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**(2002) 11 KL CK 0085**  
**In the High Court Of Kerala**  
**Case No : IT Appeal No. 132 of 1999**

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| Income Tax Officer | Vs | APPELLANT  |
| S.N.B.S. Samajam   |    | RESPONDENT |

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**Date of Decision :** 20-11-2002

**Acts Referred:**

Income Tax Act, 1961 — Section 11, 11(4A)

**Citation :** (2003) 182 CTR 390 : (2003) 263 ITR 613

**Hon'ble Judges :** K. Balakrishnan Nair, J;G. Sivarajan, J

**Bench :** Division Bench

**Advocate :** P.K. Ravindranatha Menon and George K. George, for the Appellant;  
Deepsur D. Jayan, for the Respondent

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## Judgement

G. Sivarajan, J.—The matter arises under the IT Act, 1961 (for short "the Act")

2. This is an appeal filed by the IT Department against the order of the Tribunal, Cochin Bench, in ITA 132/Cochin/1994 in respect of the asst. yr. 1984-85. The respondent-assessee is a charitable trust constituted as per a registered trust deed of the year 1928 under the Societies and Charitable Institutions Act. The trust was conducting chitty business. In the assessment for the year 1984-35 the trust claimed exemption u/s 11 of the Act on the ground that it is a charitable trust. The exemption u/s 11 of the Act was being allowed to the respondent-assessee upto and including the asst. yr. 1983-84. Section 11 of the Act was amended in 1983 by incorporating Section 11(4A). Based on said amendment the assessing authority rejected the assessee's claim on the ground that the assessee-trust did not satisfy the requirements of Section 11(4A)(b) of the said Act. The first appeal filed by the assessee was not successful. However, in second appeal, the Tribunal allowed the claim for exemption relying on the decision of this Court in Commissioner of Income Tax Vs. Dharmodayam Co., .

3. Sri P.K.R. Menon, learned senior standing counsel for the Department, submits that the benefit of exemption u/s 11 is available to an assessee from the asst. yr. 1984-85 only if the business is carried on by an institution wholly for charitable

purposes. He further submitted that the trust is not an institution and, therefore, the exemption u/s 11 cannot be granted in view of the provisions of Sub-section (4A), Clause (b) of the Act. The senior counsel also relied on the decision of the Supreme Court in Assistant Commissioner of Income Tax Vs. Thanthi Trust, . The senior counsel further submitted that in view of this decision the decision of this Court in Dharmodayam Co. 's case (supra) relied on by the Tribunal, also is no longer good law.

4. We have also heard the learned counsel for the respondent who sought to sustain the order, of the Tribunal. We have perused the judgment of the Supreme Court in Thanthi Trust's case mentioned supra. The Supreme Court considered the question of applicability of the provisions of Sub-section (4A) of Section 11 as follows:

"Sub-section (1)(a) of Section 11 says that income derived from property held under trust only for charitable or religious purposes, to the extent it is used in the manner indicated therein, shall not be included in the total income of the previous year of the trust. Sub-section (4) defines the words "property held under trust" for the purposes of Section 11 to include a business held under trust. Sub-section (4A) restricts the benefit u/s 11 so that it is not available for income derived from business unless (a) the business is carried on by a trust only for public religious purposes and it is of printing and publishing books or any other notified kind, or (b) it is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution, provided, in both cases, that separate books of account are maintained by the trust or the institution in respect of such business. Trusts and institutions are separately dealt with in the Act (Section 11 itself and Sections 12, 12A and 13, for example) The expressions refer to entities differently constituted. It is thus clear that the newspaper business that is carried on by the trust does not fall within Sub-section (4A). The trust is not only for public religious purposes so it does not fall within Clause (a). It is a trust not an institution, so it does not fall within clause{b}. It must, therefore, be held that for the assessment years in question the trust was not entitled to the exemption contained in Section 11 in respect of the income of its newspaper."

5. The above observations of the apex Court indicates that for an assessee to fall within the provisions of Section 11(4A), Clause (b) it must be an institution. None of the authorities including the Tribunal, had considered the question as to whether the assessee-trust is an institution so as to fall within the ambit of Section 11(4A)(b) of the Act. All the authorities including the Tribunal proceeded on the assumption that a trust, irrespective of being an institution, will be entitled to exemption provided the other conditions stipulated in Clause (b) are satisfied. It is in that context the Tribunal had relied on the decision of this Court in Dharmodayam Co's case mentioned above and decided the matter in favour of 1 the assessee. It would also appear from the facts found by the Tribunal that if an exemption is available to a trust u/s 11(4A)(b) all the other three conditions

stipulated therein are satisfied by the assessee. In the absence of a finding as to whether the assessee-trust can be treated as an institution we will not be in a position to decide as to whether the assessee-trust is entitled to get the benefit of exemption u/s 11 in the light of Sub-section (4A) of the Act. Since there is no such finding we are of the view that the matter must be remitted to the assessing authority for fresh consideration in the light of the decision of the Supreme Court in Thanthi Trust case mentioned supra.

6. We accordingly set aside the orders of the AO and the two appellate authorities and remit the matter to the AO for disposal in accordance with law and in the light of the decision of the Supreme Court mentioned above. It is open to the assessee to produce all the evidence before the assessing authority in this regard and to rely on any other binding decisions on the point.

The appeal is disposed of as above.