to the extended meaning from time to time and shall always be open to broader meaning in the facts and circumstances of the particular cases*. Respectfully following the judgments laying down the scope and extent of the expression charitable purpose, we are of the considered opinion that the objects for which the respondent club was established fulfilled the requirement of charitable purpose and merely for the reason that ancillary and incidental activity included the performance of dancing and supplying of wine to the sea-men who were mostly non-Muslims shall not take out the activities of respondent's club from the ambit of charitable purpose. We are further of the opinion that the officers and sea-men of the Merchant Navy constitute sufficient segment of the society so as to bring the beneficiaries within the purview of general public. The reason being that it is not necessary that benefits may be ensured to the humanity at large. The purpose is fulfilled if a sufficient segment of the society is the beneficiary, without any distinction of religion, caste, creed or sect. In the present case, the admission in the club is open without any distinction on account of nationality or religion and consequently the amenities offered shall be deemed to be for the general public utility."

The decision of the Tribunal was upheld and the tax reference filed by the Department dismissed.

19. In our view, the approach taken by the learned High Court in the cited decision correctly encapsulates the view that has found favor in this Court as to what constitute "charitable purposes" within the meaning of the definition clause. It is therefore not necessary to look at those cases separately and in any detail. What has been said by the learned High Court in the cited decision is approved. It is in the light of that approach that the facts and circumstances of the case fall to be considered.

20. However, before reaching that point it is necessary to see whether sub-clause (2) of the petitioner's objects clause can indeed be regarded as a separate and distinct object on account of the *Cotman v Brougham* clause or is to be considered as being within the limitation to the rule noted above. Only if sub-clause (2) can be regarded as a separate and distinct object that the analysis can proceed further. One way to consider the

question is to ask whether, if the petitioner were to stop the business in which was engaged in during the periods involved, the clause would still have any meaning as a separate and distinct object. That business is set out in sub-clause (1) which is in the following terms:

> "(1) To conduct, regulate and control the trade or business (hereinafter called the 'Trade') of buying, selling and dealing in shares, scrips, Participation Term Certificates, Modarba certificates, Stocks, Bonds, Debentures, Debenture stock, Government papers, Loans, and any other instruments and securities of like nature including but not limited to Special National Fund Bonds, Bearer National Fund Bonds, Foreign Exchange Bearer Certificates and documents of similar nature issued by the Government of Pakistan or any agency authorized by the Government of Pakistan."

In our view, if the "main objects" rule were to be applied sub-clause (2) would naturally fit in with sub-clause (1) as ancillary and an adjunct thereto. Indeed, even if sub-clause (2) were not there at all what is contained therein could be regarded as reasonably incidental to achieving the object set out in sub-clause (1).

21. But of course we have to consider the effect of the *Cotman v Brougham* clause. It is to be noted that the application of such a clause requires the objects clause to be considered at a certain level of abstraction, which may be somewhat divorced from the actual position on the ground. It requires a "what-if" type of analysis. Furthermore, the threshold of applying the limitation to the *Cotman v Brougham* clause is high. Thus, in the extract from *Re Introductions Ltd.* reproduced above it is couched in terms of 'senselessness' and 'irrationality'. It follows that every reasonable effort should be made to apply the *Cotman v Brougham* clause. If it can plausibly (even if somewhat artificially) be concluded that the sub-clause concerned can be regarded as a separate and distinct object in itself, then it should be given effect. When viewed from this perspective sub-clause (2) can, in our view, be regarded as a distinct and separate object in its own right. Thus, the promotion and inculcation of "honorable practices" and just and equitable principles of trade and business and the discouragement and

suppression of “malpractices” can plausibly be pursued by a company as distinct purposes in and of themselves, especially where the company is organized as one limited by guarantee and its memorandum contains a prohibition against distribution of income and profits among the members. It may be that if the petitioner were to focus its functioning on sub-clause (2) only it may well be regarded as a much diminished company and even a “shell” of its past activities. But that is of no moment in the present context, the locus of which is the exemption clause. The only question is, does the *Cotman v Brougham* clause work in the petitioner’s favor in the facts and circumstances of the case? In our view, this question should be answered in the affirmative.

22. Accordingly, the discussion must now move to consider whether sub-clause (2) can be regarded as a “charitable purpose” within the meaning of the definition clause. Applying the approach laid down in the *Merchant Navy Club* case which we have approved, the answer to this question must also be in the affirmative. The promotion and inculcation of “honorable practices” and just and equitable principles of trade and business and the discouragement and suppression of “malpractices” clearly work to the benefit of the public at large and result in gains relating to economic, business and commercial activities that advance general public utility. Even if such promotion and inculcation and discouragement and suppression were to be confined to only a few types of business activities the same conclusion would obtain. Therefore, and respectfully disagreeing with the learned High Court, we conclude the petitioner’s situation, in the facts and circumstances of the case, came within the definition clause.

23. This however is not dispositive of the case. For there is still the third “element” of the exemption clause to consider. It will be recalled that this required that the income in question must be “actually applied or finally set apart for application” to the charitable purpose claimed. This “element”, expressly set out in the exemption clause is an integral part thereof and must now be considered. It will be seen that it is essentially a

question of fact: was the income “actually” so applied or “finally set apart”? Since we are concerned with a claim to an exemption, it is not for the Department to show, negatively, that this was not so. Rather, it is for the claimant, i.e., the petitioner, to show affirmatively that it was in fact so. Now, as is well known, in tax matters the Appellate Tribunal is the last finder of questions of fact. Beyond its decision lie only questions of law to the High Court by way of a tax reference and then, in suitable cases, to this Court. We may note for completeness that perhaps the law has, in very recent years, undergone a change in this regard. Whether that is indeed so, and if so in what manner to what degree the law has undergone a change is not a matter that falls to be decided here. We are concerned with the position as it has been understood and applied prior thereto, which prevailed when the learned Tribunal decided the appeals filed by the petitioner for the assessment years and tax year in question.

24. An examination of the order of the Tribunal shows that this aspect of the case was not dealt with in a manner as required for purposes of the exemption clause. There was no affirmative and actual finding of fact that the income in question was either actually applied or “finally” set aside for purposes of achieving the objects set out in sub-clause (2). The entire discussion related to a matter of law, i.e., whether the sub-clause in question could be regarded as a “charitable purpose”. A finding in favor of the petitioner was recorded in this regard. But, with respect, that was not enough. The learned Tribunal had also to apply its mind as to whether the third “element” of the exemption clause existed during the periods in question. Absent any such finding the benefit of the exemption clause could not be extended to the petitioner. What we find is that in para 45 of the order of the Tribunal (after a lengthy consideration of the relevant authorities) there is simply a bald statement in the following terms:

> “It is further found that the house property owned by the appellant is held under a legal obligation for either being used by the appellant in pursuance of its objects or, if let out, the income derived from such property is either actually applied or set apart for application therefore....”

In our view, while this “finding” may suffice for purposes of the second “element” of the exemption clause, it is wholly deficient for the third “element”. The reasoning appears simply to amount to this: that because the second “element” is found to exist therefore the third is equally found to (or must) exist. But, with respect, the learned Tribunal failed to appreciate that while the determination of the second “element” was a question of law (or perhaps a mixed question of law and fact) the third “element” was a separate requirement, which was only a question of fact. The existence of the one could not, and did not, inevitably, as seems to have been concluded by the learned Tribunal, lead to the other. To conclude that the one existed did not show or mean that the other did as well. The positive obligation that lay on the petitioner in this regard was not discharged. And since the Tribunal was the last finder of fact the exercise in relation to the third “element” could not be carried out by either the High Court (which in any case decided against the petitioner) or this Court. This deficiency is, in our view, fatal for the petitioner’s case. Even when the exemption clause is viewed in its totality the last portion thereof has to be clearly established, at the latest, by or before the final forum designated to determine questions of fact. This is patently not the situation at hand.

25. Accordingly, in our view (though for reasons different from those that found favor with the learned High Court) the petitioner has failed to make out a case for entitlement to the exemption clause. Leave to appeal is refused and the petitions stand dismissed.

Judge

Judge

Judge

Announced in the Court on 24.10.2025 at Islamabad.

Sd/-
Judge

Approved for reporting