

(1997) 04 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal No's. 482 to 484 of 1980 (From the judgment and order dt. 23rd December, 1978 of the Madras High Court in Tax Case No's. 182 and 252 of 1974 reported as Thiagarajar Charities vs. Addl. CIT (1978) 114 ITR 699 (Mad))

THIAGARAJAR CHARITIES

APPELLANT

Vs

ADDITIONAL COMMISSIONER OF INCOME TAX and Another

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Income Tax Act, 1961 — Section 11, 118, 2

Citation : AIR 1997 SC 2541 : (1997) AIRSCW 2486 : (1997) 140 CTR 295 : (1997) 225 ITR 1010 : (1997) 4 SCC 724 : (1997) 5 Supreme 138 : (1997) 92 TAXMAN 152

Hon'ble Judges : K. S. Paripoornan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K. S. PARIPOORNAN, J. :

The appellant is a trust. The trust was created on 4th June, 1962. The trust called "Thiagarajar Charities", is an assessee to income tax. In this batch of appeals, we are concerned with the three asst. yrs. 1964-65, 1965-66 and 1966-67. A common question of law arises for consideration herein. The Tribunal referred two identical questions of law for the above three years, to the High Court of Madras for its decision. The questions of law referred for the above three years are as follows :-

"Whether, on a proper construction of the trust deed dt. 4th June, 1962, the Tribunal was right in holding that the objects of the trust are not for charitable purposes within the meaning of the said expression as defined in s. 2(15) of the IT Act, 1961, and that consequently its income for the asst. yrs. 1964-65 and 1965-66 is not exempt from tax under s. 11 of the IT Act, 1961 ?"

"Whether, on a proper construction of the trust deed dt. 4th June, 1962, the

Tribunal was right in holding that the objects of the trust are not for charitable purposes within the meaning of the said expression as defined in s. 2(15) of the IT Act, 1961, and that consequently its income for the asst. yr. 1966-67 is not exempt from tax under s. 11 of the IT Act, 1961 ?"

2. The Tribunal as also the High Court of Madras held that the income derived by the assessee from the business carried on by it, though held under a trust could not be said to be exempt from tax under s. 11 of the IT Act. The High Court rendered the decision by a common judgment dt. 23rd December, 1977 in Tax Case Nos. 182 and 252/74. This Court by order dt. 3rd March, 1980 in SLP (Civil) Nos. 2453-2455/79 granted special leave to appeal to the assessee-appellant to file the appeals from the judgment of the Madras High Court aforesaid. That is how the present appeals are before us.

3. The short question that arises for our consideration in this batch of cases is, whether the appellant-assessed-trust is entitled to exemption under s. 11 r/w s. 2(15) of the IT Act, 1961, as the relevant provision stood then.

"2(15). Charitable purpose includes 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."

Sec. 11, as originally enacted, was couched in the following terms :

"(1) Subject to the provisions of ss. 60 - 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income -

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India, and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of 25% of the income from the property or Rs. 10,000, whichever is higher;

(b) income derived from property held under trust in part only for such purposes the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of 25% of the income from the property held under trust in part;

(c) income from property held under trust -

(i) created on or after the 1st day of April, 1952, for charitable purposes which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India :

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.

Explanation : For the purposes of cls. (a) and (b), in computing 25% of the income from any such property as is referred to in the said clauses for any previous year, the income from such property for the year immediately preceding the previous year may be adopted, if that income is higher than the income for the previous year.

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in cl. (a) or cl. (b) of sub-s. (1) as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with -

(a) such persons, have, by notice in writing given to the ITO in the prescribed manner, specified the purposes for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested in any Government security as defined in cl. (2) of s. (2) of the Public Debt Act, 1944 (XVIII of 1944), or in any other security which may be approved by the Central Government in this behalf.

(3) Any income referred to in sub-s. (1) or sub-s. (2) as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so accumulated or set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(4) For the purposes of the section property held under trust includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the ITO shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable and religious purposes and accordingly chargeable to tax within the meaning of sub-s. (3)."

4. The Trust Deed dt. 4th June, 1962, is to the following effect :

"This Indenture of Trust made this Fourth day of June, 1962 by (1) Sri Karumuttu Thiagarajan Chettiar, son of Muthukaruppan Chettiar, Hindu, Nattukottai Chettiar, (2) Sri T. Sundaram Chettiar, son of Sri Karumuttu Thiagarajan Chettiar Hindu,

Nattukottai Chettiar and (3) Sri T. Manickavassagam Chettiar, son of Sri Karumuttu Thiagarajan Chettiar Hindu, Nattukottai Chettiar, all residing at "Meenakshi Nilayam". Tirupparankundram Road, Madurai, hereinafter referred to as "the Authors of the Trust."

Whereas the authors of the Trust are desirous of founding a public charitable trust for the purposes, ends and objects hereinafter set forth.

And whereas for such charitable purposes, the authors have set apart a sum of Rs. 11,000 (Rupees Eleven thousand only) and declare hereby that the said sum shall form the nucleus of the Trust.

Now this indenture witnesseth as follows :

1. The authors hereby create a public charitable trust hereinafter referred to as Thiagarajar Charities (hereinafter referred to as the trust) for the purposes, ends and objects hereinafter following :

(a) To establish, maintain, run, develop, improve, extent, grant donations for and to aid and assist in the establishment, maintenance, running, development, improvement and extension of elementary schools, secondary schools, high schools, colleges, universities, workshops, weaving industrial technological and other art, craft and science institutes, schools and institutions of Tamil or Sanskrit learning, hostels for the benefit of students and generally all kinds of educational institutions whether general, technical, vocational, professional or of other description whatsoever for the welfare and uplift of the general Indian public and to institute and award scholarships in India for study, research, apprenticeship for all or any of the said purposes.

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

(c) To establish, maintain, run, develop, improve, extend, grant donations for and to aid and assist in the establishment, maintenance, running, development, improvement, and extension of hospitals, clinics, dispensaries, sanatoria, maternity homes and all similar institutions as will afford treatment, cure, rest, recuperation and other allied advantages in the way of alleviating the sufferings of humanity.

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

(e) To conduct poor feeding and generally to give food and clothing to the poor, needy and defectives and to afford relief to people in distress and affected by earthquake, flood, famine, pestilence and other accidents and conduct or grant

donations for the support of the inmates of orphanages.

(f) To help, assist and give aid to the fathers, or other natural guardians, or near relatives of indigent and unmarried girls for the marriages of such girls.

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

(h) The above objects shall be independent of each other and the board of trustees as hereinafter constituted may, from time to time, apply the trust properties in carrying out all or any of the aforesaid objects of the trust as they may deem fit.

2. The authors do hereby constitute themselves as the first trustees of the trust for their lives. On the death of any of the authors of the trust, his seniormost male lineal descendent shall succeed as trustee in his place for his life. The said trustees shall have authority at any time and from time to time to appoint or coopt other persons not exceeding four to be trustees to act along with themselves.

3. The trust properties shall consist of the sum of Rs. 11,000 provided to the trust by the authors as hereinbefore mentioned and all and every other moneys and properties gifted, conveyed and transferred to the trust by any person whatsoever for the purpose of carrying out the objects of the trust hereby created and shall also include any income derived by the investment of trust properties and all additions, accretions, accumulations and augmentations thereto including any profit on realisation of investments of trust properties and in particular, the expression trust properties shall include any business undertaking held or carried on by the trust.

4. Sri Karumuttu Thiagarajan Chettiar shall be the first managing trustee and he shall hold office for life, unless he voluntarily relinquishes the office and thereafter the seniormost amongst the remaining authors, failing which the seniormost male lineal descendent of Sri Karumuttu Thiagarajan Chettiar shall become the managing trustee and such managing trustee shall hold office for his life.

5. The term of office of a trustee save that of the authors of the trust, their descendants as mentioned in cl. 2 and the managing trustee shall be three years from the date of his appointment but he shall, in the discretion of the other trustees, be eligible for reappointment.

6. Whenever any person appointed as trustee disclaims or any such trustee either original or substituted dies or is for a continuous period of six months absent from Indian Union or leaves Indian Union for the purpose of residing abroad or desires to be discharged from the trust or refuses or becomes in the opinion of a principal civil Court of original jurisdiction unfit or personally incapable to act in the trust or accepts as inconsistent trust or is otherwise disqualified a new trustee may be appointed in his place by the managing trustee

with the approval of the majority of the remaining trustees, if any.

7. All the trustees including the managing trustee for the time being of the trust shall be referred to collectively as the board of trustees and the board of trustees shall have the following powers in regard to the investment of all or any part of the trust properties.

(a) To invest in any securities of the Central or State Government.

(b) To invest in the purchase of any leasehold or freehold lands or buildings and in the construction of any buildings on any land belonging to the trust.

(c) To invest in fixed deposits, current or other accounts in any scheduled bank.

(d) To invest in shares, debentures or bonds of any public company or corporation incorporated in India.

(e) To invest in any business undertaking of whatsoever nature to be carried on by the trust.

(f) To invest moneys in any business undertaking for the purpose of acquiring and carrying on any business undertaking, such as managing agency, sales agency or purchasing agency of any company, or corporation in India.

Provided that nothing hereinbefore contained shall be deemed to authorise any of the trustees for the time being to advance any of the trust properties as loans to any of the trustees. Such business undertaking may be carried on individually by the trust or in partnership or in combination with any other person or persons"

(Clauses 8 to 31 have been omitted as they are not relevant).

"32. The business of the board of trustees shall be dealt with either at the meetings of the board of trustees or by resolution in circulation"

(Clauses 33 to 36 have been omitted as they are not relevant).

5. A true copy of the resolution of the trust board dt. 6th June, 1962, available at pages 30-31 of the paper book, is to the following effect :

"True copy of the resolution, dt. 6th June, 1962

True copy of the resolution passed by the board of trustees at the meeting held on 6th June, 1962 "Meenakshi", Tiruparankundram Road, Madurai at 1 A.M.

Present :

1. Sree Karumuttu Thiagarajan Chettiar

2. Sri T. Sundaram Chettiar

3. Sree T. Manickavasagam Chettiar

Sree Karumuttu Thiagarajan Chettiar took the chair.

The following resolution were unanimously passed :

1.

2. Resolved to undertake and carry on the business of purchase and sale of cotton, cotton yarn and cloth or other fibres both wholesale and retail and the managing trustee be and is hereby authorised to take the necessary steps in this behalf.

3. Resolved to appoint Sree T. V. Krishnamoorthy as the manager of the trust and to the business aforesaid and to authorise him to enter into contracts for purchase and sale of cotton, cotton yarn and cloth or other fibres both for ready and future delivery and to sign and execute all contracts on that behalf from time to time."

6. The board of trustees commenced and carried on business in the purchase and sale of cotton yarn as per the resolution of the board, dt. 6th June, 1962, quoted hereinabove. For asst. yrs. 1964-65 and 1965-66, the relevant previous years being the periods from 4th June, 1962 to 31st May, 1963 and from 1st June, 1963 to 31st May, 1964 respectively, the assessee filed returns disclosing "nil" income, though, according to the P&L a/c, it had made a profit of Rs. 8,72,550 and Rs. 13,14,269 respectively. The assessee claimed that the business carried on by it and from out of which it had derived income was one held under trust and since the trust was for charitable purposes, the income was exempt from tax under s. 11 of the Act. The claim was rejected by the ITO. He determined the total income as Rs. 8,72,550 for the asst. yr. 1964-65 and Rs. 13,14,269 for the asst. yr. 1965-66. In appeals, the AAC by his orders dt. 29th September, 1969 and 22nd April, 1970 upheld the plea of the assessee and directed the ITO to grant exemption. In further appeals filed by the Revenue, the Tribunal held that the objects covered by paragraph (1) cl. (g) of the trust deed did not fall under the head "relief of the poor". The Tribunal further held that the objects covered by cl. (g) would be covered by the fourth limb of s. 2(15) of the Act, namely, "object of general public utility" and held that the objects stated in paragraph (1) cl. (g) of the deed involved carrying on of an activity for profit, and applying the test laid down by a decision of the Kerala High Court in CIT vs. Indian Chamber of Commerce (1971) 80 ITR 645 concluded that the income derived by the assessee from the business carried on by it, though held under trust, could not be said to be exempt from tax under s. 11 of the Act. All the statutory authorities followed the decision rendered for the earlier asst. yrs. 1964-65 and 1965-66 for the subsequent asst. yr. 1966-67 without further discussion. The references made to the High Court of Madras for all the three years were considered together and agreeing with the Tribunal, the High Court held thus :

"..... But cl. (g) provides for the trust carrying on cottage industries and there is nothing in the trust deed to show that there is no profit motive. We are, therefore, of the opinion that the object of the trust is also carrying on an activity for profit."

The High Court proceeded further and held as follows :

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

In coming to the above conclusion, the High Court of Madras followed a Full Bench decision of the High Court of Kerala in Commissioner of Income tax, Kerala v. Dharamadeepti (100 ITR 375). It was held that the trust is a non-charitable trust and the income realised by the trust from its business in cotton, cotton yarn, cloth, etc., for the asst. yrs. 1964-65 and 1966-67 is not exempt from tax under s. 11 of the Act.

7. We heard counsel. At the outset, we should highlight one aspect. It appears that there is some patent mistake or confusion in the approach made by the High Court. The Trust Deed dt. 4th June, 1962 cl. 1(g) is to the following effect :

"(g). To engage in, carry on, help, aid and assist and promote rural reconstruction work, cottage industry and all other matters incidental thereto in India."

The trust carried on the business of purchasing and selling cotton, cotton yarn, cloth and other fibres wholesale and retail, not in pursuant to cl. (g) aforesaid, but in pursuance to the power vested in it under cl. 7(e) r/w cl. 32 of the Trust Deed, which are to the following effect :

"7(e). To invest in any business undertaking of whatever nature to be carried on by the trust."

"32. The business of the board of trustees shall be dealt with either at the meetings of the board of trustees or by resolution in circulation."

Pursuant to the above power vested in the trustees, a resolution dt. 6th June, 1962, quoted in this judgment, was passed by the board which enabled the trust to undertake and carry on the business of purchasing and selling cotton, cotton yarn and other fibres both wholesale and retail, etc. It is patent that the High Court of Madras wrongly assumed, that it is in pursuance of cl. 1(g) of the trust deed, the business of purchasing and selling cotton, cotton yarn, etc., was carried on by the trust. We are afraid that there has been a mix-up of cl. 1(g) of the Trust Deed and cl. 7(e) r/w cl. 32 of the resolution of the board dt. 6th June, 1962. The Tribunal denied exemption to the assessee-trust solely based on cl. 1(g) of the deed. The trust deed vested powers on the trustees to carry on any business as per cl. 7(e) of the deed. The board authorised the same by a separate resolution dt. 6th June, 1962. The business so started was held under trust. In other words, as per cl. 3 of the trust deed, the business (so started or

carried on) was a corpus of the trust. Clause 1(g) of the deed had nothing to do with such business. We are afraid that a misreading and misunderstanding of the vital clauses of the trust deed and the Resolution of the trust board - have resulted in the wrong approach and conclusion of the Madras High Court in holding that the appellant-trust in the present case is a non-charitable trust, and that the income realised by the trust from its business of cotton, cotton yarn, etc., is not exempt from tax under s. 11 of the Act. The High Court of Madras came to the conclusion, as it did, based on a full bench decision of the High Court of Kerala in CIT vs. Dharamadeepti (supra). The said decision was reversed by this Court in Dharmadeepti v. Commissioner Income-tax, Kerala (114 ITR 454) So, the very basis of the decision of the High Court of Madras no longer exists.

8. Counsel on both sides addressed elaborate arguments based on the trust deed dt. 4th June, 1962. The short question is, whether the objects of the trust will fall within the first three categories mentioned in s. 2(15) of the Act, namely, "relief of the poor, education, medical relief" or will it fall under the fourth limb only and even so, its impact herein ? In interpreting or understanding the trust deed one has to bear in mind the basic difference between the corpus of the trust, the objects of the trust and the powers of the trustees [See Aditanar Educational Institution v. Additional Commissioner of Income-tax, (1997 (1) SCALE 758); JT 1997(20 S.C.284

It will be useful to remember the following passages in the judgment of the Kerala High Court in Commissioner of Income-tax Kerala v. Shri Shaila Industrial And Spiritual Colony Charities [87 ITR 175 (at page 182)

"..... It drew a distinction between the objects in a memorandum of association and the powers taken in the memorandum of association to carry out those objects. Reliance had been placed on a decision of the Court of Appeal in North of England Zoological Society vs. Chester Rural District Council 1959 (3) All ER 116 C.A. which in turn referred to a decision of the House of Lords in Cotman vs. Brougham (1918) AC 514 (HL). Lord Wrenbury expressed the view in Cotman vs. Broughman that there may be included in the objects what are not real objects of the company but are enabling powers to achieve the objects of the company. A passage from the judgment of Lord Wrenbury at page 522 may be extracted :

The objects of the company and the powers of the company to be exercised in effecting the objects are different things. Powers are not required to be, and ought not to be, specified in the memorandum. The Act intended that the company, if it be a trading company, should by its memorandum define the trade, not that it should specify the various acts which it should be within the power of the company to do in carrying on the trade. The Third Schedule of the Act contains model forms of memoranda of association. These ought to be followed. Sec. 118, sub-s. (1), enacts that those forms or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

There has grown up a pernicious practice of registering memoranda of association which, under the clause relating to objects, contain paragraph after paragraph not specifying or delimiting the proposed trade or purpose, but confusing power with purpose and indicating every class of act which the corporation is to have power to do. The practice is not one of recent growth. It was in active operation when I was a junior at the Bar. After a vain struggle I had to yield to it, contrary to my own convictions. It has arrived now at a point at which the fact is that the function of the memorandum is taken to be not to specify, not to disclose, but to bury beneath a mass of words the real object or objects of the company with the intent that every conceivable form of activity shall be found included somewhere within its terms.

The paragraphs relied on by counsel on behalf of the Revenue can be treated as powers distinct from the primary objects of the company and they are meant to enable the real purposes being achieved. The memorandum in question is one wherein there has been a mingling of real objects with powers. The real objects disclose charitable purposes and the powers taken are merely to carry out the objects."

[See also : Pennington Company Law (6th Edn.) page 13; Palmers Company Law (25th Edn.) Vol. I para 2.606, wherein the law has been discussed in detail].

9. The objects of the trust have been clearly stated in paragraph 1 of the trust Deed. The main purpose and objects of the trust are education, medical relief and poor relief. In that behalf, the trust has been authorised to establish, maintain, run, etc., educational institutions, technological and other institutes for the welfare and uplift of the general Indian public, to assist in the establishment and running of hospitals, clinics and dispensaries, etc., to assist in building and erection of houses and places of residence for the poor; and to afford relief to the poor by giving food, clothing and to help them in distress during earthquake, flood, famine, pestilence, etc. In this connection, we should notice cl. 1(g) which is to the following effect :

(g) To engage in, carry on, help, aid and assist and promote rural reconstruction work, cottage industry and all other matters incidental thereto in India."

Though this sub-clause is included among the "objects clause", it is, really only a power. The language employed in cl. 1(g) itself suggests that it is a power vested in the trust to engage and promote, etc., rural reconstruction work, cottage industry and all other matters incidental thereto. A three Member Bench of this Court in *Dharmadeepti vs. CIT* (supra) construed cl. 3(b) of the Deed in the said decision, specified among the objects clause, as one really vesting powers, incidental or ancillary to the attainment of the main objects in cl. 3(a) therein, in the Appropriate Authority. We should also bear in mind that this power is so vested in this case, to effectuate the objects contained in cl. 1(a) to establish, maintain schools, colleges, workshops industrial, technological and other institutes, etc."of whatever description for the welfare and uplift of the general

Indian public". "Rural reconstruction", necessarily involves the uplift of the rural masses, and is directed for the welfare of such people. Majority of such persons belong to the "poor (or poorer) segments of the society". Similarly "cottage industry" is associated with the idea of a small, simple enterprise or industry in which employees, work in their own houses or in a small place gathered together for the purpose, using their own equipments and is usually found in rural areas/ places or so carried on, by the poor (or poorer) section of the society. In substance, the above activity, specified in cl. (1)(g) is to afford "relief to the poor". We understand cl. 1(g) of the trust deed dt. 4th June, 1962 as only vesting a power in the trustees to do certain things to effectuate the main objects of the trust contained in cl. 1(a) of the Deed - to start, run, develop educational, technical, vocational and other institutions and institutes for the welfare and uplift of the general Indian public. The power so vested in the trustees under cl. (g) cannot be called as "the objects" of the trust. So understood, we have no hesitation to hold that the Tribunal and also the High Court erred in construing cl. (g) aforesaid as "object" of the trust enabling it to carry on a business with a profit motive. Looked at from a different angle, and in the alternative, it is clear that the business of purchasing and selling cotton, cotton yarn, cloth and other fibres, etc., was held under trust; the said business was started in exercise of the powers vested in the trustees under cl. 7(e) r/w cl. 32 of the resolution dt. 6th June, 1962 and in view of cl. 3 of the deed, it is the "corpus" of the trust in reality. It is not an object of the trust. So, it cannot be said that the trust is carrying on (business) - an activity for profit. The business-corpus-property held under trust produces or results in income, like any other property. That is all. The business is only a "means" of achieving the "object" of the trust; it is a medium through which the "objects" are accomplished. In this view, the entire approach made by the Tribunal as also by the High Court fails to give due effect to the trust deed as a whole and is palpably erroneous and the resultant conclusion is vitiated, in denying the exemption to the appellant-trust. We hold accordingly.

10. Counsel for the appellant-assessee drew our attention to a decision rendered by a Constitution Bench of this Court in *Additional Commissioner of Income-tax, Gujarat v. Surat Art Silk cloth Manufacturers Association* [(1980) 121 ITR 1], and contended that the dominant purpose as could be gleaned from the various clauses of the trust deed is only to subserve the charitable purpose and not to earn profit and so, the appellant-assessee is entitled, in any view of the matter. [even if this case falls under the fourth limb of s. 2(25)] to the exemption under s. 11 of the Act. Our attention was invited to the following observations of Bhagwati, J. (who delivered the judgment of the majority) at pages 25-26 of the report which is to the following effect :

"..... The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object

of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg J., when he said in *Sole Trustee, Loka Sikhshana Trust's case* [1975] 101 ITR 234,256(SC) that :

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

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

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

11. It appears from the affidavit filed by the appellant-trust, which is available at page 142 of the paper book, that an aggregate sum of Rs. 16,48,030 was spent for charitable purposes during the period from 4th June, 1962 to 31st May, 1967. The purposes are aid to the various colleges, orphanages, relief to the poor and different categories or types of education. It also appears that in one of the assessment years, the amount so applied is much more than the total income. The facts available in the records go to show that the profits or amounts earned in the business fed the charitable purposes specified in the trust deed. In other words, the amounts earned had been essentially spent on charity. There can be no doubt that profit-making was not the real object of the trust.

14. In the light of the above, we answer the question referred to the High Court in favour of the assessee and against the Revenue. We hold that the income derived by the assessee from the business carried on by it, held under trust, is exempt from income tax under s. 11 of the Act. The common judgment of the Madras High Court dt. 23rd December, 1977, rendered in Tax Case Nos. 182 and 252 of 1974, is set aside and this batch of appeals allowed with costs including Advocates fees which is estimated at Rs. 10,000 in each appeal.