

(5433)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2012

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN  
and  
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Tax Case (Appeal) Nos.259 to 261 of 2004,  
987 to 991 of 2005, 1547 to 1549 of 2005  
and 675 of 2008

Commissioner of Income Tax  
Madurai.

.. Appellant in all these appeals

versus

M/s.P.Iya Nadar Charitable Trust  
Sivakasi.

.. Respondent in T.C.(A) Nos.259 to 261 of 2004

M/s.P.Ayya Nadar Charitable Trust  
12A, Chairman Shanmugham Road  
Sivakasi.

.. Respondent in T.C.(A) Nos.987 to 991 of 2005

M/s.P.Iyya Nadar Charitable Trust  
12A, Chairman Shanmugham Road  
Sivakasi.

.. Respondent in T.C.(A) Nos.1547 to 1549 of 2005

M/s.P.Ayya Nadar Charitable Trust  
Sivakasi.

.. Respondent in T.C.(A) No.675 of 2008

PRAYER: Tax Case Appeal Nos.259 to 261 of 2004 are filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Madras, dated 17.06.2003 made in I.T.A.Nos.4186/Mds/87, 4187/Mds/87 and 4188/Mds/87, relating to the Assessment Years 1981-82, 1982-83 and 1983-84 respectively.

Tax Case Appeal Nos.987 to 991 of 2005 are filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Madras, dated 19.10.2004 made in I.T.A.Nos.1644/Mds/98, 1645/Mds/98, 1646/Mds/98, 1647/Mds/98 and 1648/Mds/98 relating to the assessment years 1989-90, 1990-91, 1991-92, 1992-93 and 1995-96 respectively.

Tax Case Appeal Nos.1547 to 1549 of 2005 are filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Madras, dated 12.03.2004 made in I.T.A.Nos.447/Mds/98, 448/Mds/1996 and 449/Mds/1996, relating to the Assessment Years 1981-82, 1982-83 and 1983-84 respectively.

Tax Case Appeal No.675 of 2008 is filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Madras, dated 19.09.2007 made in I.T.A.Nos.411/Mds/2007, relating to the Assessment Years 1981-82.

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## JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

In the decision reported in [2006] 284 ITR 404 (Commissioner of Income-tax v. P. Iyya Nadar Charitable Trust) this Court considered the question as to (i) whether the Tribunal was right in holding that Section 13(1)(bb) would not apply to the Trust, although it was carrying on business; and (ii) whether the decision of the Supreme Court reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust) was not squarely applicable to the facts and circumstances of the case. Applying the decision reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust), this Court allowed the Revenue's appeal, holding that Section 13(1)(bb) would govern the case of the assessee that it was not entitled to exemption under Section 11.

2. Aggrieved by the order of this Court, the assessee went on appeal before the Supreme Court in Civil Appeal No.1679 of 2007. Setting aside the order of this Court, by order dated 26.03.2007, the Apex Court remanded the matter back to this Court for fresh consideration. The Supreme Court pointed out that the Court had not framed substantial questions of law as required under Section 260A of the Income Tax Act. Further, the Apex Court pointed out that this Court had interfered with the concurrent findings given by the authorities below, which was without any reason. On this ground, the judgment was set aside

and hence, the cases are listed before us for hearing. The Revenue is on appeal before this Court.

3. The assessment years under consideration in T.C.Nos.259 to 261 of 2004 are 1981-82 to 1983-84. T.C.Nos.1547 to 1549 of 2005 also relate to the very same years. It is seen from the facts narrated that as against the orders of assessment for the above years, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who allowed the appeals, holding that Section 13(1)(bb) was not applicable to the assessee's case. The Revenue went on appeal before the Income Tax Appellate Tribunal, which dismissed the Revenue's appeal, holding that when the dominant object of the Trust was charity, exemption under Section 11 could not be denied merely because the Trust carried on the business which was only for the purpose of doing charity. As against the order of the Tribunal, the Revenue filed Reference Applications and this Court, in Tax Case Nos.64 to 66 of 1998, remitted the matter back to the Tribunal, as it had done for earlier assessments in Tax Case Nos.275 to 281 of 1996 by order dated 01.11.2001, for fresh consideration. Tax Case Nos.259 to 261 of 2004 arise out of the order of the Tribunal passed on the remand by the High Court.

4. After the decision of the Tribunal in favour of the assessee, the Assessing Officer passed the consequential orders as regards certain issues raised. As against this, the assessee preferred appeals before the First Appellate Authority and ultimately before the Income Tax Appellate Tribunal. Aggrieved by the orders of the Tribunal holding that when the paramount object of the Trust was charity, exemption under Section 11 could not be denied on the score that the Trust earned on the business, the Department had filed appeals relating to the assessment years 1981-82 to 1983-84 in T.C.Nos.1547 to 1549 of 2005. After the order of this Court in T.C.Nos.1547 to 1549 and 259 to 261 of 2004 dated 20.02.2006, on the assessment made once again, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) and the Revenue, before the Tribunal. As against the order of the Tribunal, T.C.No.675 of 2008 is filed for the assessment year 1981-82. T.C.Nos.987 to 991 of 2005 relate to the assessment years 1989-90, 1990-91, 1991-92, 1992-93 and 1995-96 respectively and T.C.Nos.1566, 1567, 1568 and 1569 of 2005 relating to the assessment years 1990-91, 1991-92, 1992-93 and 1995-96 respectively.

5. It is seen from the narration of facts herein that one T.Iya Nadar created a Trust in August, 1956, settling certain properties in the name of the Trust, namely P.Iya Nadar Charitable Trust. The Trust was registered on 20.8.1956. The following are the objects of the Trust:

"(a) To establish, maintain, run, develop, improve, extend, grant donations for, and to aid and assist in the establishment, maintenance, running, development, improvement and extension of hospitals, clinics, dispensaries, maternity homes and similar institutions affording treatment, cure, rest, remuneration and other advantages in the way of alleviating the suffering of humanity;

(b) To establish, maintain, run, develop, improve, extend, grant donations for, and to aid and assist in the establishment, maintenance, running, development, improvement and extension of educational institutions, technical, industrial and otherwise, including schools, colleges,

polytechnics and research associations and institutions, workshops etc., hostels for the benefit of students and to award scholarships for the study, research and apprenticeship for all or any of the said purposes;

(c) To establish, maintain, run, develop, improve, extend, grant donations for and to aid in the establishment, maintenance, running, development, improvement and extension of libraries, reading rooms, recreation centres and other facilities as are calculated to be of use in imparting education to the Indian Public.

(d) To build, erect and construct and to aid and assist in the building, erection and construction of houses, tenements and places of residence for the poor, needy and defectives and to afford them all comforts and amenities.

(e) To conduct poor feeding and to give food, clothing and cash grants to the poor, needy and defectives and to afford relief to people in distress and affected by earthquake, flood, famine, pestilence and other causes and to grant donations for the support of the inmates of orphanages, rescue houses and similar institutions and societies.

(f) To engage in, carry on, help, aid and assist and promote rural reconstruction work, cottage industries and all other matters incidental thereto.

2. The above objects shall be independent of each other and the Trustees hereinafter constituted may, from time to time, apply the funds of the Trust for carrying out the above objects of the Trust in the territories of the Union of India.

3. The Trustees shall have power to invest the moneys and property of the Trust in one or more of the following ways:

(a) In any of the securities authorised under the Indian Trusts Act;

(b) In the purchase of lands and buildings or in the construction of buildings where the Trustees are satisfied that such investment will yield a reasonable income of where it is deemed expedient or necessary for carrying on the objects of the Trust.

(c) In fixed Deposits, shares, whether ordinary, preference or deferred, debentures or debenture stock of any bank, company or corporation.

(d) In the employment of funds in any industry, trade, business or businesses as the Trustees may deem proper.

12. The Trustees may meet together for the despatch of the business of the Trust as and when they think fit and at any such meeting the decision of the majority of Trustees shall prevail. The business of the Trust may also be determined by the Trustees by resolutions passed in circulation.

13. The Trustees shall have full power and management the Trust properties and funds and they shall have full control over the finances of the Trust. They shall likewise be entitled to take all steps that may be reasonable or required for the preservation of the Trust, the Trust Properties and the title of the Trust to do the Trust Properties.

6. Subsequently, a supplementary Trust Deed was drawn on 25.03.1957. The changes made thereon, as extracted in the order of the Tribunal, are as follows:

1.(i) Clause 9 of the Deed shall be numbered as 9(a).

(ii) After Clause 9(a), the following clause shall be inserted:

"9(b) INVESTMENTS AND DOCUMENTS OF TITLE SHALL BE MADE AND TAKEN IN THE NAME OF THE TRUST ITSELF REPRESENTED BY THE MANAGING TRUSTEES".

2. Clause 12 of the Deed shall be numbered as Clause 12(e) and the following clause shall be inserted after Clause 12(a):

"12(b) A MINUTES BOOK SHALL BE REGULARLY MAINTAINED FOR THE RESOLUTIONS PASSED AT THE MEETING OF THE TRUSTEE OR BY CIRCULATION AND THE SAME SHALL BE SIGNED BY ALL THE TRUSTEES PRESENT".

3. The additions net out in this Deed shall be deemed always to have been part and parcel of the DEED OF TRUST dated 20.8.1956. The value of the original trust is Rs.21,000/- (Rupees Twentyone thousand only) and the schedule of properties as described in document No.1678 of Book 1. "

7. Under a deed dated 01.10.1980, a safety manufacturing unit called the South Indian Lucifer Match Works, Sivakasi, was settled in favour of the Trust. The terms of settlement are as follows:

"1. The settlor doth hereby settle the property as described in the schedule hereto in favour of the 'P.Iya Nadar Charitable Trust', Sivakasi.

2. The Trustees of the said 'P.Iya Nadar Charitable Trust', Sivakasi, subject to the terms and conditions of the Trust Deed executed on the 20th day of August, 1956 and registered with the sub-Registrar of Assurance, Sivakasi as No.1678 of 1956 as amended, to date, shall utilise the income from the 'Trust Property' for the public charitable purposes.

3. The property now settled and any accretions thereto by way of profits and income shall be the property of the said 'P.Iya Nadar Charitable Trust', Sivakasi.

4. The properties herein transferred includes the goodwill of the business of 'The South Indian Lucifer Match Works', Sivakasi, having its depot at Gauhati now carried on by the settlor together with the Trade name, 'Camel' Label, all rights, privileges, quotes and other benefits belonging to the said business. The Trustees of the said 'P.Iya Nadar Charitable Trust', Sivakasi are authorised and are requested to carry on the said business and utilise the income therefrom for the public charitable purposes as contained in the Trust Deed by which the said Trust came into being.

5. The Trustees of the said 'P.Iya Nadar Charitable Trust', Sivakasi, shall have power to carry on the business of the South Indian Lucifer Match Works, Sivakasi, having its depot at Gauhati in such manner as they may think fit. "

8. It is stated that the Trust Deed enabled the assessee to exploit the proprietary trademark "Camel", which was a well known brand of safety matches. Evidently, the business continued till 31.03.1983, after which, it was leased out to M/s.Rajapalayam Industrial and Commercial Syndicate Limited and the assessee discontinued its activity of manufacturing.

9. The Assessing Officer viewed that even though the Trust had as its objects, relief of poor, education, medical relief and advancement of general public utility, the assessee's activities in exploiting the trade constituted business income and hence, the claim of the assessee was hit by the provisions under Section 13(1)(bb); consequently, it was not entitled to deduction. Apart from the main object of relief to poor, education, medical relief and

advancement of of general public utility, he pointed out that Clause 1(f) authorised the Trustees to engage in, carry on, help, aid and assist and promote rural reconstruction work, cottage industries and all other matters incidental thereto, apart from establishing, maintaining, running, hospitals, clinics, dispensaries, educational institutions, libraries, places of residence for the poor and affording relief to the people in distress. Thus the Tribunal had both charitable and non-charitable purposes. The assessee's business activities did not fall under exceptional clauses; therefore the income derived by the assessee from business was not eligible for exemption under Section 11 and the Trust was hit by Section 13(1)(bb).

10. The assessee derived income from the property held in trust, which consisted of house property, business, shares and deposits. Holding the view that the decision reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.) was rendered before Section 13(1)(bb) was introduced, the activities of the assessee in exploiting its assets constituted "business income"; hence, Section 13(1)(bb) stood attracted. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals).

11. Referring to the decision reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.), the Commissioner set aside the assessments and directed the Assessing Officer to re-compute the income, taking into account the application of the income and the accumulation of the income, etc., after giving due consideration under Section 11.

12. The Commissioner of Income (Appeals) pointed out that it was a fact that the assessee had leased out its business for a temporary period and derived income from the commercial asset temporarily. From the year 1984-85, the assessee itself was running the business. Even though the income derived from the asset from The South Indian Lucifer Match Works, Sivakasi, by way of lease rent and royalty under the head "business" was found to be in order, yet, the computation of income was not in accordance with the provisions of the Act. The Commissioner viewed that the assessee must establish its case of deduction or exemption under Section 11, independent of Section 13(1)(bb). Since the assessee had not substantiated the same, the assessment was set aside and the same was remanded back to the Assessing Officer to re-compute the relief under Section 11.

13. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal. The Tribunal pointed out that the only question that the assessee had to substantiate on the claim of exemption was to show whether the business was carried on in the course of actual carrying out of the primary purpose of the Trust or the Institution. If the business was carried on for the actual accomplishment of the primary purpose, then, the income derived from the business would be the income of the Charitable Trust, entitled to exemption. The Tribunal, as a matter of fact, pointed out that the right to exploit the trade name "Camel" and running the business of manufacturing of safety matches, was essentially the property of the Trust. The income derived from the exploitation of the trade name "Camel" was utilised for carrying on the various objects of the Trust. The match factory, which was given to the Trust on 01.10.1980, was leased out by the Trust so as to derive income for carrying out the various objects of the

Trust, namely, relief to poor, education, medical relief, etc. The Tribunal further pointed out that the assessee carried on the business for two and half years and hence, the assessee's case would fall within Section 13(1)(bb), i.e., the business was carried on in the actual carrying out of the primary purpose of the Trust. The Tribunal observed that unless the assets of the Trust are exploited, the Trust would not be in a position to accomplish its charitable activities. Hence, to have better revenue so as to enable it to accomplish its primary purpose, it leased out its business to M/s.Rajapalayam Industrial and Commercial Syndicate Limited and the decision taken was essentially a commercial decision to protect the properties of the Trust. In so leasing out the property, the objects of the Trust had not undergone any change. It further pointed out to the amendment to the Trust Deed on 1st April 1983 as regards the leasing out of their properties to South Indian Lucifer Match Works, Sivakasi, which was settled under the settlement deed dated 01.10.1980 by P.Iya Nadar, Sivakasi. The Trust Deed dated 01.04.1983 also pointed out to the leasing of the land and building, plant and machinery, furniture and fittings for a fixed annual lease rent to M/s.Rajapalayam Industrial and Commercial Syndicate Limited for a period of five years.

14. The Tribunal came to the conclusion that the primary purpose of carrying on of the business was to carry out the objects of the Trust; consequently, the assessee was entitled to the claim of exemption. Aggrieved by this, the Revenue came on appeal before this Court. As already pointed out, this Court allowed the Revenue's appeal, applying the decision reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust). A reading of the said decision of this Court in the assessee's case in the first round of litigation shows that even though it upheld the finding that the business was held by the Trust as part of the corpus of the Trust, yet, it did not directly accomplish any object or carry on the business in the course of actual accomplishment of the object. In so holding, it referred to the observations of this Court reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust), which reads as under:

" The requirement of section 13(1)(bb) is that the exemption under section 11 will not be available to such a trust that carries on any business unless the business is carried on "in the course of the actual carrying out of the primary purpose of the trust", that is to say, unless the business is carried on in the course of actually accomplishing a primary purpose of the trust; the business must, therefore, be carried on in the course of the actual accomplishment of relief of the poor, education or medical relief. As an example, a public charitable trust for the relief of the poor, education and medical relief that carries on the business of weaving cloth and stitching clothing by employing indigent women carries on the business in the course of actually accomplishing its primary object of affording relief to the poor and it would qualify for the exemption under section 11.

The business that the trust carries on is that of running a newspaper. That business, though it is held by the trust as a part of its corpus, and, therefore, in trust, does not directly accomplish, wholly or in part, the trust's objects of relief to the poor and education. Its income only feeds such activity. It cannot be held to be carried on in the course of the actual accomplishment of the trust's objects of education and relief of the poor. It is, therefore, not possible to accept the argument on behalf of the trust that it is entitled to the exemption under section 11."

15. Thus the questions that arose for consideration before this Court again are:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that Section 13(1)(bb) would not apply to the trust although it was carrying on business?
2. Whether the ratio of the Supreme Court's judgment in the case of Thanthi Trust (247 ITR 785) is not squarely applicable to the facts and circumstances of the case?

16. It may be seen from a reading of the grounds of appeal raised before this Court that the finding of the Tribunal is that the primary object of the Trust was to provide relief to the poor, education and medical relief. The Revenue does not dispute the fact that the business was impressed with the character of the Trust property, as evidenced by the lease deed executed by P.Ayya Nadar. The Revenue also does not dispute the fact that the income earned either by the exploitation of its business of running the match factory or by giving it on lease and the income and royalty earned on the use of the trade name "Camel", were all used for the accomplishment of the primary object of the Trust, namely, establishing, maintaining, running, developing, improving and extending educational institutions, research associations, including industrial institutions, hostels for the benefit of students and to award scholarships; establishing, maintaining, running, developing, improving, extending and granting donations and to aid in the establishment maintenance, running, development improvement and extension of libraries, recreation centres; building, erecting, constructing, aiding and assisting in the building, erection and construction of houses, tenements and places of residence; feeding the poor; engaging in, carrying on, helping, aiding, assisting, promoting rural reconstruction work, cottage industries and all other matters incidental thereto.

17. In the background of the factual finding remaining thus undisturbed, this Court, while admitting the case, formulated and dealt with the following substantial questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that Section 13(1)(bb) would not apply to the trust although it was carrying on business?
2. Whether the ratio of the Supreme Court's judgment in the case of Thanthi Trust (247 ITR 785) is not squarely applicable to the facts and circumstances of the case?

18. Thus the decision of this Court has to primarily rest on the factual findings which had reached a finality and rightly so, learned counsel appearing for the assessee/respondent herein, submitted that it is no longer open to the Revenue to challenge the finding that the business undertaking, being a property held in Trust, was carried on to perform its main object as stated above.

19. We agree with the assessee's contention that the decision of this Court must necessarily rest on the findings of fact, which, admittedly, had not been challenged before this Court. Reiterating the contentions originally taken in the first round of litigation, learned Standing Counsel appearing for the Revenue placed heavy reliance on the decision of the Apex Court reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust) and submitted that the main relief of exemption under Section 11 to the Charitable Trust is relief to poor, education and medical relief, the business run by the assessee must be one which is

carried on to exploit its primary object of affording relief to the poor and in giving aid to the poor and medical relief. Supporting the view taken by the Assessing Officer, learned counsel submitted that the provisions under Section 13(1)(bb) stood clearly attracted.

20. Countering the claim of the Revenue, learned counsel appearing for the assessee took us through the decision reported in [1982] 137 ITR 735 (Commissioner of Income-tax Vs. Thanthi Trust), a decision rendered prior to the introduction of Section 13(1)(bb) as well as to the observation of the Constitution Bench of the Apex Court reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.) (at page 16), which also considered the provision under Section 13(1)(bb), even though the issue raised in the said decision was well before the introduction of the said Section. He also referred to the decisions reported in [1997] 225 ITR 1010 (Thiagarajar Charities Vs. Additional C.I.T.), [1997] 225 ITR 652 (Samaritan Society Vs. Commissioner of Income Tax) and [1978] 114 ITR 454 (Dharmadeepti Vs. Commissioner of Income Tax) and submitted that on the findings of fact by the Tribunal, the assessee is entitled to the benefit of the Section. Even going by the provision under Section 13(1)(bb), he submitted that no exception could be taken to the said decisions.

21. Before considering the various decisions, it is necessary for us to extract Section 13(1)(bb), which reads as under:

"13. Section 11 not to apply in certain cases.-- (1) Nothing contained in section 11 for section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof--

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

(bb) in the case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any business, any income derived from such business, unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution; "

22. A reading of the provision contained in Section 13(1)(bb), which is relevant for our case, shows that the exemption under Section 11 will not be of any benefit to the assessee Trust constituted for the relief of poor, education and medical relief, unless the business carried on is in the course of actual carrying out of the primary purpose of the Trust or Institution. Thus, for the relief under Section 13(1)(bb), the question herein is that whether the business carried on could be held as one in the course of actual carrying out of the primary purpose of the Trust or Institution and whether the Trust would be entitled for an exemption of its income earned from the carrying out of its business, which is in the course of actual carrying out of the primary purpose of the Trust or the Institution.

23. Section 11 is concerned about the exemption on the income earned by the Trust from the property held for the charitable or religious purposes. It defines "property held under trust" under Sub Section (4) as follows:

"11. Income from property held for charitable or religious purposes.--

(1) ...

(2) ...

(3) ...

(4) for the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes. "

24. Section 11(4A), introduced under Finance Act No.2 of 1991 with effect from 01.04.1992, after its insertion under the Finance Act 1983 with effect from 01.04.1984, reads as under:

"11. Income from property held for charitable or religious purposes.--

(1) ...

(2) ...

(3) ...

(4) ...

(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."

25. In the decision reported in [1997] 225 ITR 1010 (Thiagarajar Charities Vs. Additional C.I.T.), the Supreme Court pointed out to the test to find out whether the Trust is entitled to the exemption under Section 11 read with Section 2(15) of the Income Tax Act. It Referred to the Constitution Bench decision reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.), wherein, it was held as follows:

The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and is no resulting profit. That would not only be difficult of

practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg J. when he said in Sole Trustee, Loka Sikhshana Trusts case [1975] 101 ITR 234, 256 (SC) that:

If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity.

The learned judge also added that the restrictive condition that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit-making is not the real object. We wholly endorse these observations. (emphasis\* supplied).

We are of the view that the above test is also satisfied on the facts of this case. "

It held that where the predominant object of the activity is to carry out the charitable purpose and profit making is not the predominant object, the engaging in an activity is only to subserve the primary object of the activity and the activity would only be a means to accomplish the primary object. The Supreme Court pointed out to the difference between the objects of the Trust and the means to accomplish the object and held that engaging in business activity as a means to accomplish the object would not defeat the claim for exemption under Section 11.

26. A reading of the facts in the decision reported in [1997] 225 ITR 1010 (Thiagarajar Charities Vs. Additional C.I.T.) show that it related to a Trust, which had its primary object of charity as for the purpose of education, medical relief and relief to poor. In that context, the Trust was authorised to establish, maintain, run, develop, improve and extend educational institutions for the Indian Public. As in the present case, the objects of the Trust in the reported decision are almost similar. The assessment years under consideration therein were 1964-65, 1965-66 and 1966-67. The Tribunal and the High Court rejected the case of the assessee holding that though the income derived by the assessee from the business carried on by it was held under a trust, yet, the same could not be exempted from tax under Section 11 of the Income-tax Act. This Court held:

In the present case the object mentioned in clause (g) is one of general public utility and it involves the carrying on of activity for profit, namely, the business of purchasing and selling cotton, cotton yarn and cloth and other fibres, wholesale or retail, which necessarily implies a motive for profit. It would not fall within the meaning of charitable purpose mentioned in section 2(15) of the Income-tax Act, 1961. In the present case, the trustees have absolute discretion to utilise the funds of the trust to the one or the other of the several objects of the trust. . . .

This Court followed the decision reported in [1975] 100 ITR 375 (CIT v. Dharmadeepti) and held that the Trust was a non-charitable Trust. On appeal by the assessee, referring to the decision of the High Court, the Apex Court pointed out to the various clauses in the Trust Deed and held that, to find out if the Trust is entitled to the exemption under Section 11 read with Section 2(15) of the Act, one has to look at the primary objects of the Trust.

27. Referring to Section 2(15), the Apex Court pointed out to the absence of the words of limitation under Section 2(15), particularly with reference to the Trust constituted for the purpose of relief to poor, education and medical relief and for any other charitable purpose and the object of general public utility having a restrictive clause thereon and held that when the predominant object of the activity is to carry out the charitable purpose and not to earn profit, the exclusive

clause which would otherwise be available to a case of general public utility would not stand in the way of the assessee claiming an exemption under Section 11. The Apex Court pointed out to the spending of the money for charitable purpose specified in the Trust Deed. "In other words, the amounts earned had been essentially spent on charity." There can be no doubt that profit making was not the relevant object of the Trust.

28. In the decision reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.)), the Apex Court laid down the principle that if a business is carried on by a trust or institution for the purpose of accomplishing or carrying out an object of general public utility and the income from such business is applicable only for achieving that object, the purpose of the trust or institution would cease to be charitable and not only income from such business but also income derived from other sources would lose the exemption. Pointing out to the far reaching consequence that may come, the Supreme Court held that nevertheless the restrictive words "not involving the carrying on of any activity for profit" in Section 2 Sub Section (15) would apply to a case of any other object of general utility. The Supreme Court pointed out that what is inhibited by the words "not involving the carrying on of any activity for profit" is the linking of activity for profit with the object of general public utility and not its linking with the accomplishment or carrying out of the object. It is not necessary that for the accomplishment of the object, the means to carry out the object should not involve an activity for profit. The language of the Section has to be gathered by the clear terms of the Section and full effect has to be given to the intention of the Legislature that the Trust having its primary object of a charitable disposition in the field of education, in its granting relief to the poor, must necessarily have the means to carry on business for the benefit of earning income for its application towards realising its objects. Referring to the amendment brought forth to Section 13(1)(bb), the Supreme Court held that the construction of the phrase under Section 2(15) leaves certain area of operation to Section 11 Sub Section (4), notwithstanding the enactment of Section 13(1)(bb). It further observed that Section 13(1)(bb) cannot result in rendering Section 11(4) a redundant provision and the construction should be adopted to give effect to the provisions of the enactment rather than nullifying the effect of the Section. The crux of the decision reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.)) is that so long as the primary object of the Trust is not of a business for profit, but to achieve its objective it carried on business to earn income, the negative effect of Section 13(1)(bb) would not be visited on the assessee Trust to deny the benefit of exemption under Section 11. To the same effect is the decision reported in [1997] 225 ITR 652 (Samaritan Society Vs. Commissioner of Income Tax).

29. Since heavy reliance is placed by the Revenue on the decision reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust), we need to look at the facts of that case in detail. We would get a clear picture on the facts from the decision reported in [1982] 137 ITR 735 (Commissioner of Income-tax Vs. Thanthi Trust). There the assessee was a Trust. The author of the Trust was carrying on the business of printing and publishing a Tamil daily newspaper as the sole proprietor thereof, since 1942. The author of the Trust transferred the business of the newspaper as a going concern with all its assets and liabilities to the Trust constituted under the deed of trust dated 01.03.1954. The Trust was constituted to

establish the newspaper and provide for its efficient running. It is stated that the trust deed mentioned as its object, (a) the establishment of Dina Thanthi, known as Daily Thanthi, as an organ of educated public opinion for the Tamil reading public, (b) to disseminate news and to ventilate opinion upon all matters of public interest through the said newspaper, and (c) to maintain the said newspaper and its press in an efficient condition devoting the surplus income of the said newspaper and its press after defraying all expenses, in improving and enlarging the said newspaper and its services and placing the same on a footing of permanency. Clause 3(k) of the Trust Deed provided that if for any reason, the newspaper "Daily Thanthi" becomes defunct or its publication is discontinued, the properties of the trust may, at the discretion of the then trustees, be employed for any charitable purposes. On July 9, 1957, the founder of the Trust executed a supplementary deed declaring that the trust created by the document dated March 1, 1954, was irrevocable. The said Thanthi Trust claimed exemption under Section 4(3)(i) of the Indian Income Tax Act, 1922, in respect of its income for the assessment years 1955-56 to 1961-62.

30. It is a matter of record that a supplementary deed in the above decision was made on 28th June 1961, after the coming into force of the Income Tax Act, 1961, defining "Charitable Purpose" under Section 2(15) of the Act. The supplementary deed pointed out that the Trust was in possession of sufficient means and after meeting out all its improvements and endowments, the surplus of the income of the Trust should be devoted by the trustees for the following purposes:

- "(i) Establishing and running a school or college for the teaching of journalism;
- (ii) Establishing and/or running or helping to run schools, colleges or other educational institutions for teaching arts and science;
- (iii) Establishing of scholarships for students of journalism, arts and science;
- (iv) Establishing and/or running or helping to run hostels for students;
- (v) Establishing and/or running or helping to run orphanages;
- (vi) Other educational purposes. "

31. It is also a matter of record that that in C.S. No.90 of 1961, the trustees took out an application before this Court under Order XIII Rule 1(g) of the Original Side Rules. The founder of the Trust was impleaded as the sole defendant. By order dated 2nd March 1962, this Court passed a decree confirming the supplementary deed to utilise the surplus income and the funds of the Thanthi Trust, after meeting out all expenses in connection with the newspaper business, for one or other of the purposes set out in the schedule to the decree. In the context of the order passed, the question arose as to whether the author of the Trust had the authority to change the tenor of the Trust. Taking the stand that the Trust had a legal obligation flowing from the order of this Court in C.S.No.90 of 1961, this Court considered whether the assessee Trust was entitled to exemption under Section 11. This Court held on an analysis of the Trust Deed and the order of this Court, that the objects of the Charitable Trust referred to in the schedule to the decree clearly showed that the objects had to be fulfilled from and out of the income from the business carried on and that the primary purpose flowing out of the legal

obligation was to fulfil the charitable objects. It further held that business was carried on as a means in the course of the actual carrying out of that primary purpose and not as an end in itself.

32. Referring to the decision reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.)), this Court held that it was not possible to accept the case of the Revenue that the Trust was not entitled to claim an exemption. The decision of this Court reported in [1982] 137 ITR 735 (Commissioner of Income-tax Vs. Thanthi Trust) came up for consideration before the Apex Court in the decision reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust) in the same assessee's case for the subsequent years starting from 1984-85 to 1991-92, and 1992-93, 1995-96 and 1996-97. While confirming the view of this Court reported in [1982] 137 ITR 735 (Commissioner of Income-tax Vs. Thanthi Trust) for the period prior to the introduction of Section 13(1)(bb), as far as the issue raised in respect of the subsequent period, applying the Section, the Apex Court observed as follows:

" The requirement of section 13(1)(bb) is that the exemption under section 11 will not be available to such a trust that carries on any business unless the business is carried on in the course of the actual carrying out of the primary purpose of the trust, that is to say, unless the business is carried on in the course of actually accomplishing a primary purpose of the trust; the business must, therefore, be carried on in the course of the actual accomplishment of relief of the poor, education or medical relief. As an example, a public charitable trust for the relief of the poor, education and medical relief that carries on the business of weaving cloth and stitching clothing by employing indigent women carries on the business in the course of actually accomplishing its primary object of affording relief to the poor and it would qualify for the exemption under section 11. "

33. It observed that the business that the Trust carried on is that of running a newspaper; that the business was held by the Trust as a part of its corpus; it does not directly accomplish wholly or in part, the Trust's objects of relief to the poor and education by deriving income from such activity. Referring to the decision reported in [1982] 137 ITR 735 (Commissioner of Income-tax Vs. Thanthi Trust) and distinguishing it from the subsequent years' claim, the Supreme Court pointed out that the decision reported in [1982] 137 ITR 735 (Commissioner of Income-tax Vs. Thanthi Trust) was rendered before the introduction of Section 13(1)(bb). It further pointed out to Section 11(4A) and held that Sub Section (4A) states that the income derived from a business held under trust wholly for charitable or religious purposes shall not be included in the total income of the previous year of the trust or institution. If the business is incidental to the attainment of the objective of the trust or institution, the scope of Sub Section (4A) would be more beneficial to a trust or institution than that of the scope of the originally enacted Sub-Section (4A). The Supreme Court held that the business income of the Trust, to be exempt from tax, should be incidental to the attainment of the objectives of the Trust or institution. If there is any ambiguity in the language employed in the provisions as one may find in Sections 13(1)(bb) and 11(4A), the benefit of the same must be given to the assessee by construing the decision in favour of the assessee. Thus, while upholding the contention of the assessee in respect of the assessment year 1992-93 that the Trust was entitled to the benefit of exemption under Section 11, which is solely for the reason specified in Sub Section (4A), the

Supreme Court held that for the period prior to 1992, under the original sub section (4A), the assessee was not entitled to any exemption under Section 11. This was on the strength of the trust deed which constituted the business and subsequently the application which arose by reason of the order of the High Court.

34. As far as the relevance of the decision reported in [2001] 247 ITR 785 (Assistant Commissioner of Income-tax v. Thanthi Trust) to the present case is concerned, as already noted, the reported decision has to be seen in the light of the findings arrived at on the terms of the Trust deed. As far as the present case is concerned, with the finding given by the Tribunal that the primary purpose of the Trust was to afford relief of poor, education and medical relief, the means employed by exploiting its assets to earn income to achieve the objects, cannot, in any manner, be applied to defeat the claim of the assessee under Section 11. Thus, guided by the decision reported in [1980] 121 ITR 1 (Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (S.C.) and applying Section 11(4A) and Section 13(1)(bb), we have no hesitation in agreeing with the assessee's case what when the main object of the Trust is charitable and to afford relief to the poor, to promote education and medical relief, we have no hesitation in confirming the order of the Tribunal and thereby rejecting the Revenue's appeal. Consequently, all these the Tax Case Appeals filed by the Revenue stand dismissed. No costs.

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To

1. The Income Tax Appellate Tribunal 'A' Bench, Madras.
2. The Income Tax Appellate Tribunal 'C' Bench, Madras.
3. The Income Tax Appellate Tribunal 'D' Bench, Madras.
4. The Commissioner of Income Tax (Appeals), Madurai.
5. The Commissioner of Income Tax (Appeals)-I, Madurai.
6. The Commissioner of Income Tax (Appeals)-II, Madurai.
7. The 1st Income Tax Officer, Virudhunagar.
8. The Income Tax Officer, Ward-I(1), Virudhunagar.
9. The Assistant Commissioner of Income Tax (OSD), Ward I(1)(i/c)  
Virudhunagar