

Thanthi Trust Vs. Assistant Director of Income-tax and anr.

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Court : Chennai

Decided On : Oct-15-1998

Reported in : [1999]238ITR635(Mad)

Judge : R. Jayasimha Babu, J.

Acts : [Income Tax Act, 1961](#) - Sections 11, 11(1), 11(2), 11(3), 11(3A), 11(4) and 11(4A); [Finance Act, 1991](#)

Appeal No. : Writ Petition Nos. 6193 of 1995 and 266 and 267 of 1998

Appellant : Thanthi Trust

Respondent : Assistant Director of Income-tax and anr.

Advocate for Def. : S.V. Subramanian, Adv. for;Chitra Venkataraman, Adv.

Advocate for Pet/Ap. : Debi Prasad Pal, Adv. for;R. Janakiraman, Adv.

Judgement :

R. Jayasimha Babu, J.

1. The writ petitioner in these three writ petitions is a charitable trust which holds in trust a business of running a newspaper known as 'Daily Thanthi'. The trust was created in the year 1954. By the amendment made in the year 1957, the trust was declared an irrevocable trust. By a supplementary deed made on June 28, 1961,

the objects of the trust were declared to be, inter alia, the relief of the poor and education. The trust has throughout claimed the status of charitable trust and sought the benefit of the provisions of the Income-tax Act exempting the income of charitable trust. In that effort, the trust has had more than one occasion to come before this court challenging the denial of the exemption by the Revenue for the income derived by it from the newspaper business. The validity of the supplementary deed has been upheld by this court in C. S. No. 90 of 1961.

2. A Division Bench of this court in the first of the assessee's cases relating to its entitlement to be treated as a charitable trust and its income derived from the newspaper business being allowed exemption from tax in the case of CIT v. Thanthi Trust [1982] 137 ITR 735 has considered the character of the petitioner's trust created under the trust deed dated March 1, 1954, and the subsequent supplementary trust deed dated July 9, 1957, as also the effect of the judgment of this court in C. S. No. 90 of 1961. The court held that the founder of the trust had created a public charitable trust; the supplemental deed dated June 28, 1961, and the decision of this court in C. S. No. 90 of 1961, create a legal obligation on the trustees to spend the income derived from the trust after defraying the expenses of the newspaper business, for the purposes set out in the Schedule to the decree in P. S. No. 90 of 1961, and therefore, the trust property including the business itself should be taken to be held under a legal obligation for various charitable objects ; that those charitable objects fall under the relief to the poor and education referred to in Section 2(15) of the Act; and that the primary purpose of the trust is to carry out on the charitable objects, and that business is carried on only as a means in the course of the actually carrying out the primary purpose of the trust, and not as an end itself.

3. The court also observed that 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 Section 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. That decision was rendered on a reference made under the provisions of the Income-tax Act for the assessment years 1968-69 and 1969-70.

4. After that decision was rendered, Section 13(1)(bb) was introduced in the Income-tax Act which remained on the statute book from the year 1977 till April 1, 1984. The assessee's claim for exemption of the income from the newspaper business from tax having been negated by the Revenue, the petitioner challenged the assessment orders for the assessment years 1979-80 to 1983-84, before this court by way of writ petitions. This court held in the case which is reported as *Ttianti Trust v. Asst. CIT* : [1995]213ITR626(Mad) that in view of the categorical finding recorded by the Division Bench in *CIT v. Ttianti Trust* [1982] 137 ITR 735 that the primary purpose of the trust was to carry out charitable objects and that the business was carried on as a means in the course of the actual carrying out of the primary purpose of the trust, the requirement of the last portion of Section 13(1)(bb), namely, 'unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution' was satisfied by the petitioner. Therefore, Section 13(1)(bb) could not stand in the way of the petitioner claiming the benefit of exemption under Section 11(1) of the Act.

5. Section 13(1)(bb) was deleted from the statute book with effect from April 1, 1984, and with effect from that date, Sub-section (4A) was introduced in Section 11 and the words 'not involving the carrying on of activity for profits' were deleted from the definition of charitable purpose defined in Section 2(15) of the Act. Sub-section (4A) of Section 11 introduced by the Finance (No. 2) Act, 1991, with effect from April 1, 1992, reads thus :

'(4A) Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.'

The Revenue, relying on the newly introduced provision under Section 11(4A) sought to levy tax on the income derived from the newspaper business held in trust by the petitioner for the assessment years subsequent to April 1, 1984. The petitioner once again came before this court by way of writ petition challenging the action of the Revenue in denying the exemption Under Section 11 of the Act for

the assessment years 1984-85 to 1991-92. The decision of this court on these petitions is reported as *Thanthi Trust v. CBDT* : [1995]213ITR639(Mad) . The principal question examined in that case was as to whether after the introduction of Sub-section (4A) of Section 11 of the Act, the business carried on by the trust would be subject to that provision, or as to whether a business undertaking held in trust--such business undertaking being property as defined in Section 11(4) and which definition has not been deleted was outside the purview of the newly introduced Sub-section (4A). The court considered this question elaborately and held in favour of the petitioner and against the Revenue. As the question which required consideration in these petitions is also the very same question, requiring consideration in these petitions, although the wording of Sub-section (4A) has undergone some changes after April 1, 1992, which do not materially affect the principle it is useful to set out in extenso the relevant portion of that judgment, as that judgment being inter parties and being on a question of interpretation of the provisions of the Act, is binding not only on the parties but on this court as well.

6. The court in the case of *Thanthi Trust v. CBDT* : [1995]213ITR639(Mad) while dealing with this question held as under (page 649) :

'The next question we have to examine is whether Sub-section (4A) of Section 11 can be applied to the case of the petitioner-trust under Section 11, on the ground that Sub-section (4A) stands in the way of the petitioner getting the exemption under Section 11 for the assessment years in question. Section 11(4A) came into effect from April 1, 1984, and it says that Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (3A) shall not apply in relation to any income, being profits and gains of business, unless (a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette ; or (b) the business 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. It is not in dispute that the petitioner-trust is not a trust created wholly for public religious purposes. It is also not in dispute that the petitioner-trust is not an institution. On the other hand, the petitioner-trust is a trust created for a public charitable

purpose, falling in Section 2(15) of the Act. Clause (a) of Section 11(4A) will not apply to the case of the petitioner-trust as it is a public charitable trust, whereas Clause (a) of Sub-section (4A) deals with the income being profits and gains of business carried on by a trust created wholly for public religious purposes; and Clause (a) does not deal with the income derived from the business undertaking held under the trust for public charitable purposes. Similarly, Clause (b) of Section 11(4A) also will not apply to the petitioner, because Clause (b) will apply only to the income being profits and gains of business carried on by an institution and not by a trust. The contention of learned senior counsel for the Revenue is that the exemption under Section 11(1) of the Act will be available to the petitioner only if it satisfies both the conditions prescribed in Clauses (a) and (b) of Section 11(4A), that the petitioner-trust is neither a trust created wholly for public religious purposes, nor it is an institution and thus it does not satisfy either of the conditions prescribed in Clauses (a) and (b) of Section 11(4A) of the Act and, consequently, the petitioner cannot claim exemption under Section 11(1) of the Act. We are unable to accept the above contention of learned senior counsel for the Revenue. As already pointed out, according to Section 11(1)(a) of the Act, income derived from property held under trust (which includes a business undertaking), wholly for charitable or religious purposes to the extent to which such income is applied to such purposes in India, shall not be included in the total income of the previous year of the person receiving the same. It is clear that Section 11(1)(a) concerns itself with income derived from the property held under trust which includes business undertaking so held, wholly for charitable or religious purposes, whereas Sub-section (4A) of Section 11, does not concern itself with any income derived from property held under trust for charitable purposes, but only concerns itself with income being profits and gains of business carried on by a trust wholly for public religious purposes or business carried by an institution wholly for charitable purposes. Thus, it is clear that the provisions of Sub-section (4A) can be applied only to income being profits and gains of business carried on by a trust, which is not held under trust and the said Sub-section (4A) cannot be applied to a case where the business undertaking itself is held under trust for charitable purposes as in the present case. There is force in the contention of learned senior counsel for the petitioner that Sub-section (4A) of Section 11 will apply only in case where the

business carried on by the trust is not held under trust for a charitable purpose, but the said income from business being the profits and gains of business earned by a trust, created wholly for public religious purposes or by an institution in such a case, the income will be eligible for exemption only when the two conditions laid down in Clauses (a) and (b) of Sub-section (4A) of Section 11 are satisfied. In the present case, inasmuch as the business carried on by the petitioner is itself held under trust for public charitable purposes and the business is carried on only for the purposes of carrying on the charitable objects as found by the Division Bench of this court in CIT v. Thanthi Trust [1982] 137 ITR 735, the provisions of Sub-section (4A) of Section 11 cannot have any application. Section 11(1)(a) grants exemption to income derived from property held under trust wholly for charitable or religious purposes to the extent indicated in that section, whereas Section 11(4A) denies exemption to income being profits and gains of business carried on by a trust wholly for public religious purposes or an institution, unless the conditions prescribed in Clause (a) or (b) of Sub-section (4A) of Section 11 are satisfied. . . .

Section 11(1)(a) of the Act grants exemption generally in respect of income derived from property held under trust wholly for charitable or religious purposes. Sub-section (4A) carves out only certain categories of income, namely, income being profits and gains of business carried on by a trust wholly for public religious purposes and institutions and denies exemption to such income being profits and gains of business unless the conditions prescribed in Clause (a) or (b) of Sub-section (4A) are satisfied, leaving the income derived from property held under trust for charitable purposes, to be taken care of by the provisions of Section 11(1)(a) read with Section 11(4) of the Act. In these circumstances, we are of the view that the provisions contained in Section 11(1)(a), so far as they relate to income derived from property held under trust for charitable purposes, as in the present case, are concerned, they are not affected or touched by the amendment introduced to Section 11 by the insertion of Sub-section (4A). Again by inserting Sub-section (4A), if it was intended to narrow down the scope of Section 11(1)(a) so as to withdraw the exemption enjoyed by income derived from property held under trust for charitable purposes, it would have been mentioned specifically that the scope of Section 11(1)(a) was being restricted to that extent. But this not being done here, it cannot at all be contended that something that was already included

in Section 11(1)(a) has been removed by the insertion of Sub-section (4A).

If the petitioner can claim exemption on the plain wording of Section 11(1)(a) of the Act, we cannot deprive it of its benefit by implication or by a deduction process when Sub-section (4A) does not in express terms cover the case. It is a settled position of law that in the case of fiscal statutes that impose pecuniary burden, if a reasonable doubt exists, the construction most beneficial to the subject must be adopted. . .

Again, as rightly pointed out by learned counsel for the petitioner, if the contention of the Revenue that unless the conditions prescribed in Clause (a) or (b) of Sub-section (4A) are fulfilled, the exemption under Section 11(1)(a) cannot be granted in respect of income derived from the property held under trust for public charitable purpose is accepted, the effect of such construction canvassed on behalf of the Revenue would be that Sub-section (4) of Section 11 would become superfluous and meaningless. As seen from Section 6 of the Finance Bill, 1983, which proposed amendment to Section 11 of the Act, the attempt at the Bill stage was to omit Sub-section (4) of Section 11 and replace the same by a new Sub-section (4) in the following terms (see : [1983]140ITR51(Bom)) :

'(4) Nothing contained in Sub-section (1) or Sub-section (2) or subsection (3) or Sub-section (3A) shall apply in relation to any income being profits and gains of business.'

However, when the Finance Bill, 1983, became the Finance Act, 1983, Sub-section (4) in the present form is retained and Sub-section (4A) was newly inserted in Section 11 of the Act. Section 11(4) declares that for the purpose of Section 11 'property held under trust' shall include a business undertaking and, therefore, a business can also be held under trust for a charitable purpose and where it is so held, its income would be exempt from tax, provided, of course, the other requisite conditions for exemption are satisfied. If the construction of Section 11(4A), as canvassed by learned senior counsel for the Revenue is accepted, no exemption can be granted under Section 11(1)(a) in relation to any income derived from the property held under trust, unless, the conditions prescribed under Clause (a) or (b) of Sub-section (4A) of Section 11 are satisfied. The construction of Sub-section

(4A), contended for on behalf of the Revenue, would thus have the effect of rendering Sub-section (4) of Section 11 redundant, after the enactment of Sub-section (4A). As pointed out by the apex court, in *Addl CIT v. Surat Art Silk Cloth Manufacturers' Association* : [1980]121ITR1(SC) , we cannot accept such a construction which renders Sub-section (4) of Section 11 superfluous and meaningless. On the other hand, the construction which we are placing on Sub-section (4A), namely, that Section 11(4A) will have no application to income derived from property held under trust for charitable purposes, leaves a certain area to Section 11(4) of the Act, for its operation, notwithstanding the enactment of Sub-section (4A) and, therefore, we must prefer that construction to the one submitted on behalf of the Revenue. The above view of ours is also fortified by the decision of the apex court in *Addl CIT v. Surat Art Silk Cloth Manufacturers' Association* : [1980]121ITR1(SC) . 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 property could be distributed amongst the members in any form or utilised for their benefit either during its operational existence or on its winding up or dissolution. The association claimed exemption in respect of its income under Section 11(1)(a). The Supreme Court held that the dominant or primary purpose of the assessee was to promote commerce and trade in art silk yarn, etc., and the other objects specified in Clauses (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 Section 2(15) and that, therefore, the assessee was entitled to the exemption under Section 11(1)(a). The Supreme

Court also held that as the words, 'not involving the carrying on of any activity for profit' only qualify or govern only the last head of charitable purpose and not the earlier three heads in Section 2(15) and that if the 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. In that decision, the Supreme Court, while dealing with the scope of Sections 2(15), 11(4) and 13(1)(bb) of the Act and the area of operation of Section 11(4) of the Act, after the introduction of Section 13(1)(bb) of the Act, held as follows (at page 18) :

'Moreover, another consequence of the construction canvassed on behalf of the Revenue would be that Section 11, Sub-section (4), would be rendered wholly superfluous and meaningless. Section 11, Sub-section (4), declares that for the purpose of Section 11 'property held under trust' shall include a business undertaking and, therefore, a business can also be held under trust for a charitable purpose and where it is so held, its income would be exempt from tax, provided, of course, the other requisite conditions for exemption are satisfied. It may be pointed out that Section 11, Sub-section (4), where it provides that a business may also be property held under trust, does not bring about any change in the law because even prior to the enactment of that provision, it was held by the Judicial Committee of the Privy Council in the *Tribune's* case [1939]. 7 ITR 415, that property in the corresponding Section 4(3)(i) of the Act of 1922 included business and this principle was affirmed by the pronouncements of this court in *J. K. Trust v. CIT* : [1957]32ITR535(Bom) and *C7T v. P. Krishna Warriar* : [1964]53ITR176(SC) . Section 11, Sub-section (4), merely gave statutory recognition to this principle. Now, Section 13(1)(bb), introduced in the Act of 1961 with effect from April 1, 1977, provides that in the case of a charitable trust or institution for the relief of the poor, education or medical relief which carries on any business, income derived from such business would not be exempt from tax unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution. Where, therefore, there is a charitable trust or institution falling within any of the first three categories of charitable purpose set out in section 2, Clause (15), and it carries on business which is held by it under trust for its charitable

purpose, income from such business would not be exempt by reason of Section 13(1)(bb). Section 11, Sub-section (4), would, therefore, have no application in the case of a charitable trust or institution falling within any of the first three heads of 'Charitable purpose'. Similarly, on the construction contended for on behalf of the Revenue, it would have no applicability also in the case of a charitable trust or institution falling under the last head of 'Charitable purpose' because according to the contention of the Revenue, even if a business is held under trust by a charitable trust or institution for promotion of an object of general public utility, income from such business would not be exempt since the purpose would cease to be charitable. The construction contended for on behalf of the Revenue would thus have the effect of rendering Section 11, Sub-section (4), totally redundant after the enactment of Section 13(1)(bb). We do not think we can accept such a construction which renders a provision of the Act superfluous and reduces it to silence. If there is one rule of interpretation more well-settled than any other, it is that if the language of a statutory provision is ambiguous and capable of two constructions, that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none. The construction which we are placing on Section 2, Clause (15), leaves a certain area of operation to Section 11, Sub-section (4), notwithstanding the enactment of Section 13(1)(bb) and we must, therefore, in any event, prefer that construction to the one submitted on behalf of the Revenue.'

The Division Bench after so discussing the matter, considered the arguments that were advanced and concluded thus (page 658) : 'For all the reasons stated above, we have no hesitation in holding that Sub-section (4A) of Section 11 will have no application to income derived from property held under trust which includes business for charitable purposes, as in the present case, and that the second respondent is not correct in denying exemption to the petitioner under Section 11 for the assessment years 1984-85 to 1991-92, in view of Sub-section (4A) of Section 11 of the Act and, therefore, the impugned orders are liable to be quashed,'

7. Sub-section (4A) of Section 11 was amended by the Finance (No. 2) Act, 1991, with effect from April 1, 1992. That section after amendment reads thus :

'(4A) Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust, or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.'

The Revenue having once again sought to tax the income of the petitioner from its newspaper business for the assessment years subsequent to 1992, these writ petitions have been filed by the petitioner challenging the assessment orders for the assessment years 1992-93, 1995-96 and 1996-97 and seeking a writ of prohibition or any other appropriate writ, order or direction in the nature of writ to restrain the first respondent from making any order of assessment under the Income-tax Act in respect of the petitioner-trust for the assessment year 1995-96 invoking Section 11(4A) of the Act.

8. Rule nisi having been issued in these writ petitions, counter affidavits have been filed by the respondents.

9. Learned senior counsel for the petitioner, Dr. Debi Prasad Pal, submitted that the decisions rendered by this court on the earlier occasions leave no room for any doubt regarding the eligibility of the petitioner for receiving exemption provided in Section 11(1) of the Act in respect of the income received by it from the newspaper business as it has been held by this court that the newspaper business is held in trust by the petitioner; that the trust is an irrevocable trust which has as its objects relief of poor and education ; that the business of the trust is also capable of being regarded as incidental to the attainment of the main objectives of the trust; and that the income of the business held in trust is outside the purview of Subsection (4A) of Section 11 of the Act.

10. Counsel also submitted that the amendment effected to Sub-section (4A) with effect from April 1, 1992, does not in any manner affect the petitioner as that provision clearly enlarges the scope of the exemption allowed for business which is not held in trust and does not touch the businesses which are held in trust by a charitable trust, as Sub-section (4) continues to remain on the statute book even after the amendment to Sub-section (4A) by the Finance (No. 2) Act, 1991. The

reasoning adopted as also the conclusions reached by the Division Bench of this court in the assessee's own case to which the Revenue was also a party and by which it is bound, therefore, applies with full force for these assessment years as well, and the action of the Revenue of seeking to bring to tax the income derived from the very business of newspaper which business is held in trust by the petitioner, is patently illegal and without jurisdiction. It was submitted that in the back-ground of these facts and the law that had already been laid down by this court in the cases to which the Revenue itself was a party, the petitioner should not be driven to the statutory appeals and references and that the matter should be decided by this court in these proceedings, there being no dispute about the relevant material facts and the dispute is only regarding the interpretation of the provisions of the Act which exercise has also been carried out by this court in the decision of the court reported in *Thanthi Trust v. CBDT* : [1995]213ITR639(Mad) .

11. Learned senior counsel for the Revenue, Mr. S.V. Subramanian, submitted that in view of the amendment effected to Sub-section (4A) with effect from April 1, 1992, the Revenue was entitled to bring to tax the assessee's income from the newspaper business notwithstanding the fact that the business was held in trust, as the business carried on by it cannot be regarded as a business which is incidental to the attainment of the main objects of the trust which are relief to poor and education. Counsel further submitted that Sub-section (4A) is a provision which comprehensively deals with all businesses run by a charitable trust whether they may be business which are incidental or businesses which are held in trust. Sub-section (4), it was submitted, is merely a definition section which defines the word 'property held under trust' which expression is used in Section 11(1), and that definition does no more than give effect in explicit term to the law which at all times prevailed in view of the decisions of the Privy Council and the Supreme Court which had uniformly held that the word 'property' would include a business undertaking and, therefore, the retention of Sub-section (4) on the statute book and the omission to refer to that provision in Sub-section (4A) is of no consequence whatever. Sub-section (4A) specifically refers to Sub-section (1) to the extent the business is dealt with in that sub-section. The provision of Sub-section (4A) of Section 11, the width of the term 'property in trust' used in Sub-section (1) as defined in Sub-section (4) is cut down or in any event made subject

to further restrictions set out in Sub-section (4A). Counsel therefore submitted that the business carried on by the petitioner unless it is shown to be one falling within the scope of Sub-section (4A) would not qualify for exemption of its income solely on the ground that the business is one which is held under trust. Sub-section (4A), it was submitted, is applicable to the petitioner as in the submission of counsel, business run by the petitioner publishing a newspaper cannot be regarded as being in any way, incidental to the attainment of the charitable object or education or relief of the poor.

12. It was also submitted by counsel that, the petitioner has other remedies against the impugned action and it would be appropriate to direct the petitioner to pursue the same.

13. As to whether the petitioner should be directed to follow the statutory remedies may first be considered. In the normal course this court would not entertain a writ against a mere notice to produce books of account or against an order of assessment. That course is adopted by the court only by way of self-restraint and not on the ground that this court has no jurisdiction to interfere with such matters whereas, in the present case, the facts are not in dispute, and the area of controversy is such that it is more convenient and appropriate that it should be settled by this court. There is no impediment whatsoever to this court to proceeding to consider the case of the petitioner and grant such relief as is appropriate. Having regard to the history of the recurring battles between the petitioner and the Revenue on the question of taxability of the income derived by it from its newspaper business, which business is held in trust, and the decisions already rendered by this court in respect of earlier assessment years, wherein the petitioner's status has been elaborately examined and determined and the question now agitated in these petitions is one which had been considered by this court and decided in favour of the assessee, in the decisions already rendered by this court, it is appropriate that these writ petitions be decided on the merits, which I proceed to do.

14. The substantive point in issue is a very short one. The only question is as to whether Sub-section (4A) of Section 11 excludes from its purview 'business' held

in trust which is 'property' of the charitable trust by applying the definition provided in Section 11(4) to the word 'property held in trust' found in Section 11(1) of the Act. That question, has already been answered by a Division Bench of this court by which decision I am bound. It is not appropriate for me in these matters to reconsider the same question which has been heard and decided by the Division Bench after hearing elaborate arguments on behalf of the Revenue as also on behalf of the petitioner, unless it is possible to distinguish the decision rendered therein on any reasonable ground.

15. The only submission put forth by learned senior counsel for the Revenue in this regard is that after the amendment of Sub-section (4A) with effect from April 1, 1992, the language used therein is not identical to the language used in Sub-section (4A) which was considered by the Division Bench of this court in the case of *Thanthi Trust v. CBDT* : [1995]213ITR639(Mad) . Sub-section (4A) before its amendment as also after its amendment have already been extracted and set out. The opening part of that provision remains the same as before, and after,, the amendment. It is declared therein that Sub-sections (1), (2), (3) and (3A) of Section 11 shall not apply in relation to the income of a trust or institution being profits or gains of a business, unless the requirements of Sub-section (4A) are satisfied. Prior to the amendment in 1992, the exemption under Sub-section (4A) was limited to business carried on by the trust wholly for public religious purposes and the business consisted of printing of books and/or publication of books or is of a kind notified by the Central Government in that behalf, or the business was carried on by the institution wholly for charitable purposes and the work in connection with the business was mainly carried on by the trust or institution. The requirement that separate books of account should be maintained by the trust or the institution is a common feature of Sub-section (4A) before as also after the amendment.

16. After the amendment the permissible categories of business which a charitable trust could carry on and still qualify for exemption were enlarged. After the amendment it is provided that any business that a trust or institution may carry on should be incidental to the attainment of the objectives of the trust or institution. This amendment therefore does not in any way affect the enunciation by the

Division Bench of this court on the relative scope of Sections 11(1), 11(4) and 11(4A) of the Act. If the business held in trust, as held by this court, is outside the purview of Sub-section (4A) before its amendment in 1992, it would continue to be outside the purview of that provision, even after the amendment as the amendment has not excluded the business held in trust from the purview of Sections 11(1) and 11(4). As to whether the decision of the Division Bench is the correct decision or not is not for me to say. I am bound by that judgment and must follow the same.

17. Counsel for the Revenue submitted that the Supreme Court had granted leave to the Revenue to appeal against that judgment and the appeals are now pending before the Supreme Court in C. A. Nos. 26611 to 26615 and 27163 to 27170 of 1995. The declaration of law to be made by the apex court in those appeals as regards the scope of Section 11(1) and (4) would govern these assessment years as well.

18. Before I conclude, it is necessary to notice one other submission that was made by learned senior counsel for the petitioner that it has already been held by this court that the business carried on by the petitioner was only incidental to the attainment of the main objectives of the trust, the finding to that effect having been recorded by this court in the decision of the Division Bench in CIT v. Thanthi Trust [1982] 137 ITR 735 and, therefore, if Sub-section (4A) of Section 11 is held to be applicable, the petitioner would be still be entitled to exemption from tax. The decision relied on was rendered in 1981, long prior to the introduction of Sub-section (4A).

19. It is not necessary for me to consider that argument in the light of my conclusion that the judgment of the Division Bench in Thanthi Trust v. Asst. CIT : [1995]213ITR626(Mad) , is applicable and that these petitions are required to be decided in consonance with the law laid down therein.

20. These writ petitions are allowed. For the assessment year 1992-93, the Assessing Officer is directed to redo the assessment without invoking Subsection (4A) of Section 11 of the Act and for the other two assessment years also, assessments shall be made without invoking Sub-section (4A) of Section 11 of the

Act. In the circumstances of the case, the parties shall bear their respective costs.

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