**(1999) 03 MAD CK 0004**

**In the Madras High Court**

**Case No :** TC No. 787 of 1990 25 March 1999

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

MATHRISEVA TRUST — RESPONDENT

**Date of Decision :** 25-03-1999

**Acts Referred:**

**Citation :** (2000) 158 CTR 433

**Hon'ble Judges :** R. Jayasimha Babu, J;Mrs. A. Subbulakshmi, J;A. Subbulakshmy, J

**Bench :** Full Bench

**Advocate :** C. V. Rajan, None, for the Appellant;

## Judgement

Mrs. A. Subbulakshmy, J.:

At the instance of the Revenue, the following questions have been referred to us for our consideration :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the donation of Rs. 31,050 made by the

assessee to other institution, would tantamount to application of income for charitable purposes, thus satisfying the requirements of s. 11 ? and

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the deficiency of funds of this year could

be set off against earlier year''s surplus ?

During the assessment year 1984-85, the assessee-trust had donated a sum of Rs. 31,050 to another charitable trust known as the service trust.

The assessee-trust claimed exemption u/s 11 of the Act, which was rejected by the Income Tax Officer. On appeal, the Commissioner (Appeals)

had allowed the claim of the assessee. The Tribunal had confirmed the order of the Commissioner (Appeals).

2. With regard to the first question, this Court in the decision Commissioner of Income Tax Vs. Thanthi Trust, had held that the trust which has

applied the money for charitable purposes was entitled to exemption without having to show how the money had been dealt with by the transferee

institution. This Court has answered the question referred to there in favour of the assessee and against the Revenue.

3. Following the aforesaid decision of this Court and for the reasons stated therein, we answer the first question referred to us in favour of tile

assessee and against the Revenue.

4. With regard to the second question, the Tribunal has held that the trust is entitled to set off the amount of excess application of the last year

against the deficiency of Rs. 82,516 of the present assessment year.

5. When similar questions came up before Rajasthan High Court arid Gujarat High Court in the case of Commissioner of Income Tax Vs.

Maharana of Mewar Charitable Foundation, and Commissioner of Income Tax Vs. Shri Plot Swetamber Murti Pujak Jain Mandal, respectively,

both Rajasthan High Court and Gujarat High Court have answered the questions in favour of the assessee and against the Revenue.

6. Following the aforesaid decisions of Rajasthan and Gujarat High Courts, we answer the second question referred to us in favour of the assessee

and against the Revenue.