

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

WEDNESDAY, THE 27TH FEBRUARY 2008 / 8TH PHALGUNA 1929

ITA.No. 41 of 2004(I)

ITA.199/COCH/1998 of I.T.A.TRIBUNAL,COCHIN BENCH

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APPELLANT/APPELLANT/ASSESSEE:-

**M/S.IDEAL PUBLICATIONS TRUST,
SILVER HILLS, CALICUT,
REP. BY ITS CHARIMAN/SECRETARY,
SIDDIQUE HASSAN.**

**BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.
SRI.M.P.MOHAMMED ASLAM**

RESPONDENT: RESPONDEDNT/REVENUE:-

**COMMISSIONER OF INCOMETAX,
CALICUT.**

**BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI.GEORGE K. GEORGE, SC FOR IT**

**THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 27/02/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

**C.N. Ramachandran Nair &
T.R. Ramachandran Nair, JJ.**

I.T.A.NO.41 of 2004

Dated this the 27th day of February, 2008.

JUDGMENT

C.N. Ramachandran Nair, J.

The appellant, a Trust engaged in the publication of a Malayalam newspaper by name 'Madhyamam', has filed this appeal under Section 260A of the Income Tax Act challenging the order of the Income Tax Appellate Tribunal confirming disallowance of income tax exemption claimed by the appellant as a charitable Trust under Section 11 of the Act. Even though the appellant started the publication in 1987, in the course of several years the appellant was engaged only in one activity, viz. publication of newspaper and the entire profits are said to be utilised for developmental purposes in the form of setting up of new units for publication of the newspapers from various centres. In order to consider the appellant's case for income tax exemption under Section 11 of the Act, we have to necessarily refer to the objects of the Trust. Clause 3 of the Trust Deed containing the objects of the appellant Trust, is extracted herein below:

“3. AIMS OF THE TRUST

The Trust is established for the following objects being charitable in nature.

Each of the above objects is independent of the other.

Education:- To provide facilities of all kinds of education, to the members of the general public, and for this purpose,

I. to set up educational institutions including colleges, schools, industrial training centres, and other educational institutions.

II. To publish educational books, magazines, periodicals, newspapers and other publications,

III. To set up and run publishing houses, printing presses and other facilities for imparting knowledge;

IV. To establish and run libraries, reading rooms, lecture halls etc.

V. To set up, establish and run hostels, boarding houses, etc. for the benefit of students and teachers.

B. Medical Relief:

I. To set up hospitals, creches, health centres and other medical facilities.

II. To afford facilities and assistance by way of medical relief to the sick, affected and the infirm.

C. Objects of General Public Relief & Utility.

I. To establish, to maintain and run Orphanages boarding houses, feeding centres, rest houses and other amenities for and to take care of Orphans, destitutes and the afflicted.

II. Assist the poor and needy to set up and/or run vocations and industries by granting financial aid/or other assistance.

III. To set up and run any industrial or other projects for the benefit of the poor and needy persons without any profit motive.”

The assessment involved in this case is for the assessment year 1992-93. It is stated that the Tribunal decided the claim against the appellant for all the assessment years upto 2002-03 except for the year 1990-91 and the department has filed appeal to this court against the Tribunal's order for the year 1990-91.

2. Learned Counsel appearing for the assessee heavily relied on the decision of the Privy Council in the case of Trustees of the 'Tribune' reported in 7 ITR 415 and contended that publication of the newspaper itself is a charitable purpose as provided under Section 2(15) of the Income Tax Act and therefore the appellant is entitled to exemption from payment of tax under Section 11 of the Act, no matter whether the publication of newspaper is on commercial lines or not.

3. Learned Senior Standing Counsel appearing for the Revenue contended that the assessee has not incurred any expenditure for charitable purpose in terms of Section 11(1)(a) of the Act and unless 75% of the income is spent for charitable purposes during the previous year, the

appellant is not entitled to any exemption. On going through the objects of the Trust extracted above, we find that those are charitable objects within the meaning of that term contained in Section 2(15) of the Act. However, admittedly the appellant/assessee has not so far taken up or spent any amount of income towards charitable purposes stated in the object clause. The only contention of the appellant is that publication of newspaper itself is advancement of object of general public utility which is a charitable object as defined under Section 2(15) of the Act and so much so, the appellant is entitled to exemption. Learned Standing Counsel has relied on the decisions of the Supreme Court in **Asst. Commissioner of Income Tax v. Thanthi Trust** (247 ITR 785), **Sole Trustee, Loka Shikshana Trust v. Commissioner of Income Tax, Mysore** (101 ITR 234) and **Additional Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufacturers Association** (121 ITR 1) and contended that the assessee is not entitled to exemption, as the business carried on by it itself is not for charitable purpose and the assessee has not spent any income for charitable purpose stated in the object clause of the Trust.

4. Section 11(1)(a) of the Act provides for exemption to the extent of income applied for charitable purpose. The section provides for

accumulation and setting apart upto 25% of the income of the previous year for future application. Admittedly, the appellant has not spent any amount towards advancement of any of the charitable objects such as education, medical relief, relief of the poor, etc. as stated in the object clause. The facts conceded and proved through the orders produced before us, show that for several years including the previous year relevant for the assessment year, the appellant was utilising the surplus income for developmental purposes such as starting of new editions from new centres. The specific case put forward by the appellant with reference to the decision of the Tribunal based on Thanthi Trust's case referred to above, is that printing and publication of newspaper is “advancement of object of general public utility” which falls within the definition of charitable purpose under Section 2(15) of the Act and hence entitled to exemption. Under clause (4) of Section 11, “property held under trust” includes a business undertaking so held. However, the question is whether sub-section (4A) of Section 11 stands in the way of the appellant getting the relief. For easy reference we extract herein below sub-section (4A) of Section 11 prior to the amendment by Finance (No.2) Act, 1991 with effect from 1.4.1992 and the amended provision thereafter.

The provision prior to the amendment with effect from

1.4.1992:

“(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income, being profits and gains of business, unless --

(a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution.”

Provision after the amendment with effect from 1.4.1992:

“(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”

Since the previous year relevant for this assessment year ended on 31.3.1992, the pre-amended provision applies to the appellant. The appellant is not covered by clause (a) of Section 4(a), because the business carried on by the appellant is not wholly for religious purpose. However, the appellant falls under clause (b) of Section 4A of the Act which provides that exemption in respect of profits and gains of business of the trust is not available unless the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly

carried on by the beneficiaries of the institution. The beneficiaries of the appellant's activities are the subscribers who are not engaged in the business of the appellant. Therefore, by virtue of clause (b) of sub-section (4A) of Section 11, the appellant is not entitled to exemption under sub-section(1) or sub-section (2) or sub-section (3) or (3A) of Section 11 of the Act. Therefore, we are of the view that the authorities including the Tribunal rightly declined the benefit of exemption to the assessee.

5. So far as the position after the amendment of sub-section 4A of Section 11 is concerned also, we are of the view that the appellant is not entitled to exemption, because exemption is available in respect of the income only if the business carried on by the Trust is incidental to the attainment of the objects of the Trust. Admittedly, the appellant Trust has not utilised or set apart any part of the income for any of the charitable purposes referred to in the object clause, viz. education, medical relief or relief of the poor. The appellant is only engaged in publication of the newspaper which is run on commercial lines including charging of commercial tariff for advertisements and charging of price for the newspaper at rates comparable to other newspapers run for profit. However, the appellant's case is that the business of printing and publication of newspaper itself is an object of general public utility and so much so the

income therefrom is exempt from tax. We are unable to accept this proposition because we are of the view that in order to qualify for exemption in respect of income from profits and gains of business, the business, after the amendment of sub-section (4A) of Section 11, should be carried on as an incidental activity to the attainment of the objects of the Trust and not as an object in itself. In other words, the business itself should not be the object of the Trust, even though the business may advance the object of general public utility. In fact, if a contrary meaning is assigned to the section, any business income involving advancement of object of general public utility will be exempt from tax. In fact, every business to some extent advances object of general public utility. However, what is intended in sub-section (4A) of Section 11 is that the object of the Trust should be for charitable purpose which includes advancement of object of general public utility and income from any business carried should be incidental to the objectives of the Trust. Since the appellant has no other activity other than the business of printing and publication of newspaper on commercial line, we are of the view that the business itself cannot be said to be an object of general public utility entitling the appellant for exemption as a charitable institution. The Supreme Court in the Thanthi Trust's case referred above held that publication of newspaper is not education and

therefore unless the business of publication of newspapers falls under Clause (4A), exemption cannot be granted.

We therefore dismiss this appeal.

(C.N. Ramachandran Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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C.N. Ramachandran Nair &
T.R. Ramachandran Nair, JJ.

I.T.A.NO.41 of 2004.

JUDGMENT

27th February, 2008.