
(1981) 01 MAD CK 0012

In the Madras High Court

Case No : Tax Case No's. 1240 to 1245 of 1979 and T.C.M.P. No. 833 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Thanthi Trust

RESPONDENT

Date of Decision : 29-01-1981

Acts Referred:

Income Tax Act, 1961 — Section 11, 11(1), 11(4), 12, 13

Citation : (1981) 23 CTR 155 : (1982) 137 ITR 735

Hon'ble Judges : R. Sengottuvelan, J;G. Ramanujam, J

Bench : Division Bench

Advocate : A.N. Rangaswami, for the Appellant; Debi Pal, for the Respondent

Judgement

Ramanujam, J.—One Sri S. B. Adityan was carrying on the business of printing and publishing the Tamil daily newspaper ""Dina Thanthi"" as

sole proprietor thereof since 1942. On March 1, 1954, he executed a deed of declaration of trust whereby he constituted a trust called ""Thanthi

Trust"" and transferred thereto the property, namely, the business of the newspaper ""Dina Thanthi"" as a going concern with all its assets and

liabilities. In clause 2 of the trust deed the purposes for which the trust was constituted were mentioned as (a) to establish the Dina Thanthi or 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. Sri S. B. Adityan, hereinafter referred to as ""the founder"", appointed himself, his brother, S. T. Adityan, and

his son, B. R. Adityan, as the first set of trustees to administer the trust. Clause 3(j) of the said deed provided that the founder may ""by

supplementary instruments confer upon the trustees such additional powers as may be required or found necessary for the proper administration of

the trust"". Clause 3(k) provided that ""if for any reason the 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 executed a supplementary

deed whereunder he declared that the trust created by the document dated March 1, 1954, was irrevocable. On May 22, 1959, two other

trustees were co-opted.

2. The said Thanthi Trust claimed exemption under s. 4(3)(i) of the Indian I.T. Act, 1922, in respect of its income for the assessment years 1955-

56 to 1961-62 on the strength of the trust deed dated March 1, 1954. The Indian I.T. Act, 1922, was replaced by the I.T. Act, 1961, on April 1,

1962. Section 11 of the 1961 Act was slightly different from the corresponding provision in s. 4(3)(i) of the 1922 Act. While the expression

charitable purposes"" has been defined in s. 4(3)(i) of the 1922 Act as including relief of the poor, education, medical relief and the advancement of

any other object of general public utility, s. 2(15) of the 1961 Act defined ""charitable purposes"" as including 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"". Presumably, taking

note of the aforesaid change in the definition of ""charitable purposes"", the founder of the trust executed a supplementary deed dated June 28,

1961, wherein it was recited that the newspaper ""Daily Thanthi"" and its services had been placed on a footing of permanency and had been

enlarged and improved as contemplated by the original trust deed dated March 1, 1954, and that the trust was in possession of sufficient funds and

properties for continuing all improvements and enlargements and directed that the surplus income of the said trust after defraying all the expenses

should be devoted by the trustees for the following purposes, namely :-

(i) Establishing and running a school or collage for the teaching of journalism;

(ii) Establishing and/or running or helping to run schools, colleges or other educational institutions for teaching art 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.

3. After the execution of the said supplementary deed dated June 28, 1961, the trustees took out an originating summons in C.S. No. 90 of 1961

on the original side of this court under O. 13 r. 1(g) of the Original Side Rules of this court for the determination of the question as to whether they

were found to utilise the surplus funds of the Thanthi Trust after defraying all expenses in connection with the newspaper business for one or more

of the purposes mentioned in the supplementary deed dated June 28, 1961. In the said suit the founder was impleaded as the sole defendant and

he filed a written statement stating that since the initial purpose for which the trust was originally stated that since the initial purpose for which the

trust was originally founded had been achieved, he gave further directions to the trustees to utilise the surplus income and funds of the trust for

allied purposes set out in the surplus income and funds of the trust for allied purposes set out in the supplementary deed and that it was within his

rights to do so. The court by its judgment dated March 2, 1962, held that it was clear that the object of the trust was not in any manner opposed

to law and there was nothing illegal in the prayer being allowed and passed to law and there was nothing illegal in the prayer being allowed and

passed a decree declaring that the trustees were bound, under the trust deed dated March 1, 1954, and the supplementary deed dated June 28,

1961, to utilise the surplus income and the funds of the Thanthi Trust, after defraying 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 schedule to the decree, six purposes mentioned in the supplementary

deed dated June 28, 1961, had been set out.

4. The claim of the trust for exemption under s. 4(3)(i) of the 1922 Act in respect of the assessment years 1955-56 to 1961-62 and under s. 11 of

the 1961 Act for the assessment years 1962-63 to 1967-68 were the subject-matter of two cases which came up for consideration before this

court and decided in *S.B. Adityan and Others Vs. First Income Tax Officer, Madras.*, and *Thanthi Trust Vs. Income Tax Officer*, .

5. For the assessment year 1968-69, the trust filed a return on October 10, 1968, admitting an income of Rs. 13,62,954 but claimed exemption in

respect of the entire income under s. 11 of the 1961 Act, on the ground that 75 per cent. of the said income had been applied for charitable

purposes. However, the ITO rejected the claim for exemption by his order dated April 19, 1972, and determined the total income as Rs.

12,52,950 after making certain additions to the declared income. Similarly, for the assessment year 1969-70, the trust filed a return on April 21,

1971, declaring a net income of Rs. 11,91,380 and claimed exemption in respect thereof under s. 11 of the 1961 Act, on the same ground. The

ITO rejected the claim of the trust for exemption holding that (1) Dina Thanthi was a politically motivated paper, (2) that the founder had utilised

Rs. 25,000 in February, 1955, from the trust funds for election purposes, (3) that the funds of the trust had never been utilised for achieving the

objects stated in the trust deed and that, on the other hand, large amounts had been invested in various concerns with which the founder and the

members of his family were connected, and (4) that there was no proper application of the income as contemplated by s. 11 of the 1961 Act.

After rejecting the claim for exemption, the ITO by his order dated March 30, 1972, determined the taxable income as Rs. 14,97,961 after

making certain additions to the declared income.

6. Aggrieved by the said assessments, the trust preferred appeals before the AAC contending that it was entitled to the grant of exemption under s.

11 of the 1961 Act. The AAC accepted the trust's plea that the decree in C.S. No. 90 of 1961 created a legal obligation on the trustees to utilise

the income from the trust for the objects set out in the schedule to the decree, that the decree passed by the High Court in the said suit was

mandatory in nature and that as the trust had credited in the account books of the trust 75 per cent. of the income in favour of the Adityanar

College, which had subsequently been withdrawn by the said institution, the trust was entitled to the benefit of the exemption under s. 11.

7. Aggrieved by the orders of the AAC, the Revenue preferred appeal to the Tribunal contending, inter alia, (1) that the supplementary deed dated

June 28, 1961, which was the subject-matter of C.S. No. 90 of 1961, was invalid and ineffective inasmuch as the founder who had divested

himself of his interest in the newspaper business and had created an irrevocable trust in respect thereof had no power to alter the terms of the trust

deed and that clause 3(j) of the original deed only empowered the founder to confer additional powers on the trustees for the proper administration

of the trust and had not conferred any power on the founder of the trust to alter the objects of the trust, (2) that the judgment and decree in C.S.

No. 90 of 1961 not being a judgment in rem was not binding on the Revenue, that the judgment was rendered in originating summons wherein

complicated questions of law and fact could not be gone into, that without going into the question of the validity of the supplementary deed dated

June 28, 1961, it cannot be relied on by the trust, and that the institution of such a suit was not genuine but collusive and fraudulent, (3) that even if

the supplementary deed was valid and effective, no property having been separately endowed for the said objects, there was no scope for the

application of s. 11 of the 1961 Act inasmuch as there was a trust for charitable purposes of the income only and not of the property, which yields

the income, and (4) that in any event, there being no application of the income for the assessment years in question for such objects as

contemplated in s. 11, the trust was not entitled to claim exemption thereunder. The trust, however, contended before the Tribunal that in view of

the judgment and decree of this court in C.S. No. 90 of 1961 it was no longer open to the Revenue to contend that the supplementary deed was

not valid, that as a result of the decree in the said suit the trustees were under a legal obligation to apply the income from the objects mentioned in the

schedule to the decree and they had no discretion to apply the entire income for the maintenance of the newspaper business, that the press already

in existence should be considered as one constituted by the original deed as modified by the decree of the High Court and that even if the original

objects set out in the original trust deed continued to be the objects of the trust, they were to be considered only as ancillary and incidental in view

of the modifications made by the High Court. As regards the question of the application of the income, the trust urged that it had been throughout

adopting the practice of applying 75% of its income for the purpose of education by making credit entries in favour of the Adityanar College of

Arts and Science in its books and debiting itself with the same, that the ITO and accepted the same as amounting to a proper application of the

amount from the year 1962-63 and that there was no jurisdiction to insist on an actual application of the surplus income, only for the assessment years in question.

8. Having regard to the above rival contentions, the Tribunal, after referring to certain passages at page 131 in *Tudor on Charities*, 6th Edn., and at page 839 in *Halsbury's Laws of England*, 3rd Edn., para. 1411, and in para. 633 at page 397 of Vol. 5 of *Halsbury's Laws of England*, 4th Edn., and cl 3(j) of the original trust deed, held that the founder had no power to execute the supplementary deed. The Tribunal, however, held that the effect of the judgment and decree of this court in C.S. No. 90 of 1961 was that the trustees were bound to spend the surplus income from the business for the carrying out of the objects set out in the schedule to the decree. that the decree by its own force created a legal obligation on the trustees to carry out the objects of the trust as set out in the schedule to the decree and that the decree obtained in the said suit was not collusive or sham as alleged by the Revenue. The Tribunal further held that as the entire business was held in trust for the objects mentioned in the schedule to the decree, the Revenue was not right in its submission that no property was held in trust for the charitable objects mentioned in the supplementary deed as also in the schedule to the decree in C.S. No. 90 of 1961. Coming to the question of application of the income, the Tribunal held that the mere crediting of the amounts cannot be taken to be application of the amounts for charitable purposes, that the exemption under s. 11 was not absolute but qualified, that the fact that in the earlier years the crediting of the amounts in the accounts of the trust in favour of the Adityanar College of Arts and Science was accepted by the Revenue as a proper application as contemplated under s. 11 cannot estop the Revenue from contending that there was no proper application of the income for charitable purposes in the assessment years in question and that the conduct of the Revenue in the earlier years cannot confer on the trust a right to claim that the same view as was taken in the previous years must be taken for the assessment years in question as well, if it is later found to be incorrect in law. The Tribunal also held that the application of funds for charitable purposes must have been made within the relevant accounting year in a case where the assessee kept its accounts on cash

basis. The Tribunal ultimately summed up its findings as follows.

(i) By reason of the judgment and decree of the Madras High Court in C.S. No. 90 of 1861, the objects of the trust are only those set out in the

schedule to the said decree and they are charitable objects, and

(2) The assessee will be entitled to exemption from tax in respect of such income derived from the business as is shown to have been actually

parted by it and actually spent on such charitable objects during the relevant previous years. The Tribunal directed that the assessments for the two

years in question should be modified in accordance with its above findings.

9. Thereafter, the trust filed a review petition alleging that Rs. 3,04,035 and Rs. 16,61,500 had been paid to the Adityanar Educational Institution

during the two previous years relevant to the assessment years 1968-69 and 1969-70 and, therefore, the Tribunal should take note of that and

pass suitable orders granting exemption at least in respect thereof. The Tribunal observed that in the assessment year 1968-69 the ITO has

specifically found that the assessee has actually paid Rs. 3,04,035 to the Adityanar Educational Trust during the relevant previous year and that in

view of that specific finding the said sum of Rs. 3,04,035 should be treated as exempt from tax. However, as regards the assessment year 1969-

70, the Tribunal found that there was no finding by the ITO that any amount had been actually spent for any of the charitable objects and,

therefore, the question of grant of exemption for Rs. 16,61,500 for that assessment year would have to be considered by the ITO while re-doing

the assessment in accordance with its findings recorded in the main order in appeal.

10. Aggrieved by the decision of the Tribunal, the Revenue as well as the trust sought references to this court and a consolidated reference has

been made wherein the following questions have been referred for the opinion of this court :

(1) Whether, on the facts and circumstances of the case, by reason of the judgment and decree of the Madras High Court in C.S. No. 90 of

1961, the objects of the trust are only those that are set out in the schedule to the said decree and not those for which the trust was originally

founded and that such objects are charitable objects within the meaning of section 2(15) of the Income Tax Act, 1961 ?

(2) Whether, on the facts and circumstances of the case, the trustees are not bound to apply the income that is left after meeting the lawful and

normal expenses for running the business for carrying out the objects set out in the schedule to the decree in C.S. No, 90 of 1961 ?

(3) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the trust is in respect of the entirety of the business

for the objects mentioned in the schedule to the decree in C.S. No. 90 of 1961 on the file of the High Court, Madras, and not merely in respect of

the income from the said business ?

(4) Whether, on the facts and circumstances of the case, the mere crediting of 75% of the assessee's income to the accounts of Adityanar College

of Arts and Science in the assessee's books will amount to application within the meaning of section 11 of the Income Tax Act, 1961 ?

(5) Whether, on the facts and circumstances of the case, such application of income should take place during the relevant accounting years for

claiming exemption u/s 11 of the Act ?

(6) Whether, on the facts and circumstances of the case, the assessee is entitled to exemption in respect of Rs. 3,04,035 only for the assessment

year 1968-69 ?

11. Question Nos. 1, 2, 3 and 6 had been referred at the instance of the Revenue and questions Nos. 4 and 5 had been referred at the instance of

the trust. As questions Nos. 1 to 3 deal with the scope and validity of the original trust deed dated March 1, 1954, the scope and validity of the

supplementary deed dated June 28, 1961, and the scope and the binding nature of the decree of this court in C.S. No. 90 of 1961, and the scope

of the exemption provision in s. 11 of the I.T. Act, 1961, it is convenient to deal with them together.

12. Under the original trust deed dated March 1, 1954, S. B. Adityan, the founder of the trust, created a trust by name ""Thanthi Trust"" of the

properties described in the schedule thereto for the various purposes mentioned therein. The properties which had been constituted as a trust as set

out in the schedule to the trust deed are : (1) the newspaper known as Dina Thanthi published as a daily newspaper in the Tamil language together

with the goodwill situated at No. 60, Cutcherry Road, Mylapore, Madras, as a going concern, with all its assets and liabilities, and (2) all the

printing machines, printing types, furniture and accessories of the newspaper known as Dina Thanthi or Daily Thanthi. The following are the

purposes for which the trust had been created as set out in clause (2) :

(a) To establish the Dina Thanthi or Daily Thanthi as an organ of educated public opinion for the Tamil reading public :

(b) to disseminate new and to ventilate opinion upon in 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.

13. Clause 3(j) enable the founder, by supplementary instruments, to confer upon the trustees such additional powers as may be required or found

necessary for the proper administration of the trust. Clause 3(k) provides that if for any reason the Daily Thanthi becomes defunct or its publication

is discontinued the properties of the Thanthi Trust may, at the discretion of the then trustees, be employed for any charitable purposes.

14. For the assessment years 1955-56 to 1958-59, the trust claimed an exemption in respect of its income under s. 4(3)(i) of the 1922 Act. The

ITO rejected the claim for exemption on the basis of an opinion given by the CBR by his order dated October 6, 1961. At that stage the trustees

filed writ petitions before this court challenging the said orders and for prohibiting the I.T. authorities from assessing the income of the trust. A

Division Bench of this court held in S.B. Adityan and Others Vs. First Income Tax Officer, Madras., that the order of the ITO dated 6th

November, 1961, was obviously bad and was liable to be quashed as the ITO had based his order on the opinion of the Central Board of

Revenue and did not render any decision himself, but writs of prohibition could not be issued as the ITO had the requisite jurisdiction to proceed

with the returns and decide whether the trust was entitled to an exemption or not and that in determining whether a trust was entitled to the

exemption under s. 4(3)(i) of the 1922 Act the ITO was not bound to confine himself to the terms of the trust deed and it was open to him to take

other relevant factors also into consideration to determine the true purpose and character of the trust and the income therefrom. Though the Bench

referred to the terms of the trust deed, it did not find it necessary for the purpose of disposing of the writ petition to decide the question whether

the income from the Thanthi Trust was exempt from Income Tax or not. Subsequent to the said decision of this court the ITO specifically

considered the claim of the trust for exemption in relation to its entire income under s. 4(3)(i) of the 1922 Act and upheld the claim for the

assessment years 1955-56 to 1961-62 on various dates. Later, for the assessment years 1962-63 to 1976-68 also, the claim for exemptions was

considered and upheld by the concerned ITOS on various dates. In all these assessment years right from 1965-66 to 1967-68, the ITOS had

specifically found that 75 per cent. of the income had been applied for recognised charitable purpose, namely, education.

15. On February 15, 1969, the trust's file was transferred from the 3rd ITO, City Circle-II, to the 1st ITO, City Circle-II. After such transfer, the

1st ITO, City Circle-II, issued a notice under s. 143(2) calling upon the trust to produce its books of account relevant for the assessment year

1968-69 in respect of which the assessment was pending and also for six previous years. The trust, however, produced its books relevant for the

assessment year 1968-69 alone and did not produce the account books in relation to the six previous years. The ITO then issued notice under s.

148 to reopen the assessment for three earlier years, 1965-66 to 1967-68. Later, the ITO, Special Investigation Circle, had issued notices under

s. 148 proposing to reassess the income for the six assessment years from 1956-57 to 1961-62. Against all the said notices issued under s. 148

with reference to nine previous years, writ petitions were filed before this court. While disposing of those writ petitions, a Division Bench of this

court in *Thanthi Trust Vs. Income Tax Officer*, after referring to the terms of the trust deed and the view taken by the ITOS in the earlier

assessment proceedings, held that the ITO had no jurisdiction to reopen the question of genuineness of the trust which had been created under the

trust deed dated April 1, 1954. In that connection, the Bench had observed (p. 284) :

It is well established that the subsequent acts and conduct of the founder of the trust cannot affect the trust if there has been already a complete

dedication. (*Vide Krishnasami Pillai Vs. Kothandarama Naicken and Others*, AIR 1938 73 (Privy Council) and *Gokuldoss Jamnadoss and Co.*

Vs. M. Lakshminarasimhalu Chetti and Others, . If a valid and complete dedication had taken place, there would be no power left in the founder to revoke and no assertion on his part or the subsequent conduct of himself or his descendants contrary to such dedication would have the effect of nullifying it. If the trust had been really and validly created, any deviation by the founder of the trust or the trustees from the declared purposes would amount only to a breach of trust and would not detract from the declaration of trust. Therefore, the subsequent conduct of the founder in dealing with the funds of the trust long after the creation of the trust may not put an end to the trust itself. There can, therefore, be no reason for doubting the genuineness of the trust.

16. In view of the said decision, we are not now concerned with the truth, validity and genuineness of the original trust deed dated March 1, 1954.

We are now concerned only with the validity of the supplementary deed dated June 28, 1961, which has been executed by the founder of the trust presumably taking note of the definition of "charitable object" contained in s. 2(15) of the Act and the exemption provision contained in s. 11 of the 1961 Act.

17. The Revenue, first, submits that the founder of the trust had no power to alter or modify the objects of the trust and the power given to the founder of the trust in cl 3(j) to executed supplementary instruments for the proper administration of the trust will not enable him to execute the supplementary deed in question modifying the objects of the original trust. The Tribunal has accepted the said submission and held that under the general law of trusts, the author of the trust has no power to alter the terms or objects of the trust unless such a power is reserved, that clause 3(j) of the trust deed cannot be taken to be such a reservation, as that clause only enables the founder to give to the trustees such directions as may be required for the proper administration of the trust, that is, for carrying out the objects of the trust as laid down in the original trust deed, that the said clause cannot confer on the founder of the trust a right to alter or modify the objects of the trust which the trustees are bound to carry out under the original trust deed, and that, therefore, the supplementary deed dated June 28, 1961, cannot be considered as valid. Though this finding of the Tribunal has been challenged before us by the learned counsel appearing

for the trust on the ground that the Tribunal has misunderstood the scope of clause 3(j) of the trust deed, we are not inclined to go into that question. The Tribunal has held that even if the supplementary deed was not valid, the decree in C.S. No. 90 of 1961 creates a valid legal obligation on the trustees to spend the income of the trust on the charitable objects set out in the schedule to the decree, and that will attract s. 11 of the Act. The findings alone are the subject-matter of the first three questions referred to us. The question as to whether the Tribunal is right in holding that the founder of the trust has no power to modify or add to the objects of the original trust and as such the supplementary deed is not valid has not been specifically referred to us. Therefore, it is not necessary for us to go into that question, though the Revenue has also invited us to go into that question and has referred to the decision in Commissioner of Income Tax Vs. S. Ramaswamy Iyer, . We, therefore, refrain from going into that question on the ground that it has not been specifically referred to us as arising out of the decision of the Tribunal.

18. The Revenue next contends that (1) the Tribunal is in error in holding that the decree in C.S. No. 90 of 1961 creates a legal obligation on the trustees to expend the income of the trust for the charitable objects referred to in the schedule to the decree and as such the trust is entitled to claim exemption under s. 11. (2) Even if the supplementary deed executed by the founder is valid and bringing on the trust as a result of the decision of this court in C.S. No. 90 of 1961, since since the original objects, which contemplate the carrying on of an activity for profit, still continue, the trust is not one for charitable purposes as contemplated by s. 11 read with s. 2(15) of the 1961 Act. (3) No property is held in trust for the new objects set out in the supplementary deed and the schedule to the decree under the original deed has been directed to be spent for the new objects and as such s. 11 cannot apply to the new objects, for which no separate property had been endowed or are held in trust, and (4) The decision in C.S. No. 90 of 1961 does not decide the question of the validity of the supplementary deed and, therefore, it is open to the Revenue to question the validity of the supplementary deed and that, in any event, the decision a friendly action in which the Revenue as it has been rendered in a friendly action in which the Revenue had not say. We ill not deal with the above

contentions seriatim.

19. As already pointed out, the 1961 Act has brought about a slight change in the matter of grant of exemption for the income spent on charitable

objects. Section 4(3)(i) of the 1922 Act provided for an exemption from tax of any income derived from property held, under trust or other legal

obligation, wholly for religious and charitable purposes, in so far as such income had been applied or accumulated for application to such religious

or charitable purposes, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application

thereto. Section 2(15) of the 1961 Act, however, defined "charitable purpose" as including 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. Section 11(1) provides for an

exemption of the income from property held under trust for charitable or religious purposes. The question is whether the income from the trust

created by the original trust deed and as modified by the supplementary deed will fall within the exemption provided in s. 11(1)(a). It is pointed out

by the learned counsel for the Revenue that since the objects mentioned in the original trust deed involves the running of a press which is admittedly

an activity for profit, the original trust, even as modified by the supplementary deed, cannot be taken to be for charitable purposes and, therefore,

the trust is not entitled to claim the benefit of the exemption under s. 11. According to the learned counsel for the Revenue, if the object of the trust

is the advancement of an object of general public utility involving the carrying on of any activity for profit, then it will cease to be a charitable

purpose as defined in s. 2(15). In this case, admittedly the trust is carrying on newspaper business for profit. But the question is whether the trust

as modified, whose entire income has to be spent exclusively for carrying on charitable objects will cease to be charitable merely because it carries

on an activity for profit. Section 2(15), which defines "charitable purpose", excludes advancement of any other object of general public utility

involving the carrying on of an activity for profit. Under the 1922 Act even such an object will be charitable purpose. Section 11(1)(a) exempts

income derived from property held under trust wholly for charitable or religious purposes under certain conditions and subject to certain limitations.

Section 11(1)(b) exempts income derived from property held under trust in part for such purposes subject to certain limitations. Section 11(4) says

that for purposes of s. 11 the expression ""property held under trust"" includes a business undertaking so held. As per this section, the business

carried on by the trust is also treated as a property held under trust. Explanation (1) to s. 13 says that for the purposes of ss. 11, 12, 12(a) and 13,

trust"" includes any other legal obligation. In view of this Explanation, the expression ""property held under trust"" occurring in s. 11 has to be

understood as ""property held under trust or any other legal obligation"". In this respect, there is not much difference between s. 4 of the 1922 Act

and s. 11 of the 1961 Act, for, s. 4 specifically refers to the property held under trust or other legal obligation. Thus, the only change brought about

in the 1961 Act is that if the main and predominant object of the trust is to carry on an activity for profit, that object cannot be taken to be a

charitable purpose for purposes of s. 11. Why such a change has been brought about has been explained by the then Finance Minister on the floor

of the Rajya Sabha as follows as seen from the official report of the Parliamentary debates dated 4th September, 1961, at columns 2922 and

2923 :

Sir, I now come to a point in this Bill which agitated hon. Members more than anything else. It has been urged that the provision regarding

charities are ambiguous or even inconsistent. In this context, references have been made to the definition of charitable purposes in clause 2(15) of

the Bill, the provision in clause 11(1) excluding from total income, income derived from property held under trust wholly for charitable and religious

purposes and the provision in clause 11(4) that property under trust includes a business undertaking so held. Let us examine how the salient

features of these provisions will operate. A person, which, amongst other things, includes a body or association of persons, claims exemption how

the salient features of these provisions will operate. A person, which, amongst other things, includes a body or association of persons, claims

exemption from tax for certain income under this clause. The first question will be, is the income derived from property held under trust or legal

obligation ? Property of every person or society or association of persons is not necessarily held under trust. Registration of a society makes no

difference to this point. On the other hand, the fact that property yields a profit will not debar the claim. Actually the fact that property in this

context includes a business undertaking necessarily means that there will be profit..... During the course of the discussion, some illustrations were

given. It was enquired whether Anath Vidyarthi Griha is covered. It obviously is.... It is run for charity.. The point then raised was, will the fact that

the Anath Vidyarthi Griha runs a printing press make a difference in this ? My answer would be "No".. Another illustration given was of a hospital

with some free wards and some paying wards. Again, subject to certain normal assumptions, that would qualify. The fact that the press or the

paying wards earn some income will not disqualify them...

Having made these general observations, I shall specifically deal with the argument that clauses 2(15) and 11(4) are in conflict with each other.

Clause 11 provides that subject to certain conditions any income derived from property held under trust for charitable purposes will be exempt

from tax. It further provides in sub-clause (4) that such income may be derived from a business undertaking. The essential thing is that the income

derived from the business or investments should be held under trust and the income should be applied for charitable purposes. The distinction will

be noticed. One part is about deriving the income. The other is about spending it. It is in this connection that the expression ""charitable purpose

has to be defined. Here it is that clause 2(15) says that the trust having derived its income from the business or the investment should spend it only

on purposes mentioned in that provision and not on furthering business interest. Thus, if a newspaper undertaking is placed under a trust and the

income of the undertaking is required to be spent and is actually spent on, say, medical relief, its income is exempt from tax. However, if after

earning the income, it does nothing but develop or carry on its business or the income is spent on some other utilitarian purpose, it does not qualify

for the exemption. Thus, there is no conflict or inconsistency between clause 2(15) and clause 11(4).

20. Thus, the object of giving a restricted meaning to the expression ""charitable purpose"" in s. 2(15) by the Legislature is to see that no commercial

activity is treated as a charitable object and that any activity for profit shall not in itself be regarded as a charitable purpose. It is in the light of the

above statutory provisions that we have to consider the claim of the trust for exemption under s. 11 in respect of the income derived from the business carried on by the trust.

21. In this case the trust as originally created was for the purpose of (1) establishing Dina Thanthi as an organ of educated news and to ventilate

opinion upon all matters of public interest through the said newspaper, and (3) to maintain the said newspaper and its press in an efficient condition

devoting the surplus income of 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.

Though the said objects mentioned in the original trust deed can be treated as charitable objects for the purpose of s. 4(3)(i) of the 1922 Act, as

was held in Trustees of the ""Tribune"", In re [1939] 7 ITR 415, the said objects cannot now be considered as charitable objects in view of s. 2(15)

of the 1961 Act, for all the three objects referred to above were with reference to the establishment of Dina Thanthi as an organ of educated public

opinion for the Tamil reading public, the maintenance of the said newspaper and its press and the enlargement of the same on a footing of

permanency which means that the predominant object of the trust was to carry on a news paper business - an activity for profit. Presumably it is

for this reason the founder of the trust had executed a supplementary deed dated June 28, 1961, directing the trustees to spend the surplus income

from the trust for the following purposes :

- (1) Establishing and running a school or college for the teaching of journalism;
- (2) Establishing and/or running or helping to run schools, colleges or other educational institutions for teaching arts and science;
- (3) Establishing scholarships for students of journalism, art and science;
- (4) Establishing and/or running or helping to run hostels for students;
- (5) Establishing and/or running or helping to run orphanages, and
- (6) Other educational purposes. There cannot be any dispute that the above objects which are referred to in the supplementary deed are charitable

purposes. In the supplementary deed the founder of the trust has specifically stated that since the newspaper, Daily Thanthi, had been placed on a

footing of permanency and had been enlarged and improved as contemplated by the founder in the original trust deed and as the trust was in possession of sufficient surplus funds, he was directing the trustees to defray the surplus income for the said charitable purposes. He has purported to execute a supplementary deed in exercise for the power reserved in c. 3(j) of the original trust deed. There was controversy between the parties as to whether the founder of the trust had or had not the power to add to or modify the objects of the trust. As already pointed out, that question has not been specifically referred to us. However, it should be noted that the supplementary deed proceeds on the basis that the objects set out in the original trust deed, that is, maintaining the newspaper and its press in an efficient condition and improving and enlarging the same and placing the same on a footing of permanency, had been carried out and that, as there was still surplus income, the necessity has arisen to specify the objects for which the surplus income has to be spent. After the execution of the supplementary deed the trustees had approached this court in C.S. No. 90 of 1961 under order 13 of the Original Side Rules and the court has in fact passed a decree directing the trustees to utilise the surplus income and funds of the Thanthi Trust after defraying all expenses in connection with the newspaper business for one or more of the six objects set out in the schedule therein. A perusal of the decree of this court in C.S. No. 90 1961 indicates that the court had proceeded on the basis that the objects mentioned in the original trust deed had been substituted by the objects mentioned in the original trust deed had been substituted by the objects set out in the supplementary deed. This is presumably for the reason that in the supplementary deed it has been specifically stated that the newspaper Dina Thanthi has already been established as an organ of educated public opinion for the Tamil reading public, that it has been disseminating news and ventilating opinion on all matters of public interest, that the paper and its press have been maintained in an efficient condition, enlarged and improved and placed on a footing of permanency and that, as the said three objects set out in the original deed having been already achieved, the necessity has arisen to give directions to the trustees to spend the surplus income after meeting the expenses of the newspaper business of the charitable objects referred to therein. Admittedly the decree in the said suit creates a legal obligation on the trustees to

spend the entire surplus income for the six charitable objects referred to in the schedule to the decree. Section 11 contemplates a property held

under trust or under other legal obligation. It is in this connection, the learned counsel for the Revenue submits, that no property is held under a

legal obligation for the new objects set out in the set out in the supplementary deed or in the schedule to the decree in C.S. No. 90 of 1961, and

that the legal obligation is only in respect of the surplus income and not in respect of the property yielding income, and, therefore, s. 11 cannot

stand attracted. It is pointed out that s. 11 can have no application unless the source of the income is held under trust or other legal obligation,

wholly or partly, for a religious or charitable purpose and that in this case the property itself is not held under trust or legal obligation and the

surplus income has not directly or substantially arisen from the property. Reference has also been made to the decision in RAJA P. C. LALL

CHAUDHARY Vs. COMMISSIONER OF Income Tax BIHAR AND ORISSA., , GANPATRAI SAGARMAL (TRUSTEES) FOR

CHARITY FUND Vs. COMMISSIONER OF Income Tax, WEST BENGAL., and Commissioner of Income Tax Vs. P.K. Barooah, Vice-

President, , in support of the said stand taken by the Revenue. In RAJA P. C. LALL CHAUDHARY Vs. COMMISSIONER OF Income Tax

BIHAR AND ORISSA., , the assessee had not created a trust or obligation on any property, but had only created a charge over a part of the

income accruing to him from a particular source and it was in those circumstances that s. 4(3)(i) was held as not applicable. In GANPATRAI

SAGARMAL (TRUSTEES) FOR CHARITY FUND Vs. COMMISSIONER OF Income Tax, WEST BENGAL., , it was found that there was

no, transfer of property as such to the trust and the property remained the property of the settlor and 1/4th of the income from the properties had

alone been directed to be spent for charitable purposes. It was, in those circumstances, held that, as there was no property which is held under

trust, s. 4(3)(i) cannot come into play. In Commissioner of Income Tax Vs. P.K. Barooah, Vice-President, , a case where the trust deed

envisaged the surplus funds from a particular source to be spent on charitable and non-charitable purposes and the trustees had a discretion to

apply the income to any of the objects, charitable or non-charitable objects. The court held that as the source from which the income was derived

had not been held under trust or under a legal obligation and the trust was only in relation to a portion of the surplus income, s. 4(3)(i) cannot stand

attracted. We do not see how the above decisions can be called in aid by the Revenue. In this case the entire newspaper business including its

assets and liabilities and goodwill are held in trust for the objects set out in the original trust deed and under a legal obligation for the objects set out

in the decree in C.S. No. 90 of 1961. We are not inclined to agree with the learned counsel for the Revenue that the property having been directed

to be held in trust for the objects referred to in the original trust deed, the same property cannot be held under trust for the additional objects

referred to in the supplementary deed and in the schedule to the decree in C.S. No. 90 of 1961. The supplementary deed as well as the decree in

C.S. No. 90 of 1961 proceed on the basis that as the original objects had since been achieved, new objects had been substituted for them. The

new objects are purely charitable. If the new objects have been substituted for the original objects set out in the original trust deed, then the

property held for the original objects should be taken to have been held for the new objects. As a matter of fact the decree in C.S. No. 90 of

1961 specifically states that the trustees are bound to carry out the objects set out in the Schedule to the decree with the income from the Thanthi

Trust. Therefore, it is not possible to say that no property is held under trust or other legal obligation for the new objects set out in the

supplementary deed.

22. The learned counsel for the Revenue would then submit that as the trustees have been given the discretion to spend the surplus from the trust

for any of the six objects referred to in the schedule to the decree and a further discretion to create a surplus or not, no exemption can be claimed

under s. 11. Reliance is placed on the decisions in East India Industries (Madras) Private Limited Vs. Commissioner of Income Tax, Madras, ,

Lakshmi Narain Lath Trust Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. P.K. Barooah, Vice-President, , in support

of the said submission. In East India Industries (Madras) Private Limited Vs. Commissioner of Income Tax, Madras, , a trust was established for

various objects, one of which was to manufacture, buy, sell and distribute pharmaceutical, medicinal, chemical and other preparations. The objects

also included several charitable and religious purposes and the trustee was given the power to apply the whole or any part of the trust property or fund towards all or any one of the purposes of the trust. As it was possible for the trustee to spend the entire income on the business itself, which was neither charitable nor religious in character, it was held that the trust property was not held wholly for religious or charitable purposes within the meaning of s. 4(3)(i). In *Lakshmi Narain Lath Trust Vs. Commissioner of Income Tax*, , also there was a clause in the trust deed enabling the trustees in their discretion to spend the income for noncharitable purposes. As the discretion was given to the trustees to spend the entire fund on one object to the exclusion of the other, it was held that the trust cannot claim the exemption under s. 4(3)(i). In *Commissioner of Income Tax Vs. P.K. Barooah*, Vice-President, , also there was a discretion given to the trustees to spend the entire surplus income either for charitable or for non-charitable purposes and, therefore, the trust was held disentitled to the benefit of s. 4(3)(i). However, these decisions may not be of any relevance in this case, for, as per the decree of this court in C.S. No. 90 of 1961, the trustees are bound to spend the entire income after defraying the expenses in connection with the newspaper business for one or other of the objects referred to in the schedule to the decree, all of which are admittedly charitable and no discretion had been left to the trustees to spend the income for any non-charitable purposes. According to the Revenue the trustees have the discretion to spend the entire income on the business itself and see that no surplus is left. If in a particular year the entire income is spent for the business itself, then there is no question of making any claim for exemption. If the entire income has been spent in connection with the newspaper business that will automatically be exempted as an expenditure wholly or exclusively laid out for the business. The question of claiming exemption will arise only when there is surplus income after defraying the normal expenses connected with the newspaper business. Once there is a surplus, there is no discretion left in the trustees to spend the same for any non-charitable purpose and they are bound to spend the same for any of the charitable purposes referred to in the schedule to the decree, all of which are admittedly charitable objects.

23. The learned counsel for the Revenue then contends that the decision in C.S. No. 90 of 1961 rendered in a friendly action between the trustees

and the founder of the trust, cannot bind the Revenue and, therefore, the Revenue is not estopped from contending that the founder of the Trust has

no power to execute the supplementary deed modifying or substituting the new objects of the trust. According to the Revenue the decision in C.S.

No. 90 of 1961 has been rendered on an originating summons where disputed questions, such as the validity of the supplementary deed, cannot be

gone into and any decision rendered by the court without going into the validity of the supplementary deed cannot bind the Revenue. The learned

counsel or the Revenue refers to the view expressed by Sampath Iyengar in his treatise on Income Tax, 6th Edition, at page 59, which is as follows

:

The administration of the Income Tax Act is a special jurisdiction and any point arising for adjudication therein, though concerning the selfsame

assessee, should be decided independently of how the said point concerning the same assessee has been decided in a case arising under another

jurisdiction.

24. Reference has also been made to the decision in Hazarat Pirmahomed Shah Saheb Roza Committee Vs. Commissioner of Income Tax,

Gujarat, , Vandervell Trustees Ltd. v. White [1970] 3 All ER 16 (HL) and Narendrakumar J. Modi Vs. Commissioner of Income Tax, Gujarat II,

Ahmedabad, . In the first case, the Charity Commissioner under the Bombay Public Trusts Act, 1950, held a wakf to be a public trust. Later, the

ITO held that the wakf was not a public trust and, therefore, the wakf's income was not exempt from Income Tax under s. 4(3)(i) of the 1922

Act. The High Court upheld the order of the ITO on the ground that the decision rendered under the Bombay Public Trusts Act did not preclude

the Revenue from examining whether the wakf was public trust. When the matter went before the Supreme Court, the counsel for the assessee had

conceded the position that the Revenue can go behind the order of the Charity Commissioner and determine the question, as to whether the wakf

was a public trust or not, independently. In the second case, Lord Reid, dealing with the question as to whether the Revenue is subject to the

ordinary rule of law of res judicata, stated (p. 18 of [1970] 3 All ER 16 (HL) :

I know of no other instance where a tribunal exercising functions of a judicial character is not so bound.....

25. However, the learned Law Lord (Lord Reid) observed (p. 17) :

It appears to me to be obvious that both justice and convenience require that the issue should have been decided by the court in the presence of the Revenue so that it could be bound by the decision.

26. In that case the dispute was between the executors and the trustees as to the ownership of the property and the question arose whether the

Crown could be joined as a party to the said dispute and the court held that the presence of the Revenue was not necessary and they could not be

joined as defendants to the action. The learned Law Lord has quoted with approval the observations of Lord Greene M. R. *Asher v. London Film*

Productions Ltd. [1944] a All ER 77 (CA), where it has been observed (at pp. 77, 78) :

I have often thought that, in cases of this kind, it is extremely inconvenient that the Crown (which is vitally interested) cannot, under the existing

procedure, be made a party or otherwise appear. The result is that the Crown is technically not bound by any decision which may be pronounced

in its absence... I venture to suggest that the Inland Revenue authorities might usefully consider whether it might not be worthwhile approaching the

Rule Committee with a view to obtaining enactment of a rule under which they could receive notice of litigation of this kind and should be given a

right to attend and put forward any argument or facts they thought right. The corollary would be that they would be bound by the decision, and the

whole matter would be cleared up between everybody concerned.

27. In the third case, a claim was made under s. 25A of the Indian I.T. Act, 1922, that there was a partition with effect from 24th October, 1954,

in the HUF of which the assessee was a member. But the claim was rejected by the I.T. authorities even though a preliminary decree for partition

had been passed by the civil court. The assessee contended that the ITO could not get being the preliminary decree for partition and treat the

assessee as a member of the joint family. The court held that notwithstanding the preliminary decree the I.T. authorities had their own view to take

and they were not bound by the partition decree. But the decision was based on the fact that s. 25A(3) provides that where an order accepting a

partition had been passed in respect of a Hindu family assessed as undivided, such a family should be deemed to continue to be an HUF.

28. The learned counsel for the trust, however, contends that these decisions do not lay down that the ITO is not bound by the decision rendered

by a civil court and that the decisions referred to should be confined to the facts of those cases. It is pointed out by him that in *Hazarat*

Pirmahomed Shah Saheb Roza Committee Vs. Commissioner of Income Tax, Gujarat, , the decision was taken not by a court but by the Charity

Commissioner that the wakf was a charity trust, that the decision in *Vandervell Trustees Ltd. v. White* [1970] 3 All ER 16 (HL) was in respect of

the procedure to be followed where the interest of the Revenue are likely to be affected and that the decision in *Narendrakumar J. Modi v, CIT*

[1967] 105 ITR 109 was based on a special provision in s. 25A(3). The learned counsel for the trust for his part contends that the judgment

rendered in C.S. No. 90 of 1961 is a judgment in rem and hence it binds everyone including the Revenue. Reference is made by him to the

decision in *Khaja Hassanulla Khan v. Royal Mosque Trust Board*, AIR 1948 Mad 134, *Baba Suraj Gir and Others Vs. B. Bramh Narain*

Advocate and Others, , and *Sunni Central Board of Waqf, U.P. Vs. Sirajul Haq Khan and Others*, . In *Khaja Hassanulla Khan v. Royal Mosque*

Trust Board, AIR 1948 Mad 134, a decree in a scheme suit relating to a public trust was held to have the effect of a judgment in rem, so as to

prevent anyone, whether a party to the suit in which the decree was passed or not, from asserting any rights vested in him, which conflict with or

attack the scheme. In that case, Chief Justice Gentle, speaking for the Bench, observed (at p. 135) :

The decree in scheme suit is, or has the effect of, a judgment in rem.

29. In *Baba Suraj Gir and Others Vs. B. Bramh Narain Advocate and Others*, , a Division Bench held that a scheme framed under s. 92 of the

CPC was binding on every one whether a worshiper or not, including even one who might have claimed an hereditary trusteeship and had brought

a suit to enforce such a right before the settlement of such a scheme. In *Sunni Central Board of Waqf, U.P. Vs. Sirajul Haq Khan and Others*, ,

another Division Bench of the same High Court held that a suit under s. 92, CPC, could be maintained only in respect of a public trust of a

permanent character and the judgment in such a suit would be a judgment in rem and not a judgment in personam. The learned counsel for the trust

submits that the decision in C.S. No. 90 of 1961 is more or less a decision given under s. 92 of the CPC or under s. 34 of the Trust Act and such a decision is to be taken as a judgment in rem. It is also pointed out by the learned counsel that even if the founder of the trust had no power to supplement or substitute the objects of the trust, wherever it is found that the trust has got surplus income, the court has inherent jurisdiction to deal with the surplus, exercising its power of cy-pres and, therefore, the decision rendered C.S. No. 90 of 1961 should be taken to be a direction given by this court in under s. 92 of the CPC or under its inherent jurisdiction. There cannot be any dispute that where a trust deed shows a clear intention to devolve the property to charity, the court will not allow the trust to fail either for uncertainty or for lack of suitable direction by the founder by invoking the cy-pres doctrine. It is also well established that wherever surplus funds are available, the court may apply the cy-pres doctrine and direct the utilisation of the surplus income for charitable purposes. In this case, the founder of the original trust has evinced a clear intention to create a public charitable trust and the trust is likely to fail for want of provision for the disposal of the surplus income as is clear from the recital in the supplementary deed wherein it is stated that the object of maintaining a newspaper and its press in an efficient condition and improving and enlarging and placing it on a permanent footing have been achieved and that there is a surplus income after achieving those objects. In those circumstances, the court, either under Order 13 of the Original Side Rules or under s. 34 of the Trust Act or under s. 92 of the CPC, can issue directions to the trustees as to how the surplus has to be utilised. Therefore, even if the founder of the trust is held to have no power to execute the supplementary deed dated June 28, 1961, as contended by the Revenue, the decree of the court in C.S. No. 90 of 1961 cannot be said to be without jurisdiction. Such a decision regarding the administration of the trust is to be taken as a judgment in rem, and not a judgment in personam. In 5 Halsbury, 4th Edn., page 432, para. 701, it says that where the original purposes, in whole or in part, have been, as far as may be, fulfilled, or cannot be carried out according to the directions given by the founder, the cy-pres doctrine can be applied by the court. This legal position has been noted in Ratilal Panachand Gandhi Vs. The State of Bombay and Others, . The following observation in that case is relevant :

The doctrine of "cy-pres", as developed by the equity courts in England, has been adopted by our Indian courts since a long time past.... When the particular purpose for which a charitable trust is created fails or by reason of certain circumstances the trust cannot be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purposes specified by the settlor, the court would not, when there is a general charitable intention expressed by the settlor, allow the trust to fail but would execute it "cy-pres", that is to say, in some way as nearly as possible to that which the author of the trust intended. In such cases, it cannot be disputed that the court can frame a scheme and give suitable directions regarding the objects upon which the trust money can be spent.

30. As a result of the above discussion, the contention of the Revenue that the decision in C.S. No. 90 of 1961 cannot bind the Revenue and, therefore, the property cannot be taken to have been held under a legal obligation to perform the charitable objects cannot be accepted. We, therefore, agreeing with the Tribunal, hold that the decision in C.S. No., 90 of 1961 creates a legal obligation on the trustees to spend the income from the trust after defraying the expenses of the newspaper business for the charities set out in the schedule to the decree and, therefore, the trust property, which is the business itself, should be taken to be held under a legal obligation for the various charitable objects.

31. This leads us to the main question canvassed before us by the Revenue that since the trust is carrying on a business activity such as running a newspaper business, it cannot claim the benefit of s. 11. It is pointed out by the Revenue that as the main and predominant object of the trust is to carry on a business activity, such as running a newspaper business, it cannot have the benefit of s. 11, and that, if a business activity is carried on for earning profit, then it ceases to be a charitable object. Reference is made to the decisions of the Supreme Court in *The Sole Trustee, Lok*

Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, and Indian Chamber of Commerce Vs. Commissioner of Income Tax, West

Bengal II, Calcutta, . In The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, , clause 2 of the trust deed

provided that the object of the trust was to educate the people of Indian in general and of Karnataka in particular by (a) establishing, conducting

and helping directly or indirectly institutions calculated to educate the people by the spread of knowledge on all matters of general interest and

welfare, (b) founding and running reading rooms and libraries and keeping and conducting printing houses and publishing or aiding the publication

of books, booklets, leaflets, pamphlets, magazines, etc., in Kannada and other languages, (c) supplying the Kannada speaking public with an organ

or organs of educated public opinion and conducting journals in Kannada and other languages, for the dissemination of useful new and information

and for the ventilation of public opinion and conducting journals in Kannada and other languages, for the dissemination of useful news and

information and for the ventilation of public opinion on matters of general public utility, and (d) helping directly or indirectly societies and institutions

which have all or any of the aforesaid objects in view. Clause 6 of the trust deed enabled the trustee to utilise the monies and property of the trust

deed enabled the trustee to utilise the monies and property of the trust for any of the purposes of the trust in such manner as to him might appear

proper. The trustee carried on the business of printing and earned a substantial income. The question was whether the income of the trust, which at

the relevant time was publishing newspapers and journals pursuant to clause 2(c), was exempt from tax under s. 11 read with s. 2(15) of the 1961

Act. The court held that the object of the trust was not education within the meaning of s. 2(15) but an object of general public utility, that,

however, the publication of newspapers and journals involved the carrying on of an activity for profit and the income of the trust was, therefore, not

exempt from tax and that as the expression "general public utility" itself excluded the object of private gain, the trust in that case, carrying on a

commercial activity for profit, was not entitled to claim the exemption under s. 11. In *Indian Chamber of Commerce Vs. Commissioner of Income*

Tax, *West Bengal II*, *Calcutta*, , the Supreme Court held that though the objects of the Indian Chamber of Commerce were primarily promotional

and protection of Indian trade interest and other allied service operations falling within the expression "advancement of an object of general public

utility", the income of the Chamber from these activities could not be exempted under s. 11 as it was carrying on its activities for profit. According

to the learned judges in that case an activity which yields profit or gain in the ordinary course must be presumed to have been done for profit or

gain and to brain himself within s. 2(15) of the Act, the onus is on the assessee to show that his objects are of general public utility and that in the

advancement of those objects, there is no involvement of any activities for profit.

32. However, in a subsequent decision in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, ,

a larger Bench of the Supreme Court while considering the same point, by a majority, disapproved the view taken in The Sole Trustee, Lok

Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, and overruled the decision in Indian Chamber of Commerce Vs. Commissioner

of Income Tax , West Bengal II, Calcutta, . In that case, Surat Art Silk Cloth Manufacturers" Association, a company incorporated under the

Indian Companies act, had the following objects, (a) promoting commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth

and cotton cloth, (b) carrying on all or any of the business of art silk and other commodities on behalf of its members, (c) to obtain import licences

for import of the said commodities, (d) to obtain export licences and export cloth manufactured by the members, and (e) to buy and sell and deal

in all kinds of cloth and other goods and fabrics belonging to and on behalf of the members, etc., and its property was to be solely and exclusively

applied for the promotion of the above objects and no part of the income or the property could be distributed amongst the members in any form or

utilised for their benefit either during its operational existence or on its winging-up or dissolution. The association claimed exemption in respect of its

income under s. 11(1)(a). The Supreme Court held that the dominant and primary purpose of the assessee was to promote commerce and trade in

art silk yarn etc., and the other objects specified in cls (b) to (e) of its memorandum of association were merely powers incidental to the carrying

out of that dominant and primary purpose, that the dominant or primary purpose of the promotion of commerce and trade in art silk, etc., was an

object of public utility not involving the carrying on of any activity for profit within the meaning of s. 2(15) and that, therefore, the assessee was

entitled to the exemption under s. 11(1)(a). The Supreme Court also held that as the words ""not involving the carrying on of any activity for profit

qualify or govern only the last head of charitable purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of

the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. The principle laid down by the Supreme Court in the said decision seems to squarely apply to the facts of this case. In this case the property held under trust or under legal obligation is the business itself and the entire income from the business has to be utilised for the various charitable objects set out in the schedule to the decree in C.S. No. 90 of 1961. Thus, the objects will clearly fall under the head "relief of the poor, education, medical relief, etc.", and merely because the trust is carrying on an activity for profit for the purpose of carrying on the charitable objects referred to in the schedule to the decree, it cannot be deprived of the benefit of section 11.

33. In the above case the Supreme Court has also approved the decisions of the Kerala High Court and the Andhra Pradesh High Court in

Commissioner of Income Tax Vs. Cochin Chamber of Commerce and Industry, and Andhra Pradesh State Road Transport Corporation Vs.

Commissioner of Income Tax, , both of which dealt with the last head of charitable purpose in s. 2(15) and expressed that the true meaning of the

last ten words in s. 2(15) is that when the purpose of a trust or an institution is the advancement of an object of public utility, then, that object of

general public utility, and not its carrying on any activity for profit, that is to be taken into account. According to the Supreme Court, the expression

not involving the carrying on of any activity for profit" qualifies the object of general public utility and not the expression "advancement" when the

object of general public utility which must not involve the carrying on of any activity for profit and not its advancement or attainment, and what is

meant by these last ten words is the linking of profit with the object of public utility and not linking with the accomplishment and it is not the

mandate of the newly added words that the accomplishment of the objects or the means to carry on the object should not involve an activity for

profit. Thus, the Supreme Court has laid emphasis on the object of general public utility and not on its accomplishment or its attainment. According

to the Supreme Court, if a trust or institution, whose object is charity or an object of general public utility, carries on any business and if such

business is held under trust or under a legal obligation for charitable purposes or for general public utility then such trust or institution is entitled to

the benefit of s. 11.

34. Following the above decision of the Supreme Court, the Rajasthan High Court in *Umaid Charitable Trust Vs. Commissioner of Income Tax*, ,

has held that wherever an activity is carried on which yields profit, an inference cannot be drawn that the activity must be for a profit if the

charitable purpose involves the carrying on of an activity for profit, and that it is borne out by s. 11(4) that the Legislature did not intend to debar a

trust created for a charitable purpose holding property including a business.

35. In the case on hand the property held under trust is the business itself and the business is carried on only, and exclusively, for carrying out the

charitable objects set out in the schedule to the decree in C.S. No. 90 of 1961. As pointed out by the Supreme Court, if the contention of the

Revenue that once a trust carries on a business activity, it does the benefit of s. 11 is accepted, no trust can carry on any business even for the

fulfilment of the charitable objects, such as, relief of the poor, education and medical relief and, therefore, such a contention cannot be accepted. If

the intention of the Legislature were to prohibit a trust or institution established for a charitable purpose or for the promotion of an object of general

public utility from carrying on any activity for profit, it would have provided in the clearest terms that no such trust or institution should carry on any

activity for profit. On the other hand the Legislature by enacting s. 11(4) under which the business may also be the property held under trust

appears to contemplate a trust actually carrying on a business for charitable purposes or for general public utility.

36. In this case the founder of the trust has clearly evinced an intention to create a public charitable trust as seen from the preamble and cl 3(k) of

the original trust deed and the charitable objects referred to in the schedule to the decree in C.S. No. 90 of 1961 have to be fulfilled from and out

of the income from the business which is directed to be held under trust or other legal obligation. Those charitable objects fall within the first 2

categories referred to in s. 2(15), viz., relief of the poor and education. It is to carry out and fulfil those objects the business is being carried on.

Thus, the primary purpose is to carry out the charitable objects and the business is carried on as a means in the course of the actual carrying out of

that primary purpose and not as an end in itself. While the predominant object of

the trust is the carrying out of the charitable objects referred to in two of the three categories of charitable purposes referred to in s. 2(15), the carrying on of the business which is actually the property held under trust or other legal obligation is incidental, and the profit resulting from the business can be taken to be a by-product. In view of the said decision of the Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , it is not possible to accept the case of the Revenue that the trust in this case cannot claim the benefit of exemption under s. 11 merely because it carries on a commercial activity for profit. We have to, therefore, agree with the conclusion of the Tribunal that the trust in this case can claim the benefit of s.

11, if 75% of its income has been applied for charitable purposes and answer questions Nos. 1 to 3 in the affirmative and against the Revenue.

37. This leads us to the further question as to whether there has been an application of the income of the trust for charitable purposes. This

question is covered by questions Nos. 4 and 5 referred to us at the instance of the trust and question No. 6 referred at the instance of the Revenue.

38. In this case, the trust had transferred Rs. 10,41,690 and Rs. 8,90,535 in the relevant account years 1966-67 and 1967-68, representing 75%

of the funds to the Adityanar College of Arts and Science run at Tiruchendur in both the years by making debit entries against itself and credit

entries in the name of the said college, and the college had drawn Rs. 3,04,035 and Rs. 16,61,500 in the respective years as detailed below :

Accounting	Assessment	Date of	Amount	credited	Amount
years	years	assessment	in favour of	withdrawn	
order	Adityanar	by			
Educational	Adityanar				
Institution	Educational				
Institution					
Rs.	Rs.				
1966-67	1968-69	20-3-1972	10,41,689-47	3,04,035	
1976-68	1969-70	19-4-1972	8,99,535-00	16,61,500	

39. Though the AAC held that such crediting of the accounts of the college and the drawal of amounts by the college from their accounts and the utilisation of the same for its purposes would amount to an application, the Tribunal had taken the view that mere crediting of the amount in favour of the college may not amount to an application.

40. Crediting 75% of the income every year in favour of the college had been the practice followed by the trust in all the earlier years and the I.T.

authorities have been accepting the same as amounting to an application of the 75% of the funds as required in s. 11. It is only in respect of the

assessment years in question that the Revenue has taken up the plea that the mere crediting of 75% of the income in favour of the college will not

amount to application as contemplated by s. 11. The I.T. authorities had been approving this mode of application of income and have been

granting exemption under s. 11 right from the assessment year 1964-65 up to 1967-68, as detailed hereunder.

Accounting	Assessment	Date of	Amount credited	Amount
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years	years	assessment	in favour of	withdrawan
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order	Adityanar	by		
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Educational	Adityanar			
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Institution	Educational			
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Institution				
-------------	--	--	--	--

Rs.	Rs.			
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1962-63	1964-65	19-2-1968	7,49,504-36	17,28,606
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1963-64	1965-66	23-2-1968	7,08,725-02	2,26,809
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1964-65	1966-67	10-7-1968	8,09,457-57	17,37,082
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1965-66	1967-68	22-7-1968	7,99,312-00	3,02,998
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41. Taking note of its practice in the earlier years of making book entries which had been accepted by the I.T. authorities as a proper application

as contemplated by s. 11, the trust contended before the Tribunal that it was not open to the Revenue to go back on the stand taken in the earlier

years and insist on the actual handing over of the 75 per cent. of income to the educational institution relying on the decision of the Bombay High

Court in H.A. Shah and Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, . In that case Changla C.J., speaking for the

Bench, pointed out that though as a general rule the principle of res judicata is not applicable to decisions of I.T. authorities and an assessment for

a particular year is final and conclusive between the parties only in relation to that year and the decision given in an earlier assessment year is not

binding either on the assessee or on the Revenue, in a subsequent year, the said rule is subject to a limitation that if the effect of revising an earlier

decision in a subsequent year is likely to lead to injustice, the court with a view to avoid injustice and a denial of justice to the assessee, may not

permit the departure from the earlier practice by the Revenue and may prevent an I.T. authority from doing something which is unjust and

inequitable. The Tribunal, however, rejected the said plea of the trust and held that if the practice followed in the earlier years, though it had been

accepted by the tax authorities, is found to be not in accordance with law, then the authorities are not bound to accept the earlier practice. The

Tribunal then went into the question as to whether the mere book entries in favour of the college will amount to an application as contemplated by

s. 11 and held that such book entries will not amount to the actual application of the funds as contemplated by s. 11 and, in that view, remitted the

matter to the tax authorities to go into the question as to how much of the income in each of the years has been actually applied for charitable

purposes.

42. To show that notwithstanding the book entries in favour of the college in the accounts of the trust, the accounts of the college did not show the

amounts as receipts and hence there was no actual application of the amount for the charitable purposes as contemplated by s. 11, the Revenue

filed a petition T.C.M.P. No. 463 of 1980 for leave to file copies of annexs. 11, 12 and 13, already filed before the Tribunal as part of the

application for reference, and to treat the same as part of the record in this case. The said petition has been filed under s. 256(2) of the I.T. Act

read with s. 151, CPC. The annexures which are sought to be filed now as part of the record are : (1) an analysis of the balance-sheet of the

college for the year 1965-66, (2) balance-sheet as on June 30, 1965, and (3) an analysis of the balance-sheet for the year 1966-67. The said

petition is strenuously opposed by the assessee-trust on the ground that it is not open to the Revenue to file or refer to any of the documents which

has not been annexed to the statement of the case sent by the Tribunal and that the Revenue cannot invoke s. 256(2) to file an application for

reception of additional documents as it were. It is also pointed out by the learned counsel for the trust that, even before the Tribunal, the Revenue

wanted the very same documents to be sent to this court as annexures to the statement of the case but the Tribunal rejected that request holding

that these documents had not been referred to and relied on by it in rendering its judgment and that, therefore, the documents cannot form part of

the annexure to the statement of the case. According to the trust, once the Tribunal has stated that these documents were not considered by it in

rendering the judgment, then the documents cannot be taken to be relevant or as forming part of the necessary records in this case. It is sent that, in

the order of reference, the Tribunal makes the following observations referring to these annexures :

Since these were not considered by the Appellate Tribunal, it is considered unnecessary to make them as annexures to the statement of the case.

43. The learned counsel for the Revenue, however, states that the above observation of the Tribunal is erroneous as a perusal of the judgment of

the Tribunal will clearly indicate that reference has in fact been made to the said annexures. He invites us to go into the said annexures and find out

whether they are relevant or not for the disposal of this reference. It is true, the Tribunal has made a reference to certain balance-sheets but it is not

clear whether that reference is to the particular annexures sought to be filed now. In any event, when the Tribunal in the order of reference is to the

particular annexures sought to be filed now. In any event, when the Tribunal in the order of reference specifically states that these documents were

not considered by it and, therefore, they are not necessary enclosures to the statement of the case, it is not possible for us to go into the

correctness or otherwise of the observation made by the Tribunal with reference to these annexures especially when there is no specific reference

on that question. It is well established that this court acting on a reference under s. 256 cannot refer to any documents which are not referred to in

the statement of case. In Commissioner of Income Tax, West Bengal Vs. Calcutta Agency Ltd., , the Supreme Court has specifically ruled that the

jurisdiction of the High Court in the matter of I.T. references made by the Appellate Tribunal is an advisory jurisdiction and that the duty of the

court is to accept the findings of fact given by the Tribunal and answer the questions of law on that footing unless the findings of the Tribunal can be

successfully assailed on the ground that there is no evidence for the conclusions on the facts recorded by the Tribunal. The Supreme Court again

reiterated that principle in Commissioner of Income Tax, Bombay City I Vs. Greaves Cotton and Co. Ltd., , saying that the High Court while

disposing of a reference under s. 66 of the Indian I.T. Act, 1922, is not a court of appeal and, therefore, it is not open to the High Court on such a

reference to embark upon a reappraisal of the evidence and to arrive at finds of fact contrary to those of the Appellate Tribunal, that it should

confine itself to the facts as found by the Tribunal and answer the questions of law referred to it in the context of those facts and that if a finding of

fact is not in accordance with the evidence on record, it is open to the party to apply for a specific reference and challenge the findings of fact. In

view of the fact that this court's jurisdiction is limited to the statement of the case, it is not possible for us to allow the said petition and receive the

said three annexures and treat the same as forming part of the statement of the case so as to enable us to consider the relevancy of the same on the

question of application of the money. In this view, we reject the said petition.

44. Then the question is whether, on the facts found by the Tribunal, the assessee-trust can be said to have applied 75 per cent. of its income to

charitable purposes as contemplated by s. 11. The Tribunal has specifically found that the assessee made merely credit entries in favour of the

educational institution in its books of account, and no funds were made available to the said institution. On the facts, it held relying on the decision

of the Supreme Court in H.E.H. Nizam's Religious Endowment Trust, Hyderabad Vs. Commissioner of Income Tax, Andhra Pradesh,

Hyderabad, , that the expression ""applied"", occurring in s. 11, meant that the income was actually applied for charitable and religious purposes and

the mere crediting of entries will not amount to an application as contemplated by s. 11 and ultimately directed the assessment for the two

assessment years in question to be modified in accordance with the findings of the Tribunal. The Tribunal also found that even the credit entries had

not been made during the relevant previous years but only much later.

45. The learned counsel for the trust contends that the view taken by the Tribunal that there should be physical handing over to, and the actual

spending of the amount by, the educational institution for the application of s. 11 cannot legally be supported and that in law if 75 per cent. of the

income has been transferred to the educational institution by debiting the trust and crediting it in favour of the institution, by which the trust had no

control over the funds, the trust can be said to have applied the funds for purposes of education and that is sufficient to attract s. 11. In this context

the learned counsel for the assessee-trust refers to the past conduct of the tax authorities in accepting such credit entries as proper application for

purposes of s. 11 and giving exemption under s. 11 on that basis and contends that the tax authorities are estopped from going behind their

conduct and questioning the mode of application continuously followed by the trust in all the earlier years. Reference has been made to the decision

in H.A. Shah and Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, , wherein it has been held that though the principle

of res judicata cannot apply to the proceedings under the I.T. Act and the decision with reference to one year may not constitute res judicata for

the assessment in the subsequent year, still, if as a result of taking a different view from that adopted, in the earlier years, by the tax authorities,

considerable injustice is likely to be caused to the assessee, the authorities can be prevented from taking a different and inconsistent view to the

one taken in the earlier years. But, however, it is not possible for us to accept this contention of the learned counsel for the trust. We are inclined to

accept the view taken by the Tribunal that where the practice adopted by the assessee and accepted by the tax authorities in the earlier years is

found to be not strictly in accordance with law, then the tax authorities are bound to take that view which is in accordance with law and they are

not estopped by their conduct from insisting on a different practice consistent with law. The principle laid down in H.A. Shah and Co. Vs.

Commissioner of Income Tax and Excess Profits Tax, Bombay City, can apply, in our view, only to a case where there is a possibility of two

different practices, both of which are consistent with law and the tax authorities accepting one practice and later insisting on a different practice

which is likely to cause hardship and injustice to the assessee, and that principle will not apply to a case where the practice adopted earlier is not

consistent with law. As pointed out by a Division Bench of this court in Additional Commissioner of Income Tax Vs. P. Nammalvar Naidu and

Sons, , and estoppel cannot be pressed into service against the terms of a statute and the rule of promissory estoppel envisaged by the Supreme

Court first in the decision reported in Union of India v. Anglo-Afghan Agencies, AIR 1968 SC 718, and reiterated in Century Spinning and

Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , will not apply to a situation where there is a

statutory compulsions has been held by the Supreme Court in Assistant Custodian of Evacuee Property v. Brij Kishore Agarwala, :

[1975]2SCR359 and Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, . Thus, notwithstanding the past

conduct of the tax authorities in accepting the credit entries as amounting to an application as contemplated by s. 11. they can contend that the

mere crediting of the amount does not amount to an application.

46. The learned counsel for the trust contends that in the assessment years in question the assessee has not only made credit entries in its accounts

in favour of the educational institution but the educational institution has been operating on that account and withdrawing the amounts credited as

and when needed and this would clearly amount to an application. The learned counsel refers to the following decisions in support. P.A.C.

Ratnaswamy Nadar and Sons Vs. Commissioner of Income Tax, Madras, , was a case where the assessee had debited his personal account in his

business for a sum of Rs. 27,000 and credited each one of his six sons with Rs. 4,500. The question arose as to whether the credit entries in

favour of the sons would constitute gifts. This court held that the entries in the account books of the donor could be relied upon as affording cogent

evidence of gift though the entries as such might not conclusively establish a real and effective gift and that the subsequent acts and conduct of the

parties taken along with the entries of credit in the books of account together cumulatively established a valid gift. In A.M. Abdul Rahman Rowther

and Co. Vs. The Commissioner of Income Tax, Madras, another Division Bench of this court has taken the view that whether the possession of

the subject-matter of the gift and that where the subject-matter of the gift consists of the assets of a firm, entries in the accounts followed by such

acts as would effectuate a divestment on the part of the donor would be sufficient. In that case the assessee who was the sole proprietor of a

business, purported to make certain gifts to two of his married daughters by incorporating certain entries in his accounts and debiting himself to the

extent of Rs. 50,000 and crediting his two daughters with a sum of Rs. 25,000 each. Subsequently, a partnership deed was executed with the

assessee and his two daughters as partners and the profits of the business were distributed in accordance with the terms of the partnership deed.

The Bench took the view that the credit entries in favour of the donees and the subsequent constitution of the partnership taking the amounts gifted

as the donees' capital and the distribution of the profits of the business in proportion to the capital contributed are sufficient to establish the gift. In

BHAU RAM JAWAHARMAL Vs. COMMISSIONER OF Income Tax, U. P., , a Division Bench of the Allahabad High Court had taken the

view that it is not necessary in every case for the validity of the gift that there should be physical delivery of the amount by the donor to the donee

and that a transfer can be effected in the books of the donor's firm by making a debit entry in the accounts of the donor and making a

corresponding credit entry in the accounts of the donee and that so long as the entries made in the respective accounts put the gifted amount

beyond the control of the donor and resulting in his ownership being replaced by the ownership of the donee, there is no reason why a valid gift

cannot be effected through such book entries. The learned judges however pointed out a distinction between a case where the entries are made in

the accounts of the donor and the donee and in the books of a third party holding monies to the credit of the donor and a case where the donor

purports to effect the transfer by making entries in his own books. In Hakim Abdul Hamid Vs. Commissioner of Income Tax, , a Full Bench of the

Delhi High Court held that the amount credited to a reserve fund of which 7/8ths are to be spent for charities in the relevant years was entitled to

exemption from tax under s. 4(3)(i) of the 1922 Act. In that case under a wakf deed 1/8th of the annual profits was to be transferred to a reserve

found and out of the balance, 7/8ths were to be spent on charities and 1/8th was to be paid to the sole mutawalli and any property acquired with

the aid of the aid of the reserve fund was also to be treated as part of the wakf. The assessee claimed that 7/8th of the amount credited to the

reserve fund was to be exempt under s. 4(3)(i) as it represented the amount applied and set apart for charitable purposes, that as under no

circumstances the mutawalli was entitled to more than 1/8th of the reserve fund and the ultimate destination of the 7/8ths of the reserve fund was

for charities, that the 7/8ths portion of the amount transferred to the reserve fund in the relevant years should be taken to have been applied or

finally set apart for application for charitable purposes and, therefore, eligible for exemption under s. 4(3)(i). In B. Muniyamma Vs. Commissioner

of Gift Tax, Mysore, , a Bench of the Karnataka High Court had held that it was not necessary in every case for the validity of a gift that there

should be a physical delivery by the donor to the donee, that a transfer could be effected by making debit entries in the accounts of the donor and

correspondingly making credit entries in the account books of the donee, and so long as the amount debited puts the amount beyond the control of

the donor and results in his ownership in it being replaced by the ownership of the donee, a valid gift was effected.

47. As against the said contention, the learned counsel for the Revenue submits that the word ""application"" is to be understood as actually

expended and a mere credit entry cannot be taken as proof of the application and refers to the following decisions in support. HANMANTRAM

RAMNATH Vs. COMMISSIONER OF Income Tax BOMBAY., was a case where an assessee made an oral declaration of trust in November,

1937, resolving to set apart a sum of Rs. 2 lakhs for religious and charitable purposes and to create a trust of it and directed the said sum to be

kept credited to the said trust. The amount was not, however, set apart or credited to any account in the assessee's books on the date of the

declaration but the amount was utilised along with some other properties in carrying on the family business. Later, in October, 1938, an account in

the name of the trust was opened and the amount of two lakhs of rupees was credited to its account and interest at 4 1/2% which had accrued

from the date of declaration was also credited to that account. For the accounting year October 24, 1938, to November 11, 1939, the assessee

claimed exemption in respect of Rs. 9,750 being the interest which he was liable to pay to the trust account under s. 4(3)(i) of the 1922 Act. The

court held that the settlor not having been shown to have divested himself of the beneficial interest in the money so as to transfer its ownership to

the trustees, there is no valid trust in law and, therefore, the exemption claimed could not be granted. In Commissioner of Income Tax Vs. Smt.

Shyamo Bibi, , a Division Bench of the Allahabad High Court held that s. 123 of the Transfer of Property Act lays down the law governing all gifts

made for whatever purpose and is to be applied whenever and wherever the question arises whether there was a gift or not, that under that section

a gift of movable property may be effected either by a registered instrument or by delivery of possession and that the mere transfer entries in the

assessee's books crediting a sum of Rs. 1 lakh in the account of her grandson and debiting her account by the said amount may not amount to a

valid gift as the assessee had a cash balance of only Rs. 15 on the date when the entries were made. The court founding that case that mere entries

in her own accounts, without there being any cash on hand, will not have the effect of putting the money in the possession of the donee as the

account books where the entries had been made were in her possession, dominion and control and by mere entries therein the assessee did not

vest the donee with possession, dominion and control over the money; not could it be said that making transfer entries in the personal accounts is

constructive delivery, and the execution of a memorandum both by the donor and the donee regarding the gift was ineffective as the donee cannot

be said to have entered into possession and control of the money when the money itself did not exist. In Nachimuthu Industrial Association Vs.

Commissioner of Income Tax, , this court held that the mere making of entries in the assessee's own books, which entries could have been

reversed if and when the assessee chose to do, will not amount to an application of the income for charitable purposes, unless there was a

communication sent to the educational institution that any such sum had been set apart in its favour and there had been reciprocal entries in the

books of the educational institution.

48. Based on the above decisions, the learned counsel for the Revenue contends that the mere entries in the assessee's own books of account crediting the amount in favour of the educational institution will not amount to an application as contemplated by s. 11, as the assessee having the dominion and custody of the account books, can always reverse those entries, so long as the amount has not been put physically in the hands of the institution. There can be no doubt that the mere credit entries in favour of the educational institution made in the assessee's own books of account cannot be taken to be an application for charitable purposes as contemplated by s. 11, for such credit entries can always be reversed by the assessee as it has control, and dominion over the account books. It is also possible for the assessee to make a credit entry in favour of an educational institution for a charitable purpose when the assessee is having the ready cash on hand, as was not the case in Commissioner of Income Tax Vs. Smt. Shyamo Bibi, , in which case, it cannot be said that the assessee has put the money in the hands of the donee and the donee has invested the same or kept the same in deposit with the assessee. In this case, there is no dispute that the debit and credit entries were made by the assessee in its books of account. It is true, the account books are not the books of any banking business carried on by the assessee. There is, however, no dispute that the assessee had sufficient cash in his possession to cover the amounts for which the credit entries have been made in favour of the educational institution. Of course, there is no evidence in this case whether the educational institution, in whose favour the credit entries have been made, was made aware of the credit entries and it accepted the same. As the Revenue, which had occasion to go through the books of account of the assessee as well as the educational institution, had not raised this plea, it can reasonably be assumed that as soon as the credit entries are made in the assessee's books in favour of the educational institution the institution had been notified about the credit entries and it had accepted the same. Apart from this, from the fact that the educational institution has drawn certain amounts during the respective assessment years, it can be assumed that the institution was aware of the credit entries made in each of the years and it is only on that basis it had withdrawn amounts from its account which stood credited with the various sums in the assessment years in question. But the question still remains as to

whether the assessee divested itself of the ownership of the amounts which it had credited in the name of the institution, and the amounts credited was beyond its control. On this aspect there is not much evidence. Whether the amount credited was kept separately as a fund or whether the assessee had dominion over it, is not clear from the evidence. Even though the amount had been credited and such credit entries had been accepted by the educational institution, still, if the assessee had not completely divested its ownership of the money and had retained some beneficial interest therein, such as investing the same either in its own business or with third parties and getting interest thereon, the gift as evidenced by the credit entries cannot be said to be complete. However, unless the Revenue, which had the opportunity to inspect the accounts of the assessee, is in a position to say whether the assessee has utilised the money covered by the credit entries in its own business or invested the same and earned interest thereon and thus had beneficial interest in the money, it cannot be assumed that the assessee had retained any beneficial interest in the money, after making the credit entries. Therefore, the assessee should be taken to have fully divested itself of the monies credited and kept the same always ready for payment to the educational institution. Further, in these proceedings, right from the beginning, the Revenue has not taken up the plea that the assessee has not divested its ownership in the money credited in favour of the educational institution but retained any beneficial interest therein. It only raised the plea that the mere credit entries in the assessee's own books of account will not amount to an application unless the monies are put physically in the hands of the educational institution. As a matter of fact, they have gone to the extent of contending that even if the monies are put in the hands of the educational institution by the assessee, that will not amount to actual application of the money for charitable purposes and such application should be taken to have been made only when the amounts are actually spent for educational purposes, by the donee-institution itself. Thus, on the material on record, we are not in a position to say that after making the credit entries, the assessee retained any control over the monies or any beneficial ownership therein. For the accounting year 1966-67 corresponding to the assessment year 1968-69, a sum of Rs. 10,41,689.47 had been credited by the assessee in favour of the educational institution out of which Rs. 3,04,035 had been drawn by

the said institution, and for the accounting year 1967-68 corresponding to the assessment year 1969-70, a sum of Rs. 8,99,535 has been credited

in favour of the educational institution and the educational institution has drawn Rs. 16,71,500 during that year. The conduct of the educational

institution in drawing from the assessee trust larger sums than what was been credited by the trust in its favour in 1969-70 shows that it was fully

aware of its credit with the assessee-trust and the funds that had been made available to it by the trust. If the amounts had been actually handed

over to the Adityanar College during the assessment years in question the assessee could claim the benefit of exemption under s. 11 as the college

has been established only for educational purposes and no part of its fund can be utilised for non-charitable purposes, and the Revenue cannot

insist that unless the educational institution expends the amount donated by the assessee within the assessment year, the assessee cannot claim the

benefit of exemption under s. 11. In this connection it is pertinent to refer to the decision in IRC v. Helen Slater Charitable Trust Ltd. [1980] 3

WLR 157; 1 All ER 785, wherein while considering the assessee's claim for exemption under s. 360(1)(c) of the Income and Corporation Taxes

Act, 1970, and s. 35(1) of the Finance Act, 1965, the court held that a charitable institution which makes an outright transfer of money applicable

for charitable purposes to any other charity in such manner as to pass to the transferee full title to the money, must be said, by the transfer itself, to

have applied such money for charitable purposes, within the meaning of s. 360(1) of the 1970 Act and s. 35(1) of the 1965 Act, unless the

transferor knew or ought to have known that the money would be misapplied by the transferee and 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. The

provisions under which exemption from tax was claimed in that case were as follows (at p. 160) :

Section 360(1)(c) of the 1970 Act :

The following exemptions shall be granted on a claim in that behalf to the Board - ... (c) exemption - (i) from tax under Schedule C in respect of

any interest, annuities, dividends or shares of annuities, (ii) from tax under Schedule D in respect of any yearly interest or other annual payment,

and (iii) from tax under Schedule F in respect of any distribution, where the income in question forms part of the income of a charity, or is,

according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, applicable to charitable purposes only, and

so far as it is applied to charitable purposes only.....

49. Section 35(1) of the Finance Act, 1965 provides :

Subject to sub-section (2) of this section a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes.

50. In that case two companies limited by guarantee were formed on the same day and the general objects of both the companies were

substantially the same, that is, (1) to relieve suffering amongst the aged, important or poor, (2) to advance education, and (3) to further such other

charitable objects as the company may think fit. One company was called ""Helen Slater Charitable Trust"" and the other was called ""Slater

Foundation Ltd."" The question that arose for decision in that case was whether the trust was entitled to exemption under s. 360(1)(c) of the 1970

Act and s. 35(1) of the 1965 Act in respect of income or gains which it paid to the Foundation, another charitable body which the Foundation had

not itself distributed by the end of the year in which the payments were received. The view taken by the court was that though the trust and the

foundation are separate entities, payment of the amount by the trust to the foundation is a proper application of a charity's income to make

donations for the furtherance of another charity's work and that it would be highly inconvenient if, in order to satisfy the requirements of s. 360(1),

the donor charity had to follow its donation into the accounts of the recipient charity and produce evidence as to its application by that body and

that the section does not impose any such requirement and the mere fact of donation to another charity will clearly satisfy the requirements of the

section. We are of the view that the principle laid down in the above case will pally here as well. In that case also, s. 360 of the 1970 Act and s.

35(1) of the 1965 Act used the expression ""applied for charitable purposes"". The Revenue contended that the trust itself did not apply its income

at all in any realistic sense but left its application to the foundation and, therefore, there is no such application as contemplated by the exemption

provisions. This contention was overruled by the court holding that the word "applied" does not import a power of selection, but it simply means devoted to" or "employed for the special purpose of". The court construed the phrase "applied for charitable purposes" as including transfer of funds outright to another charitable institution which was exclusively charitable objects and the disposition of assets by one institution in favour of another institution in such manner as to pass the whole title in such assets to the transferee must ordinarily amount to an application of such assets within the normal use of the legal terminology. Since the credit entries in this case have been followed up by withdrawal of a portion of the amount by the college in one year, and more than the amount credited in another year, it will clearly lead to the inference that the amount has been kept as a fund for the educational purposes which fund can be operated at any time by the college. If the assessee has actually handed over the amounts on the dates when the credit entries were made to the college physically and it had deposited the same with the bank or with a third party, for withdrawal of such amounts as are required by it in future, it cannot be said that there has been no application for educational purposes. The fact that the educational institution chose to keep the money with the assessee-trust itself cannot, in our view, make any difference so long as it has not been shown by the Revenue that the assessee-trust retained any beneficial interest over the money standing to the credit of the educational institution. In our view, the credit entries in this case, when taken along with the conduct of the donee institution of drawing the amounts later, would amount to a gift of the money in favour of the educational institution and as such is a proper "application" as contemplated by s. 11. It is not a case of a mere credit entry which could be reversed at any time; nor is it a case where credit entry has been made without there being any cash on hand, so that it could be said that the assessee was not in a position to physically handover the money on the dates of the credit entries. We cannot agree with the view of the Tribunal that the amounts which had been credited in favour of the educational institution for the assessment years in question had not been applied for charitable purposes as contemplated by s. 11. In this view we answer questions Nos. 4 and 5 in the affirmative and in favour of the assessee.

51. Now, coming to question No. 6, it is the contention of the learned counsel for the assessee that the question has not been properly framed by the Tribunal and the question should read : ""whether, on the facts and circumstances of the case, the assessee is entitled to the exemption in respect of Rs. 3,04,035 for the assessment year 1968-69."" The learned counsel for the Revenue refers to its contention before the Tribunal that the sum of Rs. 3,04,035 which has been paid to the Adityanar Educational Institution for the assessment year 1968-69 is not exemptible under s. 11, for that amount should be taken to have been drawn from the previous year's accumulation and, therefore, the said sum cannot be taken to have been drawn by the educational institution for educational purposes out of the profits of the assessment year 1968-69. However, having regard to the fact that the Tribunal granted exemption in relation to Rs. 3,04,035 for the assessment year 1968-69 under s. 11, the question as framed by the Tribunal has to be considered and we cannot go behind the question and consider whether even Rs. 3,04,035 which has admittedly been drawn by the educational institution from the trust was not exemptible. The question as framed by the Tribunal and referred to us is as to whether the exemption for the assessment year 1968-69 should be confined only to Rs. 3,04,035 or whether it should be for the entire sum of Rs. 10,41,689.47 found credited in favour of the Adityanar Educational Institution. As we have already held that the entire sum of Rs. 10,41,689-47 which had not only been credited in favour of the educational institution but the same has been credited in favour of the educational institution but the same has been followed up by the withdrawal of a portion of the amount by the educational institution, the entire sum should be taken to have been applied for educational purposes when we dealt with questions No., 4 and 5, this question has to be answered in the negative and against the Revenue.

52. There will, however, be no order as to costs in any of these cases.