

IN THE PRIVY COUNCIL

No.19 of 1968

ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT  
OF JUDICATURE OF GUYANA

A B E T W E E N :  
PETER STANISLAUS D'AGUIAR Appellant  
- and -  
THE COMMISSIONER OF INLAND REVENUE Respondent

B C A S E FOR THE RESPONDENT

RECORD

1. This is an appeal brought by leave from the Judgment and Order of the Court of Appeal of the Supreme Court of Judicature of Guyana (hereinafter referred to as "the Court of Appeal") dated 6th June 1967 dismissing the Appellant's appeal against the Judgment and Order of the Supreme Court of British Guiana dated 17th October 1964 dismissing the Appellant's appeal against the decision of the Commissioner of Inland Revenue in respect of an Income Tax Assessment made on the Appellant for the Year of Assessment 1962
- C pp.59  
pp.54  
pp.14, 23
- D pp.61, 72  
p.64
2. The question for determination on this appeal is whether the sum of \$4,200 paid by the Appellant in the calendar year 1961 under a Deed of Covenant to The Citizens' Advice and Aid Service (hereinafter referred to as "the Transferee") is a disposition of income to or for the benefit of a charitable organisation within the meaning of Section 53(3) of the Income Tax Ordinance as substituted and amended, and, therefore, is not to be treated as the income of the Appellant for the purpose
- E p.62  
F

RECORD

of income tax

3. The provisions in Section 53(3) of the Income Tax Ordinance Cap.299 as substituted by Section 7 of the Income Tax (Amendment) Ordinance 1958 (No.4) and amended by Section 33 of the Income Tax (Amendment) Ordinance, 1962 (No.11) are as follows :

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"53.(3) Notwithstanding anything to the contrary in this Ordinance where any person has, directly or indirectly, at any time before the end of the year immediately preceding the year of assessment, whether before or after the coming into effect of this sub-section, transferred, assigned or otherwise disposed of to any person otherwise than for valuable and sufficient consideration the right to income that would if the right thereto had not been so transferred, assigned or otherwise disposed of be included in ascertaining his chargeable income for the year immediately preceding the year of assessment, because the income transferred, assigned or otherwise disposed of would have been received or receivable by him in or in respect of that year, such income shall be included in ascertaining his chargeable income, and not the chargeable income of any other person, for that year, unless the income is from property and he has also transferred, assigned, or otherwise disposed of such property to that person, or unless the income has been transferred, assigned, or otherwise disposed of for a period exceeding 2 years or for the remainder of his life to or for the benefit of any ecclesiastical, charitable or educational institution, organisation or endowment of a public character within

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British Guiana, or elsewhere as may be approved by the Governor for the purpose of paragraph (d) of section 10 of this Ordinance:

RECORD

A                    Provided that nothing in this  
subsubsection shall apply to income the  
right to which has been transferred,  
assigned or otherwise disposed of to or  
B                    for the benefit of any ecclesiastical,  
charitable or educational institution,  
organisation or endowment of a public  
character before the 1st January, 1958."

C                    These provisions are hereinafter  
referred to as "Section 53(3) of the  
Ordinance"

4.                  The provisions in Section 8 of the Civil  
Law of British Guyana Ordinance Cap. 2 are  
relevant and are as follows :

D                    5.                  The facts of the case appear in the  
Statement of Facts and so far as material may  
be summarised as follows :

p.4

E                    (i) In his Return of Income for the Year  
of Assessment 1962 the Appellant claimed,  
inter alia, an allowance of \$4,200 in  
respect of a payment under a Deed of  
Covenant to the Transferee

F                    (ii) The Commissioner disallowed the  
claim on the ground that the Transferee  
was not an ecclesiastical, charitable or  
educational institution, organisation or  
endowment of a public character within  
the meaning of the relevant legislation

G                    6.                  By Notice of Appeal dated 7th August, 1963,  
the Appellant appealed to the Board of Review.  
The Board was unable to make any positive  
decision

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7.                  By a Notice of Appeal dated 28th May,  
1964, the Appellant appealed against the

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decision of the Board of Review to a Judge in Chambers, Luckhoo C.J. The appeal was dismissed by the Chief Justice.

8. Before the Chief Justice it was submitted on behalf of the Appellant that the provisions in Section 53(3) of the Ordinance required that for the income transferred not to be treated as the income of the transferor for the purpose of income tax, the transferee need not be established solely for charitable purposes but may be established mainly for charitable purposes. The Chief Justice was unable to accept this submission. A B

By virtue of Section 8 of the Civil Law of British Guyana Ordinance Cap. 2 the provisions of the Mortmain and Charitable Uses Act 1888 are applicable to British Guyana. Consequently it was necessary in the view of the Chief Justice to show that the objects of the Transferee were within the spirit and intendment of the preamble to the Charitable Uses Act, 1601, 25 Eliz. c.4. It followed that the expression "charitable institution or organisation" in Section 53(3) of the Ordinance should be construed as meaning an institution or organisation established solely for charitable purposes. C D E

p.22

The Chief Justice considered the objects of the Transferee and concluded that sub-clauses (a) (d) and (g) in the objects clause of its constitution included non-charitable objects. Accordingly, the Transferee was not established for charitable purposes only. F

p.24

9. By a Notice of Appeal dated 25th November 1964 the Appellant appealed against the decision of the learned Chief Justice on the grounds therein set out. The appeal came on for hearing in the Court of Appeal on the 30th January, 1st February and 6th June, 1967, before Sir Kenneth Stoby, Chancellor, Mr. Justice Luckhoo, Justice of Appeal and Mr. Justice Persaud, Justice of Appeal and on G H

6th June, 1967, the Court by a 2:1 majority dismissed the appeal.

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A 10. Mr. Justice Luckhoo agreed with the judgment of Mr. Justice Persaud. The latter was unable to accept either of the two main arguments advanced by the Appellant.

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B The first argument was that the Transferee was established for charitable purposes only. Mr. Justice Persaud set out the objects of the Transferee of which in his view no one object could be singled out as the main object and the others ancillary. And, like the Chief Justice, Mr. Justice Persaud found that several of the objects were not charitable. The Appellant's first argument therefore failed.

D The second argument was that it was unnecessary for the Transferee to be charitable only in order to enable the Appellant to avoid tax on his donation. Mr. Justice Persaud was inclined to the view that the second argument was without merit. He referred to the United Kingdom tax legislation which contains phrases like "to charitable purposes only" and "applied solely to the purpose of charity". In his view the reason for the insertion of these words was to restrict the use to which the profits or rents of any body of persons or a trust could be put in order to qualify for exception. But this restriction on application did not detract from the meaning of the word "charity"; it simply operated to prevent organisations or trusts from utilizing their income on non-charitable purposes and, at the same time, securing exemption from tax on such income.

H In his dissenting Judgment the Chancellor was persuaded that the Transferee was a charitable organisation. Especially in the context of an emergent country, the Chancellor had no hesitation in holding that

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the provision of advice, aid and services on or relating to social matters under object (a) in the Transferee's Constitution was, in particular, a charitable object. He found that making advice available on personal problems of daily life within object (d) of the Constitution was not too wide and was a charitable object. Contemporary society often needed advice and advice was what the Transferee offered. The giving of advice to a citizen was, in the Chancellor's view, a good charitable object.

11. The Respondent respectfully submits that the Transferee is not a charitable organisation within the meaning of Section 53(3) of the Ordinance. In the context it is submitted that a charitable organisation means an organisation established solely for charitable purposes, and that the Transferee is not so established. The objects of the Transferee may well be beneficial to the public; but this in itself is not sufficient to make them charitable: they must be within the letter or the spirit and intendment of the preamble to the Statute of Elizabeth I. Even allowing for different interpretations in different ages, it is respectfully submitted that some of the objects of the Transferee do not satisfy this last test.

12. The Respondent humbly submits that the decision of the majority in the Court of Appeal and the decision of the Chief Justice in the Supreme Court of British Guiana are right and should be affirmed and that this appeal should be dismissed with costs both here and below for the following among other

R E A S O N S

- (1) BECAUSE the Transferee was not established solely for charitable purposes
- (2) BECAUSE the Transferee was not a

charitable institution organisation or  
endowment of a public character within the  
meaning of Section 53(3) of the Ordinance

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A (3) BECAUSE the judgment in the Supreme  
Court in British Guiana and the judgment of  
the majority in the Court of Appeal were  
correct and ought to be affirmed.

STEWART BATES

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Appellant

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THE COMMISSIONER OF INLAND REVENUE  
Respondent

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C A S E FOR THE RESPONDENT

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