# Nathu Ram Shiv Narain Vs Commissioner of Income Tax

## Income-tax Reference No. 107 of 1976

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 5, 1981

**Acts Referred:**
Income Tax Act, 1961 â€" Section 2(15)

**Citation:** (1982) 26 CTR 455 : (1982) 134 ITR 625

**Hon'ble Judges:** S.S. Kang, J; M.R. Sharma, J

**Bench:** Division Bench

**Advocate:** D.K. Gupta, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

## Judgement

M.R. Sharma, J.
The Income Tax Appellate Tribunal, Chandigarh Bench, has referred the following question of law to us for our opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that Rs. 4,625 constituted the assessee"s

income liable to tax ?

2. The assessee is a registered firm deriving income from the purchase and sale of utensils. During the assessment year 1972-73, the assessee

collected dharmada from its constituents and maintained a separate charity account of the same. The total collections came to Rs. 4,625. The

assessee actually disbursed a sum of Rs. 5,370 for charitable purposes which are mentioned in annex. A. The bulk of the amount was donated to

temples and religious institutions. Some amount was, however, disbursed to the following institutions:

Rs.

Backward class 21

State Bank of India Employees"

Union 51

Punjab National Bank Employees"

Union 21

Central Bank of India Employees''

Union 51

Bharatiya Jan Sangh 400

3. The assessee claimed that the collections on account of charity were customary collections and did not constitute its income because at the time

of their receipt they were received from its constituents for being disbursed for charitable purposes. Because of the disbursement, specially

mentioned above, the ITO disallowed the claim of the assessee.

4. The assessee went up in appeal which was dismissed by the AAC on the ground that the amounts collected by the assessee had not been spent

purely for the purposes of charity.

5. The assessee went up in second appeal before the Income Tax Appellate Tribunal. This appeal was also dismissed by the learned Tribunal with

the observations that when the assessee had full control over the money collected by it and when it could spend the money in any manner it liked,

the principle laid down by the Supreme Court in The Commissioner of Income Tax, Bombay City II Vs. Shri Sitaldas Tirathdas, , was not

attracted.

6. We have heard the learned counsel for the parties at some length. "" Charitable purpose "" is defined in Section 2(15) of the I.T. Act as under:

'' 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.

7. This definition is of a very wide amplitude. The donations made by the assessee did not involve any process or carrying on of any activity for

profit. It is a matter of common knowledge that only low-paid employees working in banks are allowed to form a recognised trade union. When a

donation is made to such a union, it merely allows the low-paid employees to put forth their demands for the betterment of their service conditions

on collective basis. The donation made to a union remains a charity even though it is secular in nature. The same considerations apply in the case of

small donations made to a political party out of the funds which are received by a business for being utilised for charitable purposes. The Tribunal

appears to have been influenced by the fact that the assessee had the option to select parties for making the donations. The view taken by it cannot

be sustained in view of the following observations made by the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli

Cotton Mills (P.) Ltd., :

We have already dealt with the alleged compulsory nature of the levy and have pointed out that the dharmada amounts cannot be said to have

been paid involuntarily by the customers and in any case the compulsory nature of the payments, if there be any, cannot impress the receipts with

the character of being trading receipts. Further, it is not possible to accept the submission that the customers"" being illiterate did not appreciate that

they were paying the amount with a view to create a trust, especially when it has been found that such payments were made pursuant to a custom

which obtained in the commercial and trading community; indeed, being a customary levy, the constituents or customers, whether literate or

illiterate, would be knowing that the additional payments over and above the price were meant for being spent by the assessee for charitable

purposes. Further, the fact that the assessee would be having some discretion as regards the manner in which and the time when it should spend

the dharmada amounts for charitable purposes would not detract from the position the assessee held qua such amounts, namely, that it was under

an obligation to utilize them exclusively for charitable purposes. It is true that the assessee did not keep these amounts in a separate bank account

but admittedly a separate dharmada account was maintained in the books in which every receipt was credited and payment made there out on

charity was debited and the High Court has clearly found that these amounts were never credited in the trading account nor were carried to the

profit and loss statement. Having regard to this position, it seems to us clear that the Tribunal''s finding that no trust could be said to have been

created by the customers in respect of the impugned amounts will have to be regarded as erroneous."" .

8. We, therefore, answer the aforementioned question in the negative, i. e., in favour of the assessee and against the revenue. No costs.