

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**ITA No.457/Coch/2007
Assessment Year : 2003-04**

**THE SOCIETY OF PRESENTATION SISTERS,
PRESENTATION CONVENT,
CHEVAYUR, CALICUT-673017**

Vs

**INCOME TAX OFFICER
WARD-1(2), CALICUT**

Vimal Gandhi, President (TM)

Dated : September 22, 2009

**Appellant Rep by: Smt M Lalitha Nair
Respondent Rep by: Shri A K Thattai, CIT DR**

**ITA No.128/Coch/2007
Assessment Year : 2003-04**

**WAYANAD MUSLIM ORPHANAGE MUTTIL
KALPETTA, CALICUT**

Vs

**INCOME TAX OFFICER
WARD-1(4), MEERUT**

**Appellant Rep by: Shri R Krishna Iyer
Respondent Rep by: Shri A K Thattai, CIT DR**

Income tax – Charity and/or religious – the or/and dilemma? Benefits to assessees carrying on activities of charitable as well as religious nature, no provocation to read down the law and state that the benefits will be available only if the assessee is carrying on charitable purposes alone or religious purposes alone. It is clear from plethora of authorities where after considering provisions of section 11(1)(a) that so far as aforesaid provision is concerned, no distinction is made between charitable and religious purposes. A charitable institution can have religious purposes; whereas a religious institution may be partly charitable Even otherwise relief and help to the poor, medical help to the needy, looking after of deity and temples (mosque, church included) are no doubt religious purposes but these are also considered as charitable in India. Therefore, the view taken in the two cases before me that exemption u/s 11(1)(a) cannot be allowed to a charitable trust as it is also carrying some purposes which are termed as '*religious*' is totally unwarranted.

ORDER

Per : Vimal Gandhi:

On account of difference between learned Members of ITAT Cochin Bench in above cases, reference has been made u/s 255(4) of the I.T. Act. These were heard by me under the above provision. The question referred are as under: -

"1. Whether the assessee who are carrying on charitable and religious activities, entitled for the benefits of section 11 for the assessment year 2003-04 in respect of income derived from property held under Trust wholly for charitable and religious purposes in the light of the expression provided by the Act in Section 11(1) (a) as "income derived from property held under Trust wholly for charitable or religious purposes...."

2. Whether, after 1.4.1962, can there be a mixed Trust?

3. Whether, the construction of dome, chapel or convent, etc. amounts to religious purpose or it is simply an object of general public utility? "

2. The facts are that The Society of Presentation Sisters, Calicut is a trust registered u/s 12A of the I.T. Act with the Commissioner of Income Tax. It filed a return declaring nil income for the above asstt. year 2003-04 on 29.12.2003. The return was accompanied by audited accounts and assessee claimed exemption of its income as a charitable institution. On scrutiny of books of accounts, AO noted that Receipts and payments account includes the following debits: -

1. Chapel running expenses
2. Chapel articles
3. Religious books, and
4. Religious function expenses

The AO was of the view that above expenses were for religious purposes. He also found that objects as per Memorandum of Association of the Society were as under: -

"(a) "To perform works of charity by caring for the sick and disabled without distinction of caste, religion or race.

(b) To establish conduct.....for the sake of the same.

(c) To educate and train ...for the same.

(d) To train.....personnel.

(e) To conduct medical research

(f) To acquire.....

(g) To effect hospitals, infirmaries, dispensaries, chapels, convents, bungalows, schools, hospitals, orphanages, homes for the aged....

(h) To establish and conduct all types of educational institutions.... "

3. The AO was of the view that objects in clauses (a) to (h) are charitable whereas clause (g) in so far as it relates to erection of "chapels and convents" was religious in nature. He, therefore, held that assessee Trust is partly charitable and partly religious. He was of the view that u/s 11(1)(a), exemption is available only if the Trust is "*wholly charitable*" or "*wholly religious*" in nature and not to a Trust with mixed charitable and religious objects. A show cause notice on above lines was issued to the assessee. In

reply dated 22.3.2006 to the show cause notice, the assessee contended that objects of the Trust as a whole are required to be considered and not any one object in isolation. Reliance was placed on decision of Hon'ble Supreme Court in the case of *CIT Vs J.K. Charitable Trust 196 ITR 31*. The assessee further contended as under: -

"The Convent referred to in your letter is the residence of the members of the Society and the Chapel represents prayer room. It has been held by various courts that the Chapel comes under object of general public utility, and, therefore, charitable in nature. We, therefore, submit that it is incorrect to be considered our Society as partly religious."

4. The AO held that case of CIT vs J.K. Charitable Trust was not applicable as Trust deed in that case was executed in January 1944 whereas assessee's Society was registered only on 30th January 1972 and, therefore, protection u/s 11(1)(b) is not available to assessee Society having mixed objects. The AO denied exemption to the assessee Trust with the following observations: -

"Inasmuch as both the Convent and the Chapel are meant for the use by the members of Society, there is no "general public utility". Prayer halls are no doubt, connected with religion only. It is, therefore, to be held that the objects of the Trust are partly charitable and partly religious. There was no apportionment of income between these different objects of the Trust, and it was left to the exclusive discretion of the Society to spend whatever they liked and hence the assessee is not entitled to claim exemption u/s 11 of the Income Tax Act in respect of its income. The decision of Hon'ble Jammu & Kashmir High Court in the case of Gulam Mohidin Trust vs CIT reported in 248 ITR 587 are applicable to the facts of the assessee's case."

Total income of assessee Trust was taken at Rs.1,49,05,230 and exemption claimed u/s 11 was denied. The assessee was assessed as an AOP.

Wayanad Muslim Orphanage

5. The facts of the aforesaid case are that the assessee is registered trust u/s 12A with the Commissioner of Income Tax. It filed a return declaring nil income on 15.2.2004.

6. During the scrutiny of the case, assessee was asked to file copy of trust deed/Memorandum of Association of the Trust from which AO found that it has the following objects noted in the assessment order: -

"a) To protect the orphan and destitute children both male and female and give them food, shelter and cloth and educate them of religious, technical and other items and give them technical training, equip them for job....."

b) Run orphanages, handicraft centers industrial units construct and maintain required buildings Mosques schools institutions, gardens, estates etc.

c) Run institute for destitute children both male and female Orphanage High School UP School LP School Mosques, Madrassa. And also construct and maintain new buildings for the development of the present institutions and start higher institutions like colleges both arts and technical and accommodate more children.

d) Earn more money and properties for these purposes in lawful and fair manner.

e) Implement Socio-Economic and Rural Development Programs with or without assistance from Donor Agencies. "

7. On reading above objects, the AO concluded that objects of the Trust were both religious as well as charitable which, according to him, contravene provisions of Section 11(1)(a) of the Act. In his view, exemption was available to Trusts which were wholly religious or wholly charitable. The assessee was accordingly asked as to why exemption u/s 11 should not be denied to it on the above ground. In its reply dated 20th March, 2006, assessee contended that word "religious" includes charitable activity as well and both of them go together. This argument was rejected by the AO on account of word "wholly" used in the Section and as two expressions "charitable" and "religious" were separated by word "or" in Section 11(1)(a). The Trust having been created on 11.2.1976 i.e. after 1.4.1963 was not entitled to benefit of Section 11(1)(b) of the Act. Before the AO, assessee placed reliance on decisions of Gujarat High Court in the case of *CIT vs Barkate Saifiyah Society 213 ITR 492* as also on decision of Andhra Pradesh High Court in the case of *CIT vs Social Service Centre 250 ITR 39* to contend that in similar circumstances, exemption was allowed u/s 11(1)(a) of the Act. The AO held that above decisions were distinguishable. The AO further observed, "Moreover, the decision of Hon'ble High Court in this case has not been accepted by the Department and a Special Leave Petition before the Hon'ble Supreme Court has been filed." For the proposition that Trusts which are partly religious and partly charitable, are not entitled to exemption, the AO placed reliance on the decision of Hon'ble J&K High Court in the case of *Ghulam Mohidin Trust vs CIT 248 ITR 587*. Accordingly, exemption claimed by the assessee u/s 11 was denied and its total income was taken at Rs.1,67,66,760 in the status of an AOP.

8. Assessee being aggrieved took up the matter in appeal before the CIT(A). CIT(A) noted orders of the AO in both the cases. He further noted the submissions advanced on behalf of the assessee.

9. In appeal by the Society of Presentation Sisters, it was contended that AO has misconstrued requirement of Section 11(1)(a). It was argued that Section provided that a charitable Trust should be wholly charitable and should not engage in any non-charitable activity. Likewise, wholly religious trust should be religious and not engaged in any private religious or non-religious activity. Exemption could not be denied if Trust had mixed objectives i.e. charitable and religious authorized by the memorandum. Income of Trust can be applied both for religious and charitable purposes. It cannot be presumed that charitable purposes cannot include, religious purposes and vice versa. It was also claimed that all along the claim of the assessee as a charitable institution was accepted and, therefore, revenue should maintain a consistent approach. In support of the contentions, the assessee relied upon decisions noted in para 10 of the order which are as under:-

(a) *CIT vs Ahmedabad Rana Caste Association (1973) 88 ITR 354 (Guj) and (1981) 140 ITR 1 (SC)*,

(b) *Addl. CIT vs A.A. Bibijiwala Trust (1975) 100 ITR 516 (Guj)*;

(c) *CIT vs Barkate Saifiyah Trust (1995) 213 ITR 492 (Guj)*

(d) *CIT vs Andhra Pradesh Chamber of Commerce (1965) 55 ITR 722 (SC) and*

(e) *CIT vs Social Service Centre (2001) 250 ITR 39 (AP)*.

10. The Id. CIT(A) held that decisions cited on behalf of the assessee were not exactly on point and were distinguishable. According to Id. CIT(A), in none of the decisions it has been held that religious activity can also be charitable activity as was the case of the appellants. He further held that latest decision in the case of J&K High Court in the case of *Ghulam Mohidin Trust vs CIT 248 ITR 587* was against the assessee. Certain extracts of that decision are reproduced in the impugned order. Id. CIT(A) further held that logic given by

the AO was sound and supported by use of disjunctive word 'or' in Section 11(1)(a). It was further observed that conclusion arrived at by the AO follows from a plain reading of the Section. It was observed that there is no reason why word 'or' should be interpreted as anything other than what is obvious. Ld. CIT(A) therefore upheld the view taken by the AO in the assessment order. As regards plea of the assessee that in earlier year, income of the assessee Trust was treated as exempt, Ld. CIT(A) held that principle of *res judicata* was not applicable to income tax proceedings. Accordingly, after relying upon the decision of J&K High Court in the case of *Ghulam Mohidin Trust vs CIT 248 ITR 587*, the view of the AO that assessee is not entitled to exemption was upheld.

11. In the other case of Wayanad Muslim Orphanage Muttil, the same CIT(A) decided the issue in a similar fashion. He noted the reasons why exemption to the assessee was not granted u/s 11(1)(a) of the I.T. Act. In a similar fashion as in the case of Society of Presentation Sisters, the Ld. CIT(A) held that AO was right in holding that assessee Trust was partly religious and partly charitable and, therefore, not entitled to exemption u/s 11(1)(a). He held that AO had rightly applied latest decision of J&K High Court in the case of *Ghulam Mohidin Trust vs CIT 248 ITR 587*. The case of *CIT vs Barkate Saifiyah Trust 213 ITR 492* and other decisions relied upon by representative of the assessee were not applicable to the facts of the case. Ld. CIT(A) further rejected the contention of the assessee that both the religious and charitable purposes are entitled to exemption and, therefore, there was no logic in not granting exemption to a Trust which is partly charitable and partly religious. Reference in the appellate proceedings was also made to provisions of Section 115 BBC and Section 10(23c)(r) of I.T. Act to support assessee's claim. However, the Ld. CIT(A) held that above provisions did not advance the case of the assessee. The view of the AO was accordingly upheld.

12. Both the assessee challenged order of CIT (Appeals) in further appeal before Cochin Bench of the Appellate Tribunal. These appeals were disposed of by a consolidated dissenting order. According to the learned Accountant Member (A.M), who wrote the leading order, the issue in appeals stood recently decided by the Cochin Bench in the case of Calicut Islamic Cultural Society, Kozhikode, as per their order dated 31st July, 2008 wherein it has been held that section 11(1)(a) did not preclude an assessee from carrying on charitable as well as religious activities for the purpose of claiming benefit of section 11. The learned AM further observed that judicial propriety demands that a bench of the Tribunal must follow judgement of a coordinate bench. As a precedent, reference was made to decision of Hon'ble Supreme Court in the case of *Union of India vs. Raghubir Singh (Decd.) 178 ITR 548*. The learned Accountant Member felt bound by decision in the case of Calicut Islamic Cultural Society, Kozhikode. He further observed that there is no decision of jurisdictional High Court or of Supreme Court. In such a situation, he observed that decision of some other High Court than jurisdictional was required to be followed by the Appellate Tribunal as a matter of judicial propriety and discipline. He further observed that in the present case, there are judgments of more than one High Court Reference was made to decision of Andhra Pradesh High Court in the case of *Social Service Centre 250 ITR 39* delivered on 09.02.2001 and to decision of Hon'ble Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT 248 ITR 587*. In such a situation, according to the learned Accountant Member, decision of Andhra Pradesh High Court, rendered in favour of assessee, being of later date should be followed.

12.1 The learned Accountant Member then referred to the decision in the case of *Ghulam Mohidin Trust vs. CIT 248 ITR 587* and observed that in that case the Court was more concerned about implication of section 13(1)(b). The Court, according to the learned Accountant Member, has not considered implication of section 11(1)(a) in the context of the expression of the legislative intention, "charitable and religious purposes". He accordingly held

that the judgment of Jammu & Kashmir High Court did not apply to the facts of the present case.

12.2 The learned Accountant Member thereafter considered provisions of section 11(1)(a) and held that law permits an assessee to claim the benefit of section 11 if trust is carrying on charitable activities. He further observed that assessee trust is also entitled to claim benefit of section 11, if it is carrying on religious activities. Therefore, it is clear that an assessee is not dis-entitled for exemption u/s 11 if it is carrying on religious activities. The only embargo being that activities must not be exclusively for the benefit of a particular community or caste. He further observed, " So functionally speaking for the purpose of section 11, charitable activities as well as religious activities both are analogous and belong to same specie." When that legal proposition is accepted, it is perverse to argue that assessee carrying on charitable activities alone or religious activities alone will be entitled for the benefits u/s 11 and an assessee will not be entitled to for such benefits if the assessee is carrying on charitable as well as religious activities. There is no room for such an interpretation."

12.3 The learned Accountant Member further observed that apprehension of the revenue that above interpretation will render section 11(1)(b) after 1.4.1962 nugatory, is not well founded. The learned Accountant Member held that section 11(1)(b) is provided not to tinker with the expression "charitable or religious purposes" but is meant for restraining multiple objectives of charitable as well as non charitable activities. Even the ratio laid down in the case of Ghulam Mohidin Trust is infect speaking in above direction. According to learned Accountant Member, section 11(1)(b) does not contradict between charitable purposes and religious purposes but distinguishes between charitable and non-charitable purposes.

12.4 As regards functional activities of the two trusts is concerned, the learned Accountant Member observed as under:

"18. As far as the two cases placed before us in these appeals are concerned, they are carrying on charitable activities in the form of running educational institutions, hospitals, orphanages and other institutions of public utility. No doubt that they are charitable in nature. Revenue has no case that all these institutions are meant exclusively for a particular community or caste. Along with running such institutions of public utility and services, the assesseees are maintaining chapels or madrassas for offering prayers. There is nothing on record to say that entry is restricted to any particular community or caste to offer prayers in those places. Of course, there will be certain regulations in behaving in such places, which does not mean that entry is prohibited to a particular person or class of persons. As far as these two cases are concerned, it is not possible to say, as a matter of fact, that the assesseees are carrying on religious activities only for the reason that they are maintaining chapels or madrassas. Even if the maintenance of the chapels or madrassas is considered to be religious activities, even then section 11(1) (a) nowhere provides that activities of religious purposes are not entitled for the benefits of section 11. On the other hand the law provides that activities of religious purposes are also entitled for benefits of section 11."

The Accountant Member ultimately held in his proposed order that when law has categorically provided in section 11(1)(a) that the benefits are available to the assesseees carrying on activities of charitable as well as religious nature, there is no provocation to read down the law and state that the benefits will be available only if the assessee is carrying on charitable purposes alone or carrying on religious purposes alone. Religious as well as charitable purposes are covered by the benefits provided u/s 11(1)(a) as both of them are holy waters. The learned Accountant Member accordingly allowed the appeals of the assesseees, in the proposed order.

13. The learned Judicial Member did not agree with the proposed order of the learned Accountant Member. He noted the following reasons for his dissent:

(1) That section 11 of the Act is not for the benefit of an assessee whose object is partly charitable or religious trust created or established after 1.4.1962. Both the appellant trusts before the Tribunal were created after 1.4.1962. In other words the income under both charitable and religious purposes cannot be combined together and assessee has to choose either of the charitable activities or religious activities, but not both. This view was derived on the basis of the word 'or' in section 11(1)(a) disjoining charitable - religious purposes.

(2) Explanation 2 to section 13(b) which forfeits the exemption of public charitable trust, if any part of income is for the benefit of any particular religious community or caste.

According to learned Judicial Member, after 1.4.1962, "There cannot be a trust with the combination of both charitable and religious purposes. This is the view taken by the Assessing Officer while rejecting the assessee's claim". In the case of The Society of Presentation Sisters, the A.O. found that the objects and clauses (a) to (f) are charitable, but part of clause (g) in so far as it relates to construction of chapels and convents is religious in nature. The learned Judicial Member held, that the trust is partly charitable and partly religious. The learned Judicial Member noted assessee's contention that convent referred to by the AO is the residence of the members of the society and the chapel represents prayer room. According to the Judicial Member, the assessee in its letter has admitted that purpose of the society was only charitable and not combination of both religious and charitable. The reason being that after 1.4.1962, there could not be a trust both for charitable and religious purposes.

13.1 The learned Judicial Member has further stated as under for differing with the learned Accountant Member:

"The assessee submits that it is incorrect to consider the society as partly religious. I want to mention at this stage that by this letter, the assessee itself admits that the purpose is only charitable and it is not combination of both religious and charitable, the reason being that after 1.4.1962, there cannot be a trust both for charitable and religious purposes. Hence, even according to the admission of the assessee, chapel and convent come under the object of general public utility and, therefore, charitable in nature and further the assessee assets that there is no assumption of considering the assessee society as partly religious. I want to give emphasis to the letter dated 27.3.2006 by the assessee objecting to the proposal to deny the benefit of exemption u/s 11. By the said letter itself the assessee's contention is that it is only charitable and religious. But the finding of my learned Brother is that there can be combination of both religious and charitable. This I differ. After 1.4.1962, the benefit of section 11(1)(a) and (b) are not available as the assessee society was registered only on 13.1.1972. As the society was registered only on 13.1.1972, hence the benefit conferred u/s 11 is not available to a mixed trust formed after 1.4.1962 and it is not available to the assessee society. To that extent, I differ to the finding of my learned Brother."

14. The learned Judicial Member also referred to Explanation 3 to section 80G which, according to learned Judicial Member, specifically excludes the religious purpose from the sphere of charitable purpose, for the purpose of section 80G. The said Explanation, according to the learned Judicial Member takes care of mixed trust activities, which were being carried out before 1.4.1962 and for that only explanation was inserted. The learned Judicial Member further observed, "Hence on this score also, there cannot be a mixed trust after 1.4.1962." He held that decision in the case of Ghulam Mohidin

Trust was directly applicable to the facts of the case. He further observed that the word 'or' cannot be read as 'and'. He relied upon the following decisions:

State of Kerala vs. M.P. Shanti Verma Jain 231 ITR 787, 103 ITR 777, and East India Industries (Madras) Pvt. Ltd. vs. CIT 65 ITR 611

As per his proposed order, the learned Judicial Member dismissed both the appeals.

15. On account of above difference, the matter has been referred u/s 255(4) of the Income-tax Act.

16. In order to resolve above differences, the case was fixed and I have heard Smt. Lalitha Nair for Society of Presentation Sisters and Shri R. Krishna Iyer for Wayanad Muslim Orphanage. For the revenue, Shri A.K. Thattai, CIT, Sr. DR appeared and argued. Facts and circumstances of the case in the light of argument of parties have been examined. The submission of the parties were the same as were advanced before the lower authorities. There is no dispute on facts. The only controversy involved is whether assessee trusts who have been held to be partly religious and partly charitable are entitled to exemption u/s 11(1)(a). The controversy in the third question is whether construction of room, chapel and convent amounts to religious purposes or it is simply an object of general public utility. I have to dispose of the question in the light of finding recorded by the revenue authorities as also in the dissenting order of the learned Member.

17. At the very outset, I would like to reproduce relevant provisions of Section 11(1)(a) as also corresponding provisions of Section 4(3)(i) of Income Tax Act, 1922. These are as under: -

"Section 11

"Income from property held for charitable or religious purposes.-

(1) Subject to the provisions of sections 60 to 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 or set apart for application to such purposes in India to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;

(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 twenty-five per cent of the income from such property. "

Section 4(3)(i) of the I.T. Act, 1922 was as follows: -

"Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:

(i) Subject to the provisions of clause (c) of subsection (1) of section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate

to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto:

Provided that such income shall be included in the total income —

(b) in the case of income derived from business, carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either —

(i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution, or

(ii) the work in connection with the business is mainly carried on by beneficiaries of the institution.....

(iii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes."

17.1 There have been some changes in the above provisions but basic and fundamental principles as far as controversy before me is concerned remain the same without any material difference. The word "OR" has always separated religious and charitable purposes. The decisions to which I have referred have all along considered the provision relating to grant of exemption containing word "OR". Therefore, rejection of claim of the assessee on account of word "or" is unjustified.

17.2 In the case of *Fazlul Rabbi Pradhan Vs State of West Bengal AIR (1965) SC 1722*, their Lordships of Supreme Court noted the following observations with approval on 'charity' of Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax vs John Frederick Pemsel (1891) AC 531 (HL)*:-

"Charity" in its legal sense comprises four principal divisions; trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. "

(Emphasis supplied)

17.3 In the case of *Pt. Ram Chandra Shukla vs Mahadeoji Mahabiriji and Hazrat All Kanpur and Ors. (SC) AIR (1970) 450* while dealing with what is religious or charitable purpose, it has been observed that there is no line of demarcation in the Hindu system between religion and charity. Indeed, charity is regarded as part of religion. Their Lordships further observed as under:-

"As stated by the Privy Council in Vidyavaruthi vs. Balusami Ayyar (1921) (48) I.A. 302 a trust in the sense in which it is understood in English law is unknown in the Hindu system. Hindu piety found expression in gifts to idols, to religious institutions and for all purposes considered meritorious in the Hindu social and religious system. Therefore, although Courts in India have for a long time adopted the technical meaning of charitable trusts and charitable purposes which the Courts in England have placed upon the term 'charity' in the Statute of Elizabeth, and, therefore, all purposes which according to English law are charitable will be charitable under Hindu law, the Hindu concept of charity is so comprehensive that there are other purposes in addition which are recognized as charitable purposes."

17.4 The aforesaid principles have also been applied to non-Hindu trusts as is clear from the case of *Addl. CIT vs A.A. Bibjiwala Trust 100 ITR 516 (Gujarat)*. In the said case, property was settled upon Waqf by two ladies of Dawoodi Bohra community. Income was required to be used for Dawat

purpose i.e for the benefit of Dawoodi Bohra community and Mullaji Saheb apparently allowed wide discretion relating to use of funds. The Trust was held to be partly religious and partly charitable. But on above facts, it was held that exemption could not be denied. The division bench made the following specific observations:-

"Even if the trusts are partly religious and partly charitable, so long as no part of the income or corpus can be utilized for a purpose which is not either charitable or religious, there is no doubt that the exemption under section 11(1)(a) will be available to the assessee. In the instant case we find that, in spite of the apparently wide language of the clauses of the deed of trust, in fact reading the trust deed as a whole, it transpires, particularly in the light of the decision of the Bombay High Court in Advocate-General of Bombay vs. Yusufalli [1922] 24 Bom LR 1060; AIR 1921 Bom 338, 360, that the apparently wide discretion has to be exercised within the four corners of the wakf and for Dawat purposes. What are Dawat purposes, have been described by Marten J., at page 1102, in Yusufalli's case (supra) and, in our opinion, it is only within the four corners of Dawat purposes as recognized by the Dawoodi Bohra community that the Mullaji Saheb can use the corpus or the income of this fund. "

17.5 In the case of *CIT vs Barkate Saifiyah Society, 213 ITR 498 (Gujarat)*, the objects of the Trust were noted as under :-

- "(i) to help the poor and needy.*
- (ii) Medical relief.*
- (iii) Provision for education.*
- (iv) To carry out the religious activities."*

The AO denied exemption to the assessee Trust u/s 11(1) with the finding that the trustees did not carry out any religious activity and it was not provided in the Trust deed that specified portion of the income or corpus would be spent on any of the objects. It was further held that trustees were carrying on activities of charitable nature only and the assessee had wrongly labelled the Trust to be charitable and religious. On appeal, Appellate Asstt. Commissioner granted exemption to the assessee which order was confirmed on further appeal by the Appellate Tribunal. The question relating to exemption u/s 11 r/w Section 13(1)(b) was referred to the High Court. Their Lordships after considering provisions of Section 11 and 13 of the Income Tax Act, 1961, definition of charitable purposes, decision cited above including case of *ACIT vs A.A. Bibijiwala Trust 100 ITR 516*, and held as under :-

"From the aforesaid decision it can be held that if the trusts are partly religious and partly charitable, so long as no part of the income or corpus can be utilized for a purpose which is not either charitable or religious, exemption under section 11(1)(a) will be applicable to the assessee."

Thereafter, their lordships considered provisions of Section 13 as under:-

"Section 11 not to apply in certain cases.—(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

- (a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;*
- (b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income*

thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in subsection (3):

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in subsection (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company (not being a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act) are held by the trust or institution after the 30th day of November, 1983. "

It is to be stated that there is no material change in above provision of Section 13 as far as assessment years with which I am concerned in these cases. Their lordships analyzed provision of Section 13 and held that they were applicable in the following circumstances: -

"By rending the aforesaid section, it is clear that it carves out an exception to section 11 or 12 by providing that in those cases which are covered by clauses (a), (b), (c) and (d), provisions of section 11 or 12 shall not operate. Broadly speaking, it is divided into three categories and exception is carved out in case of private religious trust, charitable trust and charitable or religious trust if the conditions mentioned in clauses (a), (b), (c) and (d) are satisfied. Firstly, any part of the income from the property held under a trust for 'private religious purposes' which does not enure for the benefit of the public is not to be excluded as provided under section 11. That means, benefit of section 11 would not be given to a trust which is a private religious trust which does not enure for the benefit of the public [as per clause (5)]. Secondly, any income of a trust for charitable purposes or a charitable institution if the trust or institution is created or established for the benefit of any particular religious community or caste is not to be excluded [as per clause (b)]. This sub-clause is applicable only in those cases where the trust for charitable purposes or charitable institution is created or established after the commencement of Income-tax Act. In each case the authority is required to find out whether the trust for charitable purposes is established for the benefit of a particular religious community or caste. If it is so established, then the provisions of section 11 would not be applicable. Thirdly, clauses (c) and (d) carve out an exception in case of a trust for 'charitable or religious purposes' or a charitable or religious institution. It provides certain cases in which any income thereof enures, used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3). Clauses (c) and (d)

clearly indicate that wherever Legislature wanted to include a trust for charitable and religious purposes, it is specifically provided by using the phrase 'trust for charitable or religious purposes'. In clauses (c) and (d), the Legislature has used the phrase 'trust for charitable purposes or charitable institution' while in clause (b) the phrase used is 'charitable purposes'. Hence, it can be held that clause (b) is only applicable to a trust which is for charitable purposes or charitable institution. It does not deal with a trust for religious purposes. It only deals with a trust for charitable purposes or charitable institutions which are established for giving relief to the poor or medical relief or for education of any particular religious community or caste. Clauses (c) and (d) would be applicable to a trust which is either for charitable purposes or religious purposes or partly charitable and partly religious. Hence it can be stated that if a charitable trust is established only for the benefit of any particular religious community or caste, then provisions of section 11 would not be applicable. But in the case of a trust or an institution for religious purposes wherein certain activities can be termed as charitable activities for the benefit of any particular religious community or caste, clause (b) would not be applicable."

18. In the case of *CIT vs. Social Service Centre* 250 ITR 39, the A.O. had found that the trust was mainly engaged in religious activities namely donation to church or construction of a church and exemption was denied because the expenditure was incurred for donation to a diocese and for construction of a church. The Tribunal reversed the order of the Assessing Officer.

19. On further appeal, their Lordship of Andhra Pradesh High Court observed as under:

"2. Now the only question is whether an institution which has been given exemption as a charitable institution can claim exemption for the activities which have been termed as religious by the revenue. The dispute is with regard to the following entries :

'Construction of Church - Rs. 40,000

Donation to Diocese of Srikakulam - Rs. 1,00,29,820"

It is not in dispute that the institution is given an exemption as a charitable institution. The assessment year in this case is 1995-96. Therefore, we have to take into consideration the definition as it exists today. In section 2(15), 'charitable purpose' is defined as:

"(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility;"

We do not find that donation to a church or construction of a church is not a purpose which is not of general public utility. Therefore, the contention of the department that expenditure on religious activities could not be given exemption cannot be accepted, particularly in the context of our polity. We are aware that most of the religious and charitable activities go together in this country.

3. Secondly, if we look at section 11 which is reproduced below, it becomes clear that it is not necessary that an institution which is dealing in charitable and religious activities should get a notification issued for both the purposes because the words used are 'charitable or religious'.

"Income from property held for charitable or religious purposes.—(1) Subject to the provisions of sections 60 to 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 or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property; "

Once an exemption is granted for charitable activities, the religious activities are also included. Two judgments of the Supreme Court, although they were pronounced before the announcement of the definition of 'charitable purpose' are still relevant. The Supreme Court held that, if the primary or dominant purpose of institution was charitable, any other object which by itself might not be charitable but was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. This principle had been laid down by the Supreme Court in CIT vs. Andhra Chamber of Commerce AIR 1965 SC 1281, then it was reiterated in CIT vs. Bar Council of Maharashtra AIR 1981 SC 1462. Considering these judgments, we are of the view that the Tribunal was right. Therefore, this appeal is dismissed"

It is clear from plethora of authorities where after considering provisions of section 11(1)(a) that so far as aforesaid provision is concerned, no distinction is made between charitable and religious purposes. A charitable institution can have religious purposes; whereas a religious institution may be partly charitable. Most of the decisions were given under 1961 Act. Even where decision was on consideration of 1922 Act, there is no material difference as is demonstrated in the above discussion. Their Lordship of Supreme Court have held, as noted earlier, that charitable and religious purpose overlaps in India, Even otherwise relief and help to the poor, medical help to the needy, looking after of deity and temples (mosque, church included) are no doubt religious purposes but these are also considered as charitable in India. Therefore, the view taken in the two cases before me that exemption u/s 11(1)(a) cannot be allowed to a charitable trust as it is also carrying some purposes which are termed as '*religious*' is totally unwarranted. Above view is totally contrary to well established and settled law in India, as laid down by their Lordship of Supreme Court.

20. Although there is no distinction between religious or charitable institution as for as section 11(1)(a) is concerned, such distinction is recognised u/s 13 which is an exception to section 11 and 12 of the Act. Cases which are covered under clauses (a), (b), (c) and (d) of Section 13 would not be entitled to exemption u/s 11 or 12 of the Income-tax Act. Clause (a) of above section relates to income from property under a trust for private religious purposes which does not enure for the benefit of the public. Clause (b) deal with cases of charitable institution created or established after the commencement of the Act. It is required to be seen whether such charitable trust or institution is established for the benefit of a particular religious community or caste. If it is so established, then provisions of section 11 will not be attracted. But for application of above clause, it is to be shown that income of the trust enures and used or applied directly or indirectly for the benefit of the persons referred to in sub-section (3). Clauses (c) and (d) are applicable to both type of trusts i.e. trust for charitable or religious purposes, unlike in clauses (a) and (b) which were applicable to private religious trust or to charitable trust. The Legislature has specifically used in clause (c) the words "trust for charitable or religious purposes". Clauses (c) and (d) would be applicable to trust which is either for charitable purposes or for religious purposes or partly charitable and partly religious. In other words, if such trust is established only for the benefit of a particular religious community or caste, then the provision of section 11 would not be applicable. But the position would be different and in case of a trust or institution for religious purposes, wherein certain activities termed as charitable activities are also carried for the benefit of a religious community or caste, clause (b) would have no application in such a case.

21. In these cases, the revenue authorities did not make out any case u/s 13(1)(b) or any other clause of the section. There is no finding that trusts in question are charitable institutions created or established for the benefit of any particular religious community or caste. As already submitted, provision of clause (b) of section 13(1) is applicable only to a charitable institution and not to any institution which is created both for charitable and religious purposes. There is no elaboration as to how any particular religious community or caste is to be benefited from the trust in question. No violation of provision of section 13 of the Act has been stated or established. The finding or basis for denial of exemption u/s 11(1)(a) is that trusts are partly religious and partly charitable, whereas exemption is permissible to wholly charitable or wholly religious trusts. Such basis is not legally tenable.

22. In the case of The Society of Presentation Sisters, the Assessing Officer noted expenses under the following four heads:

1. Chapel running expenses
2. Chapel articles
3. Religious books, and
4. Religious functions

According to the AO above objects were religious. After considering objects of the trust, he observed that objects (a) to (h) are charitable. Out of these, object (g) is noted as under:

"(g) To effect hospitals, infirmaries, dispensaries, chapels, convents, bungalows, schools, hospitals, orphanages, homes for the aged."

According to the A.O, erection of chapels and convents were religious in nature. Accordingly purpose of the trust was held to be partly religious and partly charitable and exemption denied to the assessee. It is difficult to appreciate or agree with aforesaid conclusion. How erection of chapels and convents can be treated purely religious in nature and not charitable. No relevant facts have been brought on record to make out a case justifying denial of exemption u/s 11(1)(a). There is no finding that chapels and convents are to serve a particular community and the purpose would be hit by provisions of section 13(1)(b). Besides as already recorded a religious purpose can be a charitable purpose and vice versa in India. Therefore, exemption could not be denied to a trust which is partly charitable and partly religious, in the light of above discussion.

23. In the other case of Wayanad Muslim Orphanage Committee, the Assessing Officer concluded that maintenance of Mosque and Madrassas were religious activities which contravene provisions of section 11(1)(a). The purposes of the trust were held to be partly charitable and partly religious. Therefore, exemption was denied to the assessee.

24. In my humble opinion, no case for denial of exemption or for application of provisions of section 13 has been made out as discussed above. Maintenance of mosque and church must be treated as charitable purpose. Even if they are treated as religious, there is no justification for denying exemption to the assessee in the light of above discussion. It is nobody's case that purposes are partly charitable and partly non charitable and, therefore, exemption u/s 11(1)(a) is not available as trusts were created after 1.4.1962.

25. I may now refer to the proposed order of the learned Judicial Member. The learned Accountant Member has specifically held that issue before them is fully covered by decision of Cochin Bench (a coordinate bench) in the case of Calicut Islamic Cultural Society, Kozhikode and that judicial propriety

demanded that a Bench of the Tribunal must follow the judgment of a coordinate bench. The proposition stated by learned Accountant Member is well settled by several decisions of Supreme Court, to which President, ITAT has been drawing attention of the learned Members of the Tribunal by issuing circulars. The learned Accountant Member, all the same, again referred to decision of Supreme Court in the case of *UOI vs. Raghbir Singh (Deed.) 178 ITR 548*, in support of the proposition. The learned Judicial Member, however, has not said anything on above, except that he differs from the view taken by the learned Accountant Member who has relied upon decision of already existing Cochin Tribunal in the case of Calicut Islamic Cultural Society. He has not said anything as to the propriety of not following the decision of a coordinate bench. Nor the learned Judicial Member has stated that it is a fit case to review the decision of coordinate bench, by referring the matter to a larger bench. No value has been attached to settled law or even to directions of Supreme Court issued from time to time debarring the benches from taking a different view on identical facts, without referring to a larger bench.

25.1 The Hon'ble Delhi High Court, in a recent decision in the case of *M/s Thironi Chemicals Ltd. Vs. DCIT (Case ITA No. 417/Del/2004)* delivered on 23.1.2009 has observed as under:

"It may be mentioned that in DLF Universal Ltd. Vs. CIT, ITA No.854/2007 decided on 11th January, 2008 = (2008-TIOL-50-HC-DEL-IT), it has been held by this Court that a coordinate Bench of the Tribunal cannot take a view contrary to a view expressed by an earlier Bench and it is bound by the decision of the coordinate Bench rendered earlier. In case the later Bench differs from the earlier decision, the only course open to it is to refer the matter to a larger Bench. In this regard, reliance was placed on Sundarjas Kanyalal Bhatija & Ors. Vs. Collector, Thane, (1989) 3 SCC 396, Mahadeolal Kanodia vs. Administrator General of West Bengal, AIR 1965 SC 1767. The matter, therefore, is no longer res integra."

26. With utmost respect to the Judicial Member, I have to hold that on facts, Judicial Member was not justified in taking a different view than one taken in Calicut Islamic Cultural Society, Kozhikode. He was at liberty to make out a case for review of the aforesaid decision and for reference and consideration of the issue by a larger bench of the Tribunal. This course the Id. J.M. has not followed. I can only say that disregarding of the directions of Hon'ble Supreme Court is not only illegal, but is destructive of the reputation of the Institution. I, therefore, disagree with the learned Judicial Member on this aspect of the issue.

26.1 The other reason given by learned Judicial Member is that two trusts in question are partly charitable or religious trusts established after 1.4.1962. Therefore, on account of language of the statute in section 11, there is prohibition from income derived from property held for charitable or religious purposes. According to him, income under both charitable and religious purposes cannot be combined together and the assessee has to choose either of the charitable activities or religious activities, but not both. I had to state that in my humble opinion, there is no statutory provision to support proposition of law, stated by the learned Judicial Member. The learned Judicial Member, Like the revenue authorities, misconstrued the legal implication of the word "or" in section 11(1)(a).

26.2 The learned Judicial Member further referred to provisions of section 13(b) to hold that exemption of a public charitable trust is forfeited if any part of the income is for the benefit of any particular religious community or caste; scheduled castes, backward classes, scheduled tribes or women being exception. What learned Judicial Member had stated is the language of part of section 13. However, no facts are stated, no case is made out, how provisions of section 13(b) are applicable in this case. At any rate, I have elaborately discussed above that provision of section 13 has no application in this case

and a trust which is partly religious and partly charitable, is entitled to exemption u/s 11(1)(a) of the Income-tax Act.

26.3 The learned Judicial Member, thereafter laid great emphasis on letter of the assessee dated 27.3.2006 wherein contention raised was that assessee's trust was a charitable but subsequently learned Accountant Member has held it to be partly charitable and partly religious. I am of view that no adverse inference can be drawn from what is stated by the assessee in letter dated 27.3.2006 wherein assessee claimed that its trust is wholly charitable. In my considered opinion, facts and circumstances of the case are required to be considered in the light of statutory provisions to decide the case. On consideration of the relevant facts, in my view the assessee is entitled to exemption u/s 11(1)(a) of the Income-tax Act. No case has been made out to apply any clause of section 13 of the Income-tax Act.

26.4 The learned Judicial Member has also relied upon decisions Hon'ble Supreme Court in the cases of:

- 1) *State of Kerala vs. M.P. Shanti Verma Jain 231 ITR 787,*
- 2) *Yogiraj Charity Trust vs. CIT 103 ITR 777,* and
- 3) *East India Industries (Madras) Pvt. Ltd. Vs. CIT 65 ITR 611.*

In the case of *East India Industries (Madras) Pvt. Ltd. Vs. CIT 65 ITR 611*, the object of the trust for both charitable and religious as well as non charitable object trusted as absolute discretion to apply funds of the trust to any of the object. In above circumstances, exemption was denied to the trust u/s 4(3) of Income-tax Act. The ruling does not lay down the proposition that exemption can be denied if objects of the trust are partly charitable and partly religious. The case also emphasises the distinction between charitable and non charitable purposes and not between charitable and religious purposes. The ruling has no application to the case.

26.5 The case of *State of Kerala vs. M.P. Shanti Verma Jain 231 ITR 787*, relates to a trust which was both religious and charitable and was further held to be a private family trust. Their Lordship of Supreme Court held that the Tribunal was right in its conclusion that the dominant purpose of the Trust was propagation of Jain religion and to serve its followers and any part of agricultural income of the trust spent in the State of Kerala also could not be treated as an allowable item of expenses. The Trust was held to be not entitled to exemption.

26.6 It is, therefore, clear that exemption has not been denied because the trust was partly religious and partly charitable. It was denied because it was to serve Jain religion and its followers. Further the case is based on interpretation of provision of Kerala Agricultural Income-tax Act and not on consideration of provision of Income-tax Act, 1961. The decision does not advance the case of the Revenue.

26.7 In the case of *Yogiraj Charity Trust vs. CIT 103 ITR 777*, primary or dominant purpose of the Trust was found to be charitable whereas ancillary and incidental object non charitable. The Trust was held to have purposes both charitable and non-charitable. Their Lordship held as under:

"The question is whether exemption can be granted where some objects are charitable and some non-charitable. Where there are several objects of a trust, some of which are charitable and some non-charitable, and the trustees in their discretion are to apply the income to any of the objects, the whole trust fails and no part of the income is exempt from tax. Where the objects are distributive, each and every one of the objects must be charitable in order that the trust might be upheld as a valid charity. If no definite part of the

property or its income is allocated to charitable purposes and it would be open to the trustees to apply the whole income to any of the non-charitable objects, no exemption can be claimed. (See *East India Industries (Madras) Pvt. Ltd. v. Commissioner of Income-tax* [1967] 65 ITR 611 (SC) and *Mohammad-Ibrahim Riza Malak vs. Commissioner of Income-tax* AIR 1930 PC 226).

x x xx xxx x

In Radhaswami Satsang Sabha (1954) 25 ITR 472, several industrial and commercial concerns were started for the benefit of the Satsanghis. Those were not run for individual profits nor were the profits distributed among the members. The concerns were started in furtherance of its objects of religious and charitable nature."

The Court ultimately laid down the test to be applied and held as follows:

"The test is that if one of the objects of the trust deed is not of a religious or charitable nature and the trust deed confers full discretion on the trustees to spend the trust funds for an object other than of a religious or charitable nature, the exemption under section 4(3)(i) of the Act is not available to the assessee (See Lakshmi Narain Lath Trust vs. CIT (1969) 73 ITR 402 (Raj.)"

26.8 Its quite evident from above that the decision, instead of supporting the revenue, is supporting the case of the assessee. The decision has clearly laid down that it is to be seen whether any object of the trust is "non charitable" or "non religious" and not partly religious and partly charitable to deny exemption. It is nobody's case that any object of the two trusts before me has any non charitable object. A religious object cannot be equated with a non charitable object. Exemption can be denied in case of a trust if object of the trust is non religious or non charitable and this has been further emphasized in the following observations: -

"The decisions in Commissioner of Income-tax vs. Bengal Home Industries Association [1963] 48 ITR 181 (Cal), Hyderabad Stock Exchange Ltd. vs. Commissioner of Income-tax [1967] 66 ITR 195 (AP), Commissioner of Income-tax vs. Radhaswami Satsang Sabha [1954] 25 ITR 472 (All) on which the appellant relied are all applications of the ruling in All India Spinners' Association case (Supra) that what has to be found out is whether the object clause has any non-charitable object. In Bengal Home Industries case (Supra), the object was to promote and develop home industries, arts and crafts. The income of the Association was to be applied solely towards the promotion of and carrying out of its objects. No portion of the income could be paid or transferred directly or indirectly by way of dividends to the members. In the case of winding up the surplus could not be distributed to the members but were to be transferred to the institution."

(Emphasis supplied)

27. Lastly, it is necessary to consider decision of Hon'ble J & K High Court in the case of *Ghulam Mohidin Trust vs. CIT* 248 ITR 587. In the said case, as is clear from the facts shown in the report that ITO held that trust was not a charitable trust and it was hit by provisions of section 13(1)(b) of the Act. The income of the Trust was not to be applied for charitable purposes but for construction of building for commercial purposes which was not one of the objects of the trust. On appeal, AAC found the trust to be partly charitable and partly religious in nature. He directed to bifurcate the income and allow exemption in respect of that part of income which was applied for charitable purposes. On further appeal, the Tribunal held that assessee trust was not entitled to exemption. Reference u/s 256(1) was taken to the Hon'ble High Court. Their Lordship noted clause 13 and 14 of the Trust Deed, in the light of provisions of section 13 and decision of Supreme Court in the case of *State of*

Kerala vs. M.P. Shanti Verma Jain 231 ITR 787 and recorded as under, for denying exemption to the Trust:

"8. The ratio of the above decision squarely applies to the facts of the present case. In this case also the objects of the assessee-trust contained in clauses 13 and 14 of the Instrument of Trust clearly show that the dominant purpose of the trust is promotion of Muslim theology among Muslim intelligentsia. Another object is promotion of science and technology but that too among the Muslim intelligentsia. Similarly, in clause 14 of the Instrument of Trust which confers powers on the trustees to give financial assistance by way of ex gratia grants or loans on easy terms to scholars of educational institutions to enable them to prosecute their further studies and research in science and technology, it is specifically provided that the selection for such grants has to be confined to Muslims only. The trustees, however, have been given a discretion to extend this benefit to such other communities as in their opinion are backward in this regard. It is obvious that the author of the trust felt, as indicated in clause 14 of the Instrument of Trust that the Muslims of the State and some other sections of the population had lagged behind in this particular branch of learning and it was to improve that situation that power was conferred on the trustees to grant financial assistance by way of ex gratia grants, etc., to scholars to enable them to prosecute their further studies. This assistance too, as indicated above, is intended to promote science and technology and Muslim theology among the Muslim intelligentsia, which is the main and dominant object of the trust. In such a situation, section 13(1)(b) of the Act is attracted and the assessee-trust is not entitled to exemption in respect of its income under section 11 of the Act. Clause (a) of section 13(1) of the Act will also be attracted in this case because the income has been derived by the assessee from property held under trust, which does not enure for the benefit of the public.

On facts of the case, it was held to be hit by provisions of section 13(1)(b). The case related to a private trust with object to serve a particular community. The decision was given on the facts of the case. Admittedly, the two trusts before me are public charitable trusts pre-dominantly and there is no finding that any object of the trust is to serve any particular community. Construction of chapel churches or maintenance and construction of mosque and madrassas are all public charitable purposes. The decision, in my view, has no application to the facts of the case. Even if it be accepted that above decision is applicable, then the said decision is not the only decision governing the field. There are other decisions of Gujarat High Court and Andhra Pradesh High Court in favour of the assessee. It is settled law that if two reasonable views of the matter are possible, then one has to follow the view in favour of the assessee. At any rate, in the light of detailed discussion, I am inclined to hold that both assessees are entitled to exemption u/s 11(1)(a) of the I.T. Act. For all the above reasons, I agree with the view taken by the learned Accountant Member.

28. The case may now be put up before the regular Bench for disposal of appeals in accordance with law.

(Vimal Gandhi) President

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**ITA No.457(Coch)/2007
Assessment Year : 2003-04**

**THE SOCIETY OF PRESENTATION SISTERS
CALICUT
PAN NO: AAAAS3077L**

Vs

**THE INCOME TAX OFFICER
WARD-1(2), CALICUT**

AND

**ITA No. 128(Coch)/2007
Assessment Year : 2003-04**

**WAYANAD MUSLIM ORPHANAGE
KALPATTA, CALICUT
PAN NO: AAATW0193L**

Vs

**THE INCOME TAX OFFICER
WARD-1(4), CALICUT**

Dr. O K Narayanan, AM And N Vijayakumaran, JM

Dated: December 24, 2008

Appellant Rep by: Dr P Daniel, Adv.

Respondent Rep by: Shri G Vijayan Nair, DR

REFERENCE UNDER SECTION 255(4) OF THE I.T. ACT, 1961

As there is a difference of opinion between the Members who heard the appeals, the following questions are referred to the Hon'ble President, Income Tax Appellate Tribunal: -

- 1. "Whether the assesseees who are carrying on charitable and religious activities, entitled for the benefits of section 11 for the assessment year 2003-04 in respect of income derived from property held under Trust wholly for charitable and religious purposes in the light of the expression provided by the Act in section 11(1)(a) as "income derived from property held under Trust wholly for charitable or religious purposes....."*
- 2. "Whether, after 1.4.1962, can there be a mixed Trust?"*
- 3. "Whether, the construction of dome, chapel or convent, etc. amounts to religious purpose or it is simply an object of general public utility?"*

(N Vijayakumaran), JM

(Dr. O K Narayanan) AM

Per : N Vijayakumaran:

I have gone through the proposed order of my learned Brother and I find that the reasoning given by him is not found convincing whereby my learned Brother allowed both the appeals of the assesseees.

2. These two appeals are filed by two different assesseees who are claiming the benefit of section 11 of the Income-tax Act, 1961. The common asst. year is 2003-04. These appeals are directed against the orders of the Commissioner of Income-tax(Appeals)-I, Calicut dated 21.2.2007 and 20.11.2006 respectively. The issue being common, both the appeals were heard together and disposed of by my learned Brother through a common order.

3. The first reason of my dissent is that section 11 of the Act is not for the benefit of an assessee whose object is partly charitable or religious trust created or established after 1.4.1962. It is an admitted fact that both the assessee trusts before us were created only after 1.4.1962. If that being the factual finding admitted by the parties, after 1.4.1962, the language of the statute in section 11 prohibits income derived from property held for charitable or religious purpose. In other words, the income under both charitable and religious purpose cannot be combined together and assessee has to choose either of the charitable activities or religious activities, but not both. The word "or" according to my view, permits the assessee to choose any of the one activity and it cannot be a combination of both after 1.4.1962. Explanation 2 to section 13(b) which forfeits the exemption of the public charitable trust if any part of the income is for the benefit of any particular religious community or caste, of course with the exception to scheduled castes, backward classes, scheduled tribes or women. As per section 11, after 1.4.1962, the trust cannot be both for charitable or religious. Section 11(1)(a) clearly prohibits both purposes. For the purpose of appreciation, section 11(1)(a) is reproduced hereunder: -

"11(1) Subject to the provisions of sections 60 to 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 or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of Fifteen per cent of the income from such property;"

4. Section 11(1)(a) clearly postulates the condition of income derived from property held under trust wholly for charitable or religious purpose. It is not the combination of both purposes. Therefore, after 1.4.1962, there cannot be a trust with the combination of both charitable and religious purposes. This is the view taken by the Assessing Officer while rejecting the assessee's claim. While perusing the assessment order in the case of The Society of Presentation Sisters for this asst. year 2003-04 which is dated 27.3.2006, it is seen that the assessee filed the return of income on 29.12.2003 admitting Nil income. This return was accompanied by audit report. Permission was sought for to set apart assessee's income i.e. to accumulate sufficient funds to carry out the purpose. While framing the assessment u/s.143(3) i.e. regular assessment, the Assessing Officer found that the objects in clauses (a) to (f) are charitable in the case of the assessee. But part of clause (g) in so far as it relates to construction of chapels and convents is religious in nature. It is, therefore, evidenced that the trust is partly charitable and partly religious. The AO further found that exemption u/s.11(1)(a) is available only if the trust is wholly charitable or religious in nature, However, the assessee replied that the convent referred to by the AO is the residence of the members of the society and the chapel represents prayer room. It has been held by various courts according to assessee's letter that the chapel comes under the object of general public utility and therefore, charitable in nature. Therefore, the assessee submits that it is incorrect to consider the society as partly religious. I want to mention at this stage that by this letter, the assessee itself admits that the purpose is only charitable and it is not combination of both religious and charitable, the reason being that after 1.4.1962 there cannot be a trust both for charitable and religious purposes. Hence, even according to the admission of the assessee, chapel and convent come under the object of general public utility and therefore, charitable in nature and further the assessee asserts that there is no assumption of considering the assessee society as partly religious. I want to give emphasis to the letter dated 27.3.2006 by the assessee objecting to the proposal to deny the benefit of exemption u/s. 11. By the said letter itself, the assessee's contention is that it is only charitable and religious. But the finding of my learned Brother is that

there can be combination of both religious and charitable. This I differ. After 1.4.1962, the benefit of section 11 (1)(a) and (b) are not available as the assessee society was registered only on 13.1.1972. As the society was registered only on 13.1.1972, hence the benefit conferred u/s.11 is not available to a mixed trust formed after 1.4.1962 and it is not available to the assessee society. To that extent, I differ to the finding of my learned Brother A.M.

5. Further, coming to Explanation 3 to section 80G, the said Explanation specifically excludes religious purpose from the sphere of charitable purpose for the purpose of section 80G. A moot point may be put, then what is the purpose of Explanation 3 to section 80G. Explanation 3 takes care of the mixed trust activities which were being carried out before 1.4.1962 and for that only Explanation is inserted. Hence, on this score also, there cannot be a mixed trust after 1.4.1962. The decision of the Hon'ble Jammu and Kashmir High Court in the case of *Ghulam Mohidin Trust Vs. CIT 248 ITR 587* is directly applicable wherein. Their Lordships have relied on the decision of the Hon'ble Supreme Court in the case of *State of Kerala Vs. M.P. Shanti Verma Jain (1998) 231 ITR 787 (SC)* and *Yogiraj Charity Trust Vs. CIT (1976) 103 ITR 777 (SC)* and *East India Industries (Madras) P. Ltd. (1967) 65 ITR 611 (SC)*. Respectfully following the above decision, I humbly differ with my learned Brother that in the cases of both assessees the assessees are not entitle to claim the benefit u/s.11. The word "or" cannot be read as "and". Hence, on that score also, I differ with the findings of my esteemed Brother. The decision of the Hon'ble Jammu and Kashmir High Court in the case of *Ghulam Mohidin Trust (supra)* has not been properly considered by my learned Brother particularly with reference to section 11 exemption. Further, before us as observed by my learned Brother, the Revenue has relied on the decision in the case of *R. Kanakasabai 89 ITR 251 (SC)* and others as mentioned in paragraph 8 on page 4. Hence, I differ from the findings of my learned Brother who has also relied on the decision of the already existing Cochin Tribunal decision in the case of *Calicut Islamic Cultural Society, Kozhikode in ITA No.729(Coch)/2006* and another dated 31st July, 2008. Under the above circumstances, I beg to differ from the view taken by my learned Brother and I am of the view that both appeals of the assessees are to be dismissed and the orders of the authorities below are to be confirmed.

6. In the result, both the appeals are dismissed.

Dated : 22.10.2008
(N Vijayakumaran), JM

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**ITA No. 457/Coch/2007
Assessment Year : 2003-04**

**THE SOCIETY OF PRESENTATION SISTERS
CALICUT
PAN NO: AAAAS3077L**

Vs

**THE INCOME-TAX OFFICER
WARD-1(2), CALICUT**

Appellant Rep by: Dr P Daniel, Adv.
Respondent Rep by: Shri G Vijayan Nair, DR

AND

**ITA No.128/Coch/2007
Assessment Year : 2003-04**

**WAYANAD MUSLIM ORPHANAGE
KALPATTA, CALICUT
PAN NO: AAATW0193L**

Vs

**THE INCOME-TAX OFFICER
WARD-1(4), CALICUT**

Dr. O K Narayanan And N Vijayakumaran

Dated: August, 2008

**Appellant Rep by: Shri R Krishna Iyer, CA
Respondent Rep by: Shri G Vijayan Nair, DR**

ORDER

Per : O K Narayanan:

These are two appeals filed by the assesseees who are claiming the benefits under section 11 of the Income-tax Act, 1961. The common assessment year is 2003-04. These appeals are directed against the orders of the CIT(Appeals)-I, Calicut, dated 21.2.2007 and 20.11.2006 respectively. Both the appeals arise out of the assessment orders passed u/s.143(3) of the Act.

2. Even though these appeals are filed for two different assesseees, the issue raised in both the appeals is common. Therefore, these two appeals are heard together and disposed off through this common order.

3. In both these cases, the Assessing Officer has denied the benefits provided u/s.11 to the assesseees on the ground that the assesseees are societies/trusts established for carrying on activities of charitable as well as religious purposes. According to the Assessing Officer, the law of section 11 does not allow the assesseees to carry on both the charitable and religious purposes simultaneously. According to the Assessing Officer, an assessee may be entitled for the benefits of section 11 if it is carrying on activities relating to charitable purposes or else it is carrying on the activities relating to the religious purposes. But if the assessee is carrying on activities of charitable as well as religious purposes, then according to the assessing authority an assessee is not entitled for the benefits provided under section 11 of the Act.

4. The basis relied on by the assessing authority for the above proposition is the language of the statute provided in section 11. The Assessing Officer gives stress to the proposition 'or'. According to the assessing authority income u/s.11 shall not be included in the total income of the previous year of an assessee if the income is derived from property held for charitable or religious purposes. According to the assessing authority charitable or religious purposes permits an assessee to choose either of the charitable activities or religious activities, but not both. If the intention of the Legislature was to permit an assessee to enjoy the benefits of section 11 in respect of the activities carried on relating to both charitable as well as religious purposes, the construction of the statute would have been "charitable and religious purposes". So according to the assessing authority the expression 'or' is not used in the statute to treat charitable and religious activities as conjunct. But on the other hand the "expression" used is "charitable or religious purposes" which prominently conveys the intention of the statute that joining or mixing

up of the objectives will act as an embargo against the assessee for claiming the benefits of section 11.

5. We have heard Dr. P. Daniel, learned Counsel and Shri R. Krishna Iyer, learned C.A. appearing for the assesseees. They have principally relied on a recent order passed by Income-tax Appellate Tribunal, Cochin bench in *ITA Nos. 729/Coch/2006 & 641/Coch/2006 dated 31.07.2008* where the Tribunal has held that institutions pursuing charitable as well religious objectives are entitled for the benefits of section 11 and the expression "charitable or religious purposes does not dis-entitle an institution carrying on both the activities from availing benefits of section 11. Reliance has also been placed on a judgment of the Andhra Pradesh High Court in the case of *CIT vs. Social Service Centre - 250 ITR 39 (AP)*, where the Court has held that charitable activities also include religious activities and therefore either of the activities cannot be excluded for the purpose of granting benefits u/s.11.

6. The Revenue, on the other hand, mainly relied on the judgment of Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT - 248 ITR 587* where the Court has held that where the objects are distributive and in that way both religious as well as charitable, then the institution is not entitled for exemption u/s.11.

7. The Revenue has further contended that in order to make a claim for exemption u/s. 11, the property from which the income is derived should be held under trust or other legal obligations and the property should be so held for charitable or religious purposes which ensure for the benefit of the public and no part of the income or property of the trust should be used or applied directly or indirectly for the benefit of the settler or other specified persons, except to the extent permitted in the case of trusts constituted prior to 1st day of April 1962. In the case of charitable trusts created on or after the 1st day of April 1962, the further conditions are that the trust should not be created for the benefit of any particular religious community or cast and no part of the income should ensure directly or indirectly for the benefit of the settler or other specified persons. It is the case of the Revenue that the reading "or" as "and" is not to be resorted unless some other part of the same statute or the clear intention of it required that to be done. If the clause charitable or religious purposes in section 11(1)(a) is read as charitable and religious purposes, then purely charitable and purely religious Trust will not become eligible for exemption u/s.11(1)(a) which is not the intention of the legislature. In the case of the trust where the property is held partly for charitable purposes and partly for religious purposes, to get exemption the trust should have been created before 1st day of April 1962 as provided in section 11(1)(b).

8. The Revenue has relied on the decision of *CED vs. R. Kanakasabai (1973) 89 ITR 251 (SC)* and *Smt. Tarulata Shyam vs. CIT (1977) 108 ITR 345 (SC)* to impress upon the point that it is impermissible for the Court to read into a taxing provision any words which are not there or exclude words which are there. They have further relied on the judgment of the Supreme Court in the cases of *Dadi Jagannadham vs. Jammulu Ramulu, AIR 2001 SC 2699* and *Grasim Industries Ltd. vs. Collector of Customs (2002) 4 SCC 297 = (2005-TIOL-69-SC-CX-LB)* where proposition has been laid down by the Supreme Court that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. On the matter of interpretation of the relevant text of the law containing section 11, the Revenue has further relied on the judgment of the Supreme Court in the case of *CBDT vs. Aditya V. Birla (1988) 170 ITR 137; CIT vs. Ajax Products Ltd. (1965) 55 ITR 741 = (2002-TIOL-132-SC-IT)* and *Prashar vs. Vasantsen Dwarkadas (1963) 49 ITR 1; CIT vs. Indian Bank Ltd. (1965) 56 ITR 77; CED vs. Alladi Kuppaswamy (1977) 108 ITR 439; Associated Banking Corporation, of India Ltd, vs. CIT (1965) 56 ITR 1 and CIT vs. N.C. Budharaja & Co. (1993) 204 ITR 412 = (2002-TIOL-632-SC-IT)*.

9. In reply to the arguments of the Revenue, the learned counsel appearing for the assessee argued that the judgment of the Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT-248 ITR 587* does not apply to the present cases as the issue considered by the Hon'ble High Court in that case was the implications of section 13(1)(b) in granting exemption u/s.11. In that case the Court was mainly examining whether the assessee therein was carrying on charitable activities or non-charitable activities. Rather than a distinction between charitable activities and religious activities, the Court was primarily examining whether the activities were non-charitable also so that the objects of the assessee left to the discretion of the trustees would defeat the very purposes for which exemption has granted u/s.11. It is in that context the Court examined if the assessee was carrying on religious activities whether it was meant for a particular community or cast, so that the assessee is not entitled for the exemption u/s.11. The Court did not examine the law relating to exemption u/s.11 as such and has not held in that judgment that an assessee should not be entitled for the exemption only for the reason that the assessee is carrying on charitable as well as religious activities.

10. The learned counsel for the assessee further submitted that all these legal and judicial expositions have been considered by the very same Tribunal in the case of Calicut Islamic Cultural Society, Kozhikode, mentioned supra and the rule of precedence and judicial propriety demand that the Tribunal is bound by the judgment of a co-ordinate Bench and accordingly the above order of the co-ordinate Bench must be followed in deciding these matters. The learned counsel further argued that even if for the sake of argument it is accepted for a moment that the judgment of Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT -248 ITR 587* is to be considered being the judgment of a constitutional Court, then the latest judgment of a High Court must be preferred and if so the judgment of Andhra Pradesh High Court in the case of *CIT vs. Social Services Centre - 250 ITR 39* is rendered in favour of the assessee. The learned counsel pointed out that the judgment of the Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT - 248 ITR 587* was delivered on 17.11.2000 whereas the judgment of the Andhra Pradesh High Court in the case of *Social Service Centre* was delivered thereafter on 09.02.2001 and according to the rule of precedence the latest judgment of a High Court must be followed if the judgment of the jurisdictional High Court is not available.

11. We have heard both sides in detail and considered the matter. As rightly argued by the learned counsel appearing for the assessees, the issue has been recently decided by Income-tax Appellate Tribunal, Cochin Bench, in the case of Calicut Islamic Cultural Society, Kozhikode, through their order dated 31st July, 2008 wherein they have held that section 11(1)(a) does not preclude an assessee from carrying on charitable as well as religious activities for the purpose of claiming the benefits of section 11. Judicial propriety demands that a Bench of the Tribunal must follow the judgment of a Co-ordinate Bench. The Hon'ble Supreme Court has upheld the above rule of precedence in the case of *Union of India vs. Raghbir Singh (Decd.) -178 ITR 548*. The Supreme Court has held in the said case that the Appellate Tribunal should follow its own decision and should not differ from its earlier view simply because a contrary view is possible. Therefore, we have to state that as far as the issue raised in these appeals is concerned, we have to follow the judgment of the co-ordinate Bench in the case of Calicut Islamic Cultural Society, Kozhikode.

12. There is no decision of the jurisdictional High Court on this point. There is no judgment of the Supreme Court as well. Now the question is whether any other High Court has deliberated upon this issue so that we may prefer that judgment of that High Court to the judgment of the co-ordinate Bench of the Tribunal. If the judgment of the jurisdictional High Court is not available on a subject, the judgment of another High Court is to be followed by the Appellate Tribunal as a matter of judicial propriety and discipline. In such a situation

also if there are judgments of more than one High Court, the latest judgment of the High Court should be followed. In that case, the judgment of the Andhra Pradesh High Court in the case of *Social Service Centre - 250 ITR 39* delivered on 09.02.2001 is the decision later than the judgment of the Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT -248 ITR 587*. The Andhra Pradesh High Court in the case of *Social Service Centre* has delivered the judgment accepting the contentions of the assessee and that being the latter judgment, we have to follow that. Therefore, even before contributing our mites to the merit of the issue we have to state that we have to follow the judgment of the co-ordinate Bench in the case of *Calicut Islamic Cultural Society, Kozhikode* and if we follow the judgment of another High Court, then to follow the judgment of the Andhra Pradesh High Court in the case of *Social Service Centre - 250 ITR 39* where the decision was rendered in favour of the assessee. Therefore, on the out set itself we hold that the appeals of the assessee are to be allowed as the issues have been settled by the decision of the co-ordinate Bench and by the judgment of another High Court.

13. Now coming to the merit of the case, we find that the only weapon in the armory of the Revenue to hold against the contention of the assessee is the judgment of the Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT -248 ITR 587*. The general proposition of law laid down by the Hon'ble High Court in the said case is that where the objects of a trust are distributive, each one of the objects must be charitable in order that the trust must be upheld as a valid charity. If it is a trust created exclusively for the benefit of a particular religious community, then the trust is not entitled for exemption. The Court was more concerned about the implication of section 13(1)(b). In fact the Court has not considered the implication of section 11(1)(a) in the context of the expression of the legislative intention "charitable and religious purposes". Therefore, we have no hesitation to hold that the judgment of the Jammu & Kashmir High Court does not apply to the present case at all.

14. Section 11(1)(a) provides that income of a person shall not be included in the total income if it is 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. The law permits an assessee to claim the benefits of section 11 if it is carrying on charitable activities. The law also permits an assessee to claim the benefits of section 11 if it is carrying on religious activities. Therefore, it is clear that an assessee is not dis-entitled for the exemption u/s.11 if it is carrying on religious activities. The only embargo is that the activities must not be exclusively for the benefit of a particular community or cast.

15. In other words, law grants benefits u/s.11 to the activities carried on by an assessee of charitable nature or religious nature. Both are entitled for exemption. Therefore, the normal rule of interpretation says that the charitable activities as well as religious activities in the context of section 11(1)(a) should be treated as belonging to the same class and same character. They are to be held analogous in nature. Both the activities are eligible for the benefits. Both the activities fall under the category of exemption. Benefits cannot be denied to a trust for the reason that it is carrying on religious activities. Benefits cannot be denied to an assessee for the reason that it is carrying on charitable activities. So functionally speaking, for the purpose of section 11 charitable activities as well as religious activities both are analogous and belong to same specie.

16. When that legal proposition is accepted, it is perverse to argue that an assessee carrying on charitable activities alone or religious activities alone will be entitled for the benefits u/s.11 and an assessee will not be entitled to for such benefits if the assessee is carrying on charitable as well as religious activities. There is no room for such an interpretation. If the law grants exemption to charitable activities and if the same law grants exemption to

religious activities, then there is no reason why exemption should not be given to an assessee where the assessee is carrying on charitable as well as religious activities. For the purpose of section 11, charitable activities and religious activities are not strange. Therefore, we have to hold that expression "or" is conjunctive in nature and therefore it is necessary to read that income derived from property held under trust wholly for charitable or religious purposes or both shall not be included in the total income of the assessee.

17. The apprehension of the Revenue is that if the above interpretation is accepted, then section 11(1)(b) becomes inoperative/otiose. The Revenue says that the above interpretation stands good for the trusts formed before 1.4.1962 and thereafter by virtue of section 11 (1)(b), the above interpretation will not be relevant. We do not think that the apprehension is well founded. The law contained in section 11 (1)(b) is provided not to tinker with the expression of "charitable or religious purposes" but it is meant for restraining multiple objectives of charitable as well as non-charitable activities. Section 11 (1)(b) is not against the multiple objectives relating of charitable and religious purposes but to restrict the multiple objectives relating of charitable and non-charitable activities. Even the ratio laid down by the Jammu & Kashmir High Court in the case of *Ghulam Mohidin Trust vs. CIT -248 ITR 587* is in fact speaking in the above direction. After 1st day of April 1962, the law provides that an assessee having multiple objectives and carrying on multifarious activities both charitable and non-charitable purposes and the funds are applied at the discretion of the trustees, then such trusts will not be entitled for the benefits of section 11. Section 11(1)(b) is not provided to contradict between charitable purposes and religious purposes but to distinguish between charitable and non-charitable purposes. Therefore, in the context of interpreting the expression "charitable or religious purposes", the law given in section 11 (1)(b) does not prejudice the contention of the assessees.

18. As far as the two cases placed before us in these appeals are concerned; they are carrying on charitable activities in the form of running educational institutions, hospitals, orphanages and other institutions of public utility. No doubt that they are charitable in nature. Revenue has no case that all these institutions are meant exclusively for a particular community or cast. Along with running such institutions of public utility and services, the assessees are maintaining chapels or madrassas for offering prayers. There is nothing on record to say that entry is restricted to any particular community or cast to offer prayers in those places. Of-course, there will be certain regulations in behaving in such places, which does not mean that entry is prohibited to a particular person or class of persons. As far as these two cases are concerned, it is not possible to say, as a matter of fact, that the assessees are carrying on religious activities only for the reason that they are maintaining chapels or madrassas. Even if the maintenance of the chapels or madrassas is considered to be religious activities, even then section 11(1)(a) no-where provides that activities of religious purposes are not entitled for the benefits of section 11. On the other hand the law provides that activities of religious purposes are also entitled for benefits of section 11.

19. When the law has categorically provided in section 11(1)(a) that the benefits are available to assessees carrying on activities of charitable as well as religious purposes, there is no provocation to read down the law and state that the benefits will be available only if the assessee is carrying on charitable purposes alone or carrying on religious purposes alone. Charitable purposes as well as religious purposes are covered by the benefits provided u/s.11 (1)(a) and as both of them are holy waters, there is no justification for segregating them as exclusive poles only for the reason that the expression given in section 11(1)(a) is "charitable or religious purposes". Charitable or religious purposes should be read as charitable or religious purposes or both charitable and religious purposes.

20. In the facts and circumstances of the case, we accept the contentions of the assessee and direct the assessing authority to grant the benefits of section 11 of the Income-tax Act, 1961.

21. In the result, assessee's appeals are allowed.

(N Vijayakumaran) JM

(Dr. O K Narayanan) AM