

---

**(1977) 01 AHC CK 0017**

**In the Allahabad High Court**

**Case No :** Income-tax Reference No's. 64, 375 and 662 of 1974, 275 of 1975 and 885 of 1976

Additional Commissioner of Income Tax

APPELLANT

Vs

Channoo Lal Damodar Dass

RESPONDENT

---

**Date of Decision :** 17-01-1977

**Acts Referred:**

**Citation :** (1978) 113 ITR 759

**Hon'ble Judges :** Satish Chandra, J;B.N. Sapru, J

**Bench :** Division Bench

**Advocate :** A. Gupta, for the Appellant; B.C. Agarwal, R.R. Agarwal and O.P. Agarwal, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Satish Chandra, J.—In these five connected references the question of law that has been referred for our opinion is whether the receipts on account of mandir, gaushala and dharmada were trading receipts in the hand of the assessee.

2. The assessee carries on the business of commission agency. It charged dharmada at the rate of one anna per 100 rupees, mandir charges at the rate of 1/2 old paisa per bag and gaushala at the rate of 2 old paise per 100 rupees from all its constituents to whom the goods were sold. The assessee claimed that the receipts under these heads were exempt because they had to be spent for the specific purposes for which they were realised from the constituents. The Income Tax Officer, however, disallowed this claim and brought the amounts realised under these heads to tax. This view was upheld by the Appellate Assistant Commissioner, The assessee took the matter to the Tribunal. The Tribunal, relying upon a decision of this court in AGRA BULLION EXCHANGE LTD. Vs. COMMISSIONER OF Income Tax., and Bijli Cotton Mills Ltd. Vs. Commissioner of Income Tax, , upheld the assessee's claim. The Tribunal observed that the facts in these cases are not in dispute. The charges on account of mandir, dharmada and gaushala were levied by the assessee in respect of each

transaction on every constituent at fixed rates. These receipts were then credited in three separate accounts, namely, of mandir account, dharmada account and gaushala account, in the books of the assessee. Certain payments were made for the purposes for which they were realised and the balances were carried forward. These realisations were constantly made by the assessee for the last over 100 years. These were customary receipts realised according to the usage of the market. Relying upon a decision of this court in *Bijli Cotton Mills Ltd. Vs. Commissioner of Income Tax*, it held that the amounts were paid by the customers to the assessee specifically on account of mandir, dharmada or gaushala charges. These amounts were never treated as trading receipts or surcharge on the sale price. The Tribunal inferred that in these transactions there was a sort of agreement entered into by the assessee with the purchasers that the charges levied as mandir, dharmada and gaushala would be spent for these purposes and thus a resultant trust was created, and that the assessee held these realisations in trust for application to these purposes. It was held on these facts that these charges did not form part of the price of the commodities sold, and there was an implicit agreement entered into with the purchasers that it would be spent for the purposes for which they were realised. The initial nature and character of these receipts, therefore, is not that of trading receipts. The Tribunal upheld the assessee's claim.

3. At the instance of the Commissioner of Income Tax the Tribunal has referred the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the receipts on account of mandir, gaushala and dharmada were trading receipts in the hands of the assessee ?"

4. Since then, a Full Bench of this court has considered this very question in the case of *Thakur Das Shyam Sunder Vs. Additional Commissioner of Income Tax and Another*, . That was a case relating to the customary levy of dharmada. The facts are identical, and the Full Bench, after considering the various decisions of this court, held that the receipts under the head dharmada were not trading receipts, and so, were not taxable. Learned counsel for the parties are agreed that the true nature and character of the receipts under the head "dharmada" was identical with those under the heads "mandir" and "gaushala" and the same principle would apply. This Full Bench decision of this court was followed by the Punjab and Haryana High Court in the case of *Commissioner of Income Tax v. Gheru Lal Bal Chand* [1978] 111 ITR 134. It was held that the receipts of the assessee on account of gaushala and dharmada which were held by the assessee to be utilised specifically and exclusively for charitable purposes, did not constitute the income of the assessee.

5. Learned counsel for the revenue relied upon the decision of a Bench of this court in the case of *Commissioner of Income Tax Vs. Meerut Bidi Factory*, . That case is clearly distinguishable. In that case the crucial finding was that on facts no trust could be said to have been created at the point of time when income

was received. There was merely a desire to spend the income on charitable purposes. In the next place, the collection in that case was not made under a customary levy, which in law created a trust. This case is, therefore, not helpful.

6. Learned counsel for the revenue urged that sometimes the assessee had spent part of the monies collected under the aforesaid three heads for some other purposes, namely, for paying contribution to the political parties. We have examined the facts. It was only in the year 1969-70 in the case of the firm, Channu Lal Bal Krishna Das, that a small amount was spent for these purposes. This would not indicate that in fact the assessee has adopted a device to realise monies from its constituents in order to spend it for such purposes. At best this will amount to an instance of breach of trust which, it is settled law, does not destroy the trust itself. Therefore, the nature of the receipts cannot depend upon such diversion of application.

7. It was argued that the Income Tax Officer had found that often the firm had less cash money in the kitty than the total balances under these three heads. This may show that the firm had utilised these monies for some other purposes, but that, as already mentioned above, would be a case of breach of trust and will not affect the initial true nature and character of the receipt.

8. In the result, we answer the question referred to us by holding that the receipts on account of mandir, gaushala and dharmada were not trading receipts, and so, not taxable in the hands of the assessee. The assessee would be entitled to its costs which we assess at Rs. 200, one set.