IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 1382/CHD/2016
Assessment Year : 2013-14

Chandigarh Lawn Tennis Association, Sector 10, Chandigarh	Vs.	The ITO (Exemptions), Ward, Chandigarh
PAN No. AAATC4943J		
(Appellant)		(Respondent)

Appellant by : Sh. Y.K. Sud, CA
Respondent by : Smt. Chanderkanta, Addl. CIT (on 22.3.2018)
& Sh.Yoginder Mittal, Sr. DR (on 13.7.2018)

Date of Hearing : 22.03.2018 & 13.7.2018
Date of Pronouncement : 26.07.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 21.10.2016 of the Commissioner of Income Tax(A)-2, Chandigarh [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken the following grounds:-

1. *That the CIT(A) was not justified in upholding the action of the Assessing officer of denying the exemption of Rs. 1,06,14,830/- u/s 11 of the Income Tax Act, 1961 on the grounds that the assessee is hit by section 13(8) of the Income Tax Act.*

2. *That CIT(A) failed to consider the submissions made*

by the assessee and has wrongly given a finding that holding of the Devis Cup Tie was not the object of the assessee.

3. That the Ld. CIT(A) has shown gross indiscipline by not following the various judgements of High courts and also of Jurisdictional ITAT while upholding the disallowance of exemption u/s 11 claimed by the assessee.

3. Brief facts relating to the issue as culled out from the order of CIT(A) are that the assessee, M/s Chandigarh Lawn Tennis Association (hereinafter referred to as 'CLTA') is a society registered under the Societies Registration Act. The assessee is also registered as a charitable entity vide order dated 27.09.2006 of the CIT(E) u/s 12AA of the Income Tax Act (in short 'the Act'). The main object of the assessee is for the promotion of game of lawn tennis by controlling the conduct of championships and other open and restricted competitions within its jurisdiction and holding coaching classes/schemes for players. During relevant year under consideration, the assessee hosted an international event 'Cloud India v/s New Zealand Davis Cup Tie' for which separate income and expenditure account had been maintained. This event was hosted by providing various services and facilities like infrastructure, boarding and lodging, logistics, advertisement etc. These facilities were provided by receiving money for advertisement for souvenir, corporate box income, sale of tickets, sponsorship etc. and thus a surplus of Rs. 1,08,36,902/- was generated. Assessing Officer observed that the assessee society was registered u/s 12AA on

27.09.2006 and the objects were charitable but after the amendment in section 2(15) of the Act, the definition of charitable purpose had undergone change and that the proviso to the said section laid down that advancement of any other object of general public utility would not be a charitable purpose if it involved the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration irrespective of the nature of use or application or retention of the income from such activity. Assessing Officer further observed that holding of 'Davis Cup Tie' was not in accordance with the object of the society as it was an international event which had been exploited by the assessee for commercial purpose by allowing of private sponsors, selling tickets through private concerns, allowing of advertisement from various business entities. The assessee had surplus of Rs. 1,06,14,830/- as per consolidated income and expenditure statement. The assessing officer therefore held that the assessee was not eligible for exemption u/s section 2(15) read with section 13(8) of the Act and therefore the entire surpluses was brought to tax.

4. Being aggrieved by the said order of the Assessing officer, the assessee preferred appeal before Ld. CIT(A). However, Ld. CIT(A) dismissed the appeal of the assessee observing as under:-

"5.3 I have carefully considered the submission of the

appellant, the assessment order and perused the decisions relied upon by the appellant. The ratio in these cases is that proviso to section 2(15) is not hit so long as the rendering of any service are purely incidental to the main objective of general public utility carrying on by the assessee. In the case of India Trade Promotion Organisation, the Hon'ble Delhi High Court has held that the main object of the assessee is to organise trade fairs / exhibitions in order to promote trade, commerce and business and therefore, the activities taken by the assessee for sale of tickets and sale of publications are incidental to the main objective of the assessee. In the instant case, the appellant has organised Davis Cup Tie between India and New Zealand is an international event and totally apart from the objective of the assessee the Assessing Officer has given reasoned findings that the main objectives of the assesses society is to promote, develop and popularize the game of tennis, to promote and maintain the bonds of friendships between all the affiliated clubs and institutions within its jurisdiction and encourage new clubs and institutions, to control the conduct of such championships and other open an restricted competitions within its jurisdiction as may be sanctioned by the association and / or approved by the AITA. As per the income and expenditure account furnished by the assessee the normal surplus of Rs. 15,96,663/- was generated as per the activities taken by the assessee which has been listed on page 5 of the assessment order which are incidental to the dominant object of the assessee. However, by holding India V/s New Zealand Davis Cup Tie, appellant has thrown open the sale of

tickets, advertisements and sponsorships to private sponsors and business entities with the main motive to earn maximum profits or commercial gains from this activity. Therefore, the holding of Davis Cup Tie cannot be said as incidental to the main objective of general public utility carried on by the assessee.

5.3.1 Appellant has placed reliance on the decision of the improvement trust of ITAT Chandigarh Bench in which the order of ITAT, Amritsar Bench in the case of Hoshiarpur Improvement Trust has been followed. In these cases these trust were constituted under the Punjab Town Improvement Act with the main objectives of bringing about improvement in towns. In these cases, assessee sold residential and commercial units and residential and commercial lands and earned profits and these activities were held by the jurisdictional tribunal as incidental to the attainment of its main object. The case of the appellant is entirely different wherein the Davis Cup Tie was organized entirely deviating from the objectives of the trust and by commercially exploiting the event earn huge surplus of Rs. 1,92,54,745/- as against the normal surplus generated from the activities of the trust during the relevant year of Rs. 15,96,663/-. Therefore, appellant has done the activities of rendering service to trade, commerce or business for a commercial consideration, these activities are not incidental or subservient to the main objective of general public utility and is hit by proviso to section 2(15) of the Act. Hence, the action of the A.O in bringing to tax the surplus of Rs. 1,06,14,830/- u/s 13(8) is upheld. Ground of appeal No. 1, 2, 3 and 4 are dismissed."

5. Being aggrieved by the said order of the Ld. CIT(A), the assessee has come in appeal before us.

6. Sh. Y.K. Sud, the Ld. Counsel for the assessee has made oral as well as written submissions contending therein that as per object '3a' and '3c' of the object clauses of the MOA of the assessee, holding of a 'Davis Cup Tie' was / is towards the promotion, development and popularizing the game of tennis amongst the general public. That these matches of international importance are watched by public at large either watching it live by buying tickets or by watching the game on live telecast of the TV channels. The public and people having interest in the game are highly benefited by watching the professional players of two nations contesting against each other. That as per the clause 3c of the object clauses, 'to conduct the championship and other open restricted competitions with the sanction of the Association and approved by AITA' is the clear objective of the assessee trust. That even the Chandigarh Administration and Govt. of India also monitor and supervise the Davis Cup Tie. That it cannot be said that holding of International Davis Cup is not the objective of the trust. That the Chandigarh Lawn Tennis Association has been established with the object of promotion of the Lawn Tennis game by teaching the children and making them players and also for holding of the various tournaments and competition approved by the IATA and all these objects have been considered as charitable by CIT while granting the registration

to the trust. The Ld. Counsel for the assessee has further submitted that the AO in his order has although agreed with the assessee that it is engaged in the promotion of the game lawn tennis and also agreed that all the objects are charitable in nature but yet he gave a finding that these objects were / are pursued for commercial gains. That this finding of the AO is contrary to the finding of the CIT in as much the CIT has allowed the registration u/s 12AA by holding the objects of the trust as charitable and that the registration is still continued till date. That at the time of making assessment, all that Assessing Officer has to verify as to the activities of the assessee are according to the objects of the trust. That it is well settled law that when the motive of the trust is not of making profits but for the attainment of the objects, if any commercial activity is carried on, the exemption u/s 11 cannot be denied. That the assessee Chandigarh Lawn Tennis Association had hosted the Davis Cup matches earlier also in the year 1989-90 and 1992-93 and the exemption to the income of the trust was allowed during these year u/s 11 and further that this exemption has consistently been allowed to the assessee ever since its inception in 1975, therefore applying the rule of consistency, exemption u/s 11 should be allowed for this year also.

The ld. Counsel has further referred to the decision of the 'Amritsar Bench' of the Tribunal in the case of Hoshiarpur Improvement Trust and 'Moga Improvement Trust' 291 CTR 352

stating that therein the Bench has taken a view that exemption u/s 11 is available on the profits generated by improvement trusts on the ground that the motive of the trust is not to carry on any commercial activity and motive is not to earn any profits and activities carried out may be commercial in nature are for the attainment of the main objective, hence charitable, and exemption u/s 11 was allowed. That even the appeal against this order of the Moga Improvement Trust has been dismissed by P&H High Court in the judgment reported in 291 CTR 352 at page 395.

The ld. Counsel for the assessee has also relied upon the following case laws:

i. Asst. CIT Vs Surat City Gymkhana (2008) 300 ITR 214(SC)

ii. Sonepat Hindu Educational & Charitable Society Vs. CIT & Anr.(2005) 278 ITR 262(P&H)

iii. Hiralal Bhagwati Vs. CIT (2000) 246 ITR 188 (Guj)

iv. Ananda Marga Pracharaka Sangha Vs. CIT (1996) 218 ITR 254 (Cal)

v. ITO Vs Mrs. Dwarika Prasad Trust (1989) 30 ITD 84 (Del)(SB)

vi. ITO Vs Trilok Tirath Vidyavati Chuttani Charitable Trust (2004) 90 ITD 569 (Chd)

vii DDCA Vs DIT 168 TTJ 425(ITAT Delhi)

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7. Sh. Y.K. Sud, the Ld. Counsel for the assessee, has also made the alternate submissions that the assessee Chandigarh Lawn Tennis

Association is involved in imparting training to boys and girls in Tennis and is running a tennis academy having coaches and instructor therefore the assessee trust can be said to be engaged in imparting education since teaching tennis to the students amounts to imparting of education and is covered in the first limb of section 2(15) and not as a residual clause. He in this respect has relied upon the decision of the Delhi Bench of the Tribunal in the case of 'Pitanjali Yog Peeth Nyas Vs ADIT'(Exemptions) stating that the Hon'ble Delhi Bench has held that imparting training in Yoga amounts to educational activity as per the law laid down by the Hon'ble Supreme Court in the case of Lok Shiksha Trust. He, therefore, has submitted that imparting training in lawn Tennis also amounts to education and therefore the assessee falls in the first limb of the definition of charitable purposes as defined u/s 2(15) and that the proviso is not applicable to the assessee.

8. Apart from oral submissions made by Smt. Chandarakanta, the Ld. DR, written submissions have also been filed by Smt. Sangeeta Sharma, the Ld. Income Tax Officer (Exemptions) on behalf of the Department wherein it has been contended since the activities of appellant is directly in contrast of the first proviso to Section 2(15) of the Act, so, the exemption u/s 11 and 12 of the Act has rightly been denied. That Section 2 (15) of the Act clearly defines that as far as the first three limbs are concerned, it constitute 'charitable purpose' even if they incidentally involve in carrying on of

commercial activities but as far as the fourth limb i.e. 'advancement of any other object of general public utility' is concerned, the entities are not eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. That while interpreting the object and scope of this Section, the various Tribunals/Courts have decided many important cases in favour of the revenue. That in the case of 'PUDA Vs. CIT', reported as (2006) 103 TTJ CHD 988 , the application for registration u/s 12A(a) filed by above named statutory Development Authority was rejected by the CIT, which order was finally confirmed by the ITAT of Chandigarh Bench vide a detailed judgment of Tribunal dated 01.06.2006, which decision has been further followed by various Tribunals and also by the Amritsar Bench while deciding a similar case of another statutory Govt. body i.e. 'Jalandhar Development Authority vs. CIT reported' as (2010) 35 SOT ASR 15 whereby it again upheld the order of CIT rejecting the application for grant of registration u/s 12A of the Act vide a detailed judgment of Tribunal dated 12.06.2009. That since, many such entities were seen engaged in commercial activities also claiming exemption on the ground that their activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of 'charitable purpose', hence, Section 2 (15) was amended vide Finance Act, 2008 by adding a proviso which states that the 'advancement of any other object of general

public utility' shall not be a charitable purpose if it involves the carrying on of – (a) any activity in the nature of trade, commerce or business; or (b) any activity of rendering any service in relation to any trade, commerce or business; for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity. Reliance has also been placed on Circular No. 11/2008 dated 19.12.2008 of the CBDT in this respect, which we will discuss in the later part of this judgement. It has been further contended that after insertion of the above provisos to Section 2 (15) of the Act, the Amritsar Bench of the tribunal while interpreting the entire scope and objects of Section/circular and legal position, decided a case of another statutory Govt body i.e. 'Jammu Development Authority vs. CIT' vide order dated 14.06.2012 reported as (2012) 52 SOT ASR 153 following the judgments in the cases of PUDA and 'Jalandhar Development Authority' (supra) and has upheld the order of CIT which canceled the registration while passing an order u/s 12AA (3) of the Act, wherein, it has been held that if activities of any Institution/Trust/Society under the fourth limb i.e. `the advancement of any other object of general public utility' are in the nature of trade, commerce or business for cess or fee and the receipts therefrom crosses the prescribed limit (which for the year under consideration was 25 Lakhs or more) then they are not eligible to continue with registration u/s 12A and the same is

required to be withdrawn. That the limit of receipt in second proviso to section 2(15) was Rs. 25 lakhs for the year under consideration. Further that that the judgment in 'Jammu Development Authority' was later upheld firstly by Hon'ble J&K High Court in ITA No. 164 of 2012 vide its order dated 07.11.2013 and also by Hon'ble Supreme Court in Special Leave to Appeal (C) No. 4990 of 2014 vide its order dated 21.07.2014. That the aforesaid decisions of the tribunal passed in the cases of PUDA (supra), Jalandhar Development Authority (supra) and also the 'Jammu Development Authority vs. CIT' (supra) have been consistently followed by the Tribunals all throughout the Country, reliance in this respect has been placed on the following decisions of the coordinate benches of the Tribunal:

(a) Andhra Pradesh State Housing Corp. Ltd. Hyderabad Vs. DIT (E), Hyderabad ITA No. 1845/Hyd/2012 (Hyderabad bench)vide order dated 19.04.2013.

(b) Housing Board Haryana, Panchkula Vs. CIT, Panchkula, (Chandigarh Bench) in ITA No. 1200/CHD/2004 vide order dated 30.05.2014 .

(c) The Greater Cochin Development Authority, Kochi Vs. Jt. DIT (E), Kochi, (Cochin Bench) in ITA No. 792 & 793/Coch/2013 vide its judgment dated 08.08.2014.

(d) M/s Patiala Urban Planning & Development Authority, Patiala (PDA) Vs. The ITO, (Chandigarh) in ITA No. 674 & 675/CHD/2014 vide judgment dated 06.05.2015.

(e) A.P. Housing Board, Hyderabad Vs. DIT (E), (Hyderabad) in ITA No. 110/Hyd/2008 vide its judgment dated 03.06.2015

(f) Ahmedabad Urban Development Authority Vs. ACIT (Exemptions), (Ahmedabad) in ITA No. 712 and 711/Ahd/2013 and ITA No. 647 and 2335/Ahd/2014 vide its d judgment dated 19.04.2016.

9. Reliance has also been placed on the decision of the jurisdictional Pb. & Hry. High Court, in the case of 'The Tribune Trust Vs. CIT', reported as 390 ITR 547 (P&H) (which we will discuss in detail in the coming paras of this judgement).

10. It has been further submitted on behalf of the department that the activities of the appellant are aimed at earning profit as it is carrying on activity in the nature of trade, commerce or business. The purpose of appellant is making profit and also there is no spending of the income exclusively for the purpose of charitable activities and profits of the assessee are not used for charitable purpose. Reference has also been made to the financial accounts of the appellant, and it has been submitted that the appellant hosted the "India- New Zealand Davis Cup Tie" in September, 2012 by providing various services/ facilities like infrastructure, boarding and lodging, logistics, advertisement etc. These facilities were provided by receiving various types of fees and financial considerations. That the activity of hosting this event had been carried out in addition to the normal activities being carried out for advancement of objects of the appellant. Thus, this activity was of commercial nature with dominant object to earn profit. Out of total

income of Rs. 1,92,54,745/-, the assessee had received income to the tune of Rs. 1,60,14,000/- from sponsorship, which was 83.16% of the total income. The appellant earned huge profit of Rs. 1,08,36,902/- from the event after meeting out expenses. It has been further contended that the object clause of the appellant does not contain any clause that for furtherance of its objects, it shall charge any sum like sponsorship, advertisement or make collection through sale of corporate tickets. That the event was exploited commercially as the major focus of the appellant was to utilize this event for commercial gains. Reference has also been made to the Income and Expenditure account and percentage of profit as gathered from the consolidated books of accounts maintained by the appellant for financial years 2008-09 to 2015-16 to submit that the appellant's surplus took an upturn from the financial year 2012-13, the year under consideration and in which Davis Cup tie was organized. That from the financial year 2008-09 to 2011-12, the appellant earned accumulated surplus of Rs. 7,96,473/- and during the financial year 2013-14 to 2015-16, the appellant earned accumulated surplus of Rs. 94,88,969/-. However, in total contrast, the appellant, during the year under consideration i.e. financial year 2012-13, earned surplus of Rs. 1,06,14,830/- and earned 88% profit which clearly established that dominant object of the appellant was to maximize profit. A table in respect of Corpus fund, Fixed Deposit Receipts, Bank balances and interest income received for the financial year 2008-09

to 2015-16 has also been furnished to contend that the appellant has been accumulating Corpus fund year after year. The fixed deposit receipts of the appellant also increased year after year. That the same is the case with interest income. That during the year under consideration, the amount of FDRs surged from Rs. 13.86 lakh to Rs. 86.20 lakh and this shows that the profit earned by the appellant from hosting India- New Zealand Davis Cup Tie has been invested in the form of FDR. That it is evident from financial accounts that the appellant has invested Rs. 55,00,000/- in FDRs in State Bank of Patiala and earned interest of Rs. 60,883/- during the year under consideration. That considering the trend of continued investment in FDRs, year after year, without its utilization towards the objects, the intent of the appellant to earn income to further increase profit is clearly visible. Reliance in this respect has been placed on the decision of the Hon'ble Karnataka High Court in the case of Visvesvaraya Technological University Vs. Assistant Commissioner of Income Tax (reported as 362 ITR 279). A table showing income from Admission/ Training fee, training expenses, profit and profit percentage for the financial year 2008-09 to 2015-16 has also been furnished to submit that the appellant has been earning huge profit from training activity also which is unjustified and unwarranted considering the charitable objects of the appellant. It has been, therefore, contended that the income earned by the assessee is not only in the direct contrast to post amendment of Section 2(15) and

its proviso and that the surplus accumulated over the years has not been ploughed back for the charitable purposes. It has therefore been submitted that the lower authorities rightly denied the claim of exemption to the assessee u/s 11 of the Act for the year under consideration.

11. The assessee, however, in its rejoinder has submitted that the judgments relied upon by the AO are totally distinguishable which do not support the facts of the assessee. The judgments are against the granting of registration u/s 12A under the Income Tax Act whereas in the case of the assessee the registration u/s 12A is granted and most importantly is the fact that registration is intact till date and not withdrawn by the CIT. That the AO could have proposed to the CIT for withdrawal of the registration which the AO has not done. That there is no law laid down by the J&K High Court which has approved the order of Amritsar Bench on facts and since there was no question of law involved, the Hon'ble Supreme Court dismissed the SLP. This issue has already been considered by the jurisdictional P&H High Court in the case of 'Moga Improvement Trust' 291 CTR 352 wherein in para 84 of the judgment at page 407 the Hon'ble High Court has dismissed the plea of the revenue of getting support from Jammu Development Authority case. That so far the reliance of the Department in the case 'Tribune Trust' (supra) is concerned, the Hon'ble High Court has observed that profit was the pre-dominant motive, purpose and object of the

assessee ‘The Tribune Trust’. That the Tribune Trust had over the year accumulated huge profits and there was nothing in the case to show that the surplus accumulated over the years had been ploughed back for charitable purposes. That, however, in the case of the present assessee (Chandigarh Lawn Tennis Association) profit making is not the motive of the assessee and the only object of the assessee is to promote the game of Lawn Tennis and hold various tournaments for the promotion of the game. That the Hon'ble P&H High Court in the case of ‘Moga Improvement Trust’ reported (supra) has held that if the trust is not set up with a motive of making profits but during carrying on of its activities according to the objects if any surplus is generated which is again ploughed back for the activities of the trust exemption u/s 11 is to be allowed. In the present case of the assessee the entire surplus generated from the ‘Davis Cup Tie’ has been ploughed back and spent for the activities of the trust. That the Assessing officer while framing the assessment has only to see that the assessee trust has carried out the activities in accordance with its objects and 85% of the total receipts have been spent towards the objects of the trust to which the assessee has complied with as per the provisions of the Income Tax Act u/s 11, 12 & 13. It has been further submitted that the assessee society holds various tournaments in which it incurs deficit as well as surplus. Hence it will not be correct to say that the tournaments are organized by the appellant with commercial motive.

12. We have considered the rival submissions and have also gone through the records. The issue involved in this appeal requires the interpretation of section 2(15) of the Act including the proviso thereto. For that purpose, we need to look at the changes / amendments brought out from time to time in the provisions of section 2(15) of the Income Tax Act as these have bearing upon the interpretation of the section as it stands during the relevant period and as on today. We will also consider the judicial decisions passed from time to time interpreting the time to time amended provisions of section 2(15) of the Act. We have the benefit of decision of the co-ordinate Amritsar Bench of the Tribunal in the case of 'Hoshiarpur Improvement Trust' case (supra) and also of the Hon'ble Punjab & Haryana High Court in the case of 'The Tribune Trust' (supra).

13. In the Income-tax Act, 1922, the relevant /corresponding provision was section 4(3) of the Act, which read as under:

Section 4(3) of the 1922 Act:

"4. Application of Act.—

…… ….. ….. …… …… …… …….

(3) This Act shall not apply to the following classes of income:—

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto.

(ii) to (viii) ……"

In this sub-section "charitable purposes" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility."

14. The issue relating to the interpretation of the above provisions of the 1922 Act came into consideration of the Privy Council in the case of 'The Trustees of the Tribune Press vs. CIT' [(1939) 7 ITR 415*:* AIR 1939 PC 208]. The Privy Council took into consideration the will of Sardar Dyal Singh, the founder of the Tribune Trust, and observed that it seemed unreasonable to doubt that his object was to benefit the people of upper India by providing them with an English newspaper - the dissemination of news and the ventilation of opinion upon all matters of public interest. That the object of the paper could fairly be described as "the object of supplying the Province with an "organ of educated public opinion" and that it should prima facie be held to be an object of general public utility. It was, therefore, held that property of the assessee 'Tribune Press' was held under Trust wholly for the advancement of general public utility.

15. Thereafter to overcome the decision of the Privy Council, the section 3(4) of the 1922 Act was substituted with section 2 (15) of the 1961 Act, whereby the words "not for profit" were added to the "advancement of object of general public utility" in the provisions. The provisions of Section 2(15) of the 1961 Act, as they stood at that time, read as under:

> ***Section 2 (15)****: "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."*

16. Thus in the 1961 Act, advancement of any other object of general public utility was qualified with the crucial words “not involving the carrying on of any activity for profit." which was not there in the relevant provisions of section 4(3) of the 1922 Act. The interpretation of the above substituted provision by 1961, Act came into consideration before the three judges Bench of the Supreme Court in the cases of ‘Sole Trustee, Lok Shikshana Trust vs. CIT’ (1975) 101 ITR 234 (SC). The assessee Trust in that case was carrying out the activity of printing and publishing of newspaper and magazines. The assessee claimed that the object of the assessee-trust was education, while the stand of the revenue was that the activity of the assessee would fall in the last mentioned category in section 2(15), viz., the advancement of any other object of general public utility. The reason for the above divergence in the stands of assessee and the revenue was because the concluding words of the definition in section 2(15) of the Act "not involving the carrying on of any activity for profit" did not qualify the first three categories of relief of the poor, education, or medical relief but qualify only the fourth category of "advancement of any other object of general

public utility" which was qualified with the words "*not involving the carrying on of any activity for profit*".

17. His Lordship Justice H.R. Khanna, writing the majority view (for himself & Justice A.C. Gupta) observed that the word 'education' has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. That though a number of objects, including the setting up of educational institutions, were mentioned in the trust deed as the objects of the trust, however, the trust at that time was carrying out only the last mentioned object of the trust, namely, supplying the Kannada speaking people with an organ or organs of educated public opinion viz the publication of newspaper and magazine. His Lordship further relying on the decision of the Judicial Committee in the case of 'In re Trustees of the Tribune' [1939]7 ITR 415 (PC) held that the object of the assessee-trust (Lok Shikshana Trust) was "the advancement of any other object of general public utility". It was further observed that as a result of the addition of the words 'not involving the carrying on of any activity for profit' at the end of the definition in section 2(15), even if the purpose of trust was advancement of any other object of general public utility, it would not be considered to be charitable purpose unless it was shown that the above purpose did not involve the carrying on of any activity for profit. That in order to bring a

case within the fourth category of charitable purpose, it would be necessary to show that:

> "(1) the purpose of the trust is advancement of any other object of general public utility, and
> (2) the above purpose does not involve the carrying on of any activity for profit."

His Lordship further observed that that the word used in section 2(15) is profit and not private profit and it would not be permissible to read in the above definition the word 'private' as qualifying profit even though such word was not there. That there was also no apparent justification or cogent reason for placing such a construction on the word 'profit'. The words 'general public utility' contained in the definition of charitable purpose were very wide. These words, exclude objects of private gain. That it was also difficult to subscribe to the view that the newly added words 'not involving the carrying on of any activity for profit' merely qualify and affirm what was the position as it obtained under the definition given in the Act of 1922. If the legislature intended that the concept of charitable purpose should be the same under the Act of 1961, as it was in the Act of 1922, there was no necessity for it to add the new words in the definition. That the earlier definition did not involve any ambiguity and the position in law was clear and admitted of no doubt after the pronouncement of the Judicial Committee in the cases of In re the Tribune [1939] 7 ITR 415 (PC) and in and 'All India Spinners' Association v. CIT' [1944] 12 ITR

482 (PC). If despite that fact, the legislature added new words in definition as if the newly added words were either not there or were intended to be otiose and redundant.

18. However his Lordship Beg, J. writing a separate order while stressing on the meaning of word 'involve' observed that the dictionary meaning of the word 'involve' was of wide import and would cover all profit making, even as a mere by-product, if this word had stood alone and by itself without further qualifications by the context. However, the use of the words 'for profit', showed that the involvement of profit making should be of such a degree or to such an extent as to infer it to be the real object. If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The genuineness of the purpose was to be tested by the obligation created to spend the money exclusively or essentially on 'charity'. That if profit making results from the activity and these profits could be utilised for non-charitable purposes, the trust would not be exempt from paying income-tax.

However as per both the majority and minority view, it was concluded that the activity of the Trust was not charitable purpose but for making profits and the relief was denied.

19. Further the matter came for discussion in the case of ‘Indian Chamber of Commerce vs. CIT’ (1975) 101 ITR 796 (SC) and the

matter was decided in favour of the revenue. Commenting on the expression, “not involving the carrying on of any activity for profit", their Lordships observed:

> *"Notwithstanding the possibility of obscurity and of dual meaning when the emphasis is shifted from 'advancement' to 'object' used in s. 2(15), we are clear in our minds that by the new definition the benefit of exclusion from total income is taken away where in accomplishing a charitable purpose the institution engages itself in activities for profit."*

20. The Hon’ble Supreme Court, thus, emphasized that if in the advancement of the objects of general public utility a trust resorts to carrying on of any activity for profit, then necessarily s. 2(15) cannot confer exemption. It needs to be mentioned here that as against the above definition of charitable purpose, which seeks to preclude carrying on of any activity for profit involved in advancement of any other object of general public utility, sub-section (4) of section 11 still allowed carrying on of any business held in trust for charitable or religious purpose. The relevant part of the said provision read as under:

> ***"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; . . .*
>
> ** ** **

(4) For the purposes of this section 'property held under trust' includes a business undertaking so held. . .”

21. Another section 13(1)(bb) was introduced by the Taxation Laws Amendment Act, 1975 and remained on the statute book until omitted with effect from 1-4-1984 providing that in the case of a charitable trust or institution for the relief of the poor, education or medical relief, any income from business carried on by the trust will not be exempt, unless the business is carried on in the course of actual carrying out of a primary purpose of the trust or institution.

13. 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—

** **

(bb)in the case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any business, any income derived from such business, unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution;"

22. With the aforesaid amendment, when read in its plain and literal meaning , the institutions or trusts carrying on the activity as per first three limbs of section 2(15) i.e. for the relief of the poor, education or medical relief were allowed to carry on business activity also, but subject to the condition that such business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution to claim their activity as for “charitable Purposes”. However, for the institutions carrying on the

activity as mentioned in the fourth limb i.e. for advancement of object of General Public Utility, the profit making was barred in view of the crucial words " not for making profit" added in section 2(15) of the Act of 1961.

23. However, it is to be noted here that the above decisions in the cases of 'Sole Trustee, Lok Shikshana Trust vs. CIT' (supra) and Indian Chamber of Commerce vs. CIT (supra) were overruled by the Majority View of the Larger Bench Judgement of the Supreme Court in 'Addl. CIT v. Surat Art Silk Cloth Manufacturers Assn' reported in [1978] 121 ITR 1 [1979] 2 Taxman 501 (SC). Justice P.N. Bhagwati writing Majority view for the bench, in para 17 of the said order held that the activity of the trust or the institution must be for profit in order to attract the exclusionary clause. It is not therefore enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. That **profit-making must be the end to which the activity must be directed** or in other words, the predominant object of the activity must be making a profit. The Hon'ble Supreme Court further observed:

> "Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where, on the other hand, an activity is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in

advancement of the charitable purpose of the trust or institution. **Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to subserve the charitable purpose and not to earn profit.** The charitable purpose should not be submerged by the profit making motive; the latter should not masquerade under the guise of the former. The purpose of the trust, as pointed out by one of us (Pathak, J.) in *Dharmadeepti* v. *CIT* [(1978) 3 SCC 499 : 1978 SCC (Tax) 193] must be '"essentially charitable in nature" and it must not be a cover for carrying on an activity which has profit making as its predominant object." This interpretation of the exclusionary clause in Section 2 clause (15) derives considerable support from the speech made by the Finance Minister while introducing that provision. The Finance Minister explained the reason for introducing this exclusionary clause in the following words:

"The definition of 'charitable purpose' in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them namely, the newspaper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit' should be added to the definition."

(emphasis supplied by us)

24. The Hon'ble Supreme Court thus took departure from the

plain English grammar meaning of the words in the provisions, but interpreted the phrase 'not involving the carrying on of any activity for profit' suffixed to the 'advancement of any other object of general public utility' in the provisions of section 2(15) of the 1961 Act in the manner that if the income from the profit making activity is ploughed back to subserve the charitable purpose to achieve the end or ultimate motive of charity, the activity of such an institution will not be excluded from the definition of charitable purposes. The Hon'ble Supreme Court held that it was obvious that the exclusionary clause was added with a view to overcoming the decision of the Privy Council in the of 'The Trustees of the Tribune Press [AIR 1939 PC 208 : (1939) 7 ITR 415] where it was held that the object of supplying the community with an organ of educated public opinion by publication of a newspaper was an object of general public utility and hence charitable in character, even though the activity of publication of the newspaper was carried on commercial lines with the object of earning profit. That the publication of the newspaper was an activity engaged in by the trust for the purpose of carrying out its charitable purpose and on the facts it was clearly an activity which had profit-making as its predominant object, but even so it was held by the Judicial Committee that since the purpose served was an object of general public utility, it was a charitable purpose. The Hon'ble Supreme Court observed that it

was clear from the speech of the Finance Minister that it was with a view to setting at naught this decision that the exclusionary clause was added in the definition of "charitable purpose". The test which has, therefore, now (as per section 2(15) of 1961 Act) to be applied was whether the predominant object of the activity involved in carrying out the object of general public utility was to sub serve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. However, the profits, if any, should be ploughed back and applied to charitable activity to subserve the main purpose. The Hon'ble Supreme Court held, "**It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management."** The Supreme Court held that the concluding words "not involving the carrying on of any activity for profit" go with the "object of

general public utility" and not with the "advancement".

His Lordship, Justice Bhagvati, as he then was, expressing the majority view observed : " The Revenue contended that whatever be the object of general public utility, its "advancement" or achievement cannot involve the carrying on of any activity for profit; otherwise the purpose of the trust would not be a charitable purpose and its income from business would not be immune from tax liability. This contention cannot, however, be accepted as its consequence would be as follows:

i. **The trust or institution established for promotion of an object of general public utility would not be able to engage in business for fear that it might lose the tax exemption altogether and a major source of income for promoting objects of general public utility would be dried up. It is difficult to believe that the Legislature could have intended to bring about a result so drastic in its consequence. If the intention of the Legislature were to prohibit a trust or institution established for promotion of an object of general public utility from carrying on any activity for profit, it would have provided in the clearest terms that no such trust or institution shall carry on any activity for profit, instead of using involved and obscure language giving rise to linguistic problems and promoting interpretative litigation.**

ii. **Section 11(4) , which declares that "property held under trust" shall include a business undertaking enjoying immunity from tax and which gave statutory recognition to this principle decided by this Court in earlier cases, would be rendered wholly superfluous and meaningless, after the insertion of clause (bb) in section 13(1) with effect from 1-4-1977.**

(emphasis supplied by us)

25. However, there was dissenting view in the words of Justice A.P. Sen pointing out that it is not permissible for the Court to whittle down the plain language of the section. He reminded that "It would be contrary to all rules of construction" in the words of Khanna, J., speaking for himself and Gupta, J. in Loka Shikshana Trust, "to ignore the impact of the newly added words ‘not involving the carrying on of any activity for profit’ and to construe the definition as if the newly added words were either not there or were intended to be otiose and redundant, i.e., as qualifying and affirming the position under the Act of 1922." According to Sen, J. "if an object of general public utility is engaged in an activity for profit, it ceases to be a charitable purpose and, therefore, the income is not exempt under section 11(1)(a). **He also observed that the concept of ‘profits to feed the charity’, therefore, is applicable only to the first three heads of charity and not the fourth.** It would be illogical and, indeed, difficult to apply the same consideration to institutions which are established for charitable purposes of any other object of general public utility. Any profit-making activity linked with an object of general public utility would be taxable. The theory of the dominant or primary object of the trust cannot, therefore, be projected into the fourth head of charity, viz., ‘advancement of any other object of general public utility’ so as to make the carrying on of a business activity merely ancillary or incidental to the main object." He also pointed out that the Direct

Tax Laws Committee in its interim report on charitable trusts (Chapter 2) in 1977 had considered the question whether the expression ‘not involving the carrying on of any activity for profit’ in the definition of ‘charitable purpose’ should be deleted and expressed its opinion in favour of deletion. The Government however did not accept the suggestion. He observed "I fail to comprehend when the recommendation has not been acted upon by the Government by suitable legislation, how this court can by a process of judicial construction to achieve the same result."

26. The purpose of our above discussion, is that while interpreting the scope of the words” “not involving the carrying on of any activity for profit." suffixed with “the advancement of any other object of general public utility” both the views as to whether literal interpretation of the above clause is to be taken or the same is to be read down to remove hardship to the trusts whose end motive is charity as they apply all such profits earned in charitable activity, went on side by side. Earlier in the case of ‘Lok Shiksha Trust’ (supra) the majority view prevailed for the literal interpretation of the provisions of the section 2(15) of the Act, however later on in the case of ‘Surat Art Silk Manufacturers Assn.’(supra) the provisions were read down and ‘purpose test’ or ‘the end object’ or to say ‘predominant object’ theory was applied.

27. However, shortly after the above judgment was delivered by the Five Member Bench Hon'ble Supreme Court in the case of "Surat Art Silk Manufacturers Assn." (supra) , Sub-section (4A) was introduced in section 11 by the Finance Act, 1983 with effect from 1-4-1984 to provide that a trust or institution for charitable or religious purpose will not get the benefit of exemption under section 11 in respect of any profits or gains of business carried on by it, unless the business is—(i) carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or the business is of a kind notified by the Central Government, or (ii) carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution. The Legislature, however, **omitted** the words '**not involving the carrying on of any activity for profit**' from the definition of 'charitable purpose' in section 2(15), and also omitted section 13(1)(bb).

28. It is pertinent to mention here that the above amendments made by the Finance Act 1983, dropping of the words "not involving the carrying on any activity for profit" did not bring any major change as corresponding amendments were also made in section 11 of the Act wherein more stringent restrictions (as discussed above) were brought in.

29. The rigour of newly inserted section 11(4A), however, was diluted by the Finance (No. 2) Act, 1991 Sub-section (4A) of section 11 was amended with effect from 1-4-1992 to provide that sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

The amended section 11(4A) read as under: -

> **11(4A) :**
> **Sub-section (1) or sub-section (2) or sub-section (3) or subsection (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.**

30. Explaining this amendment in law, the CBDT circular no. 621 dated 19th December 1991 [(1992) 195 ITR (St) 154], read with circular No. 642 dated 15th December 1992 [(1993) 199 ITR (St) 7] stated as follows:

> CBDT circular no. 621 dated 19th December 1991 [(1992] 195 ITR (St) 154 @*165*]
>
> 15.8 In order to bring exemption of charitable or religious trusts in line with the corresponding provisions in section 10(23C)(iv) or (v), sub-section (4A) of section 11 has been amended to permit trust and institutions to carry out business

activities if the business activities are incidental to the attainment of its objective. The charitable or religious trust will no longer lose complete exemption from income-tax. However, the profits and gains from such business activity will be subjected to tax.

CBDT circular no 642 dated 15th December 1992

In partial modification to para 15.8 (as extracted above) *of the Circular No. 621, dt. 19th Dec., 1991 issued from F. No. 133/389/91-TPL, it is clarified that according to the provisions of section 11(4A) of the Income tax Act, as amended through the Finance (No. 2) Act, 1991, with effect from 1st April, 1992, profits and gains of business in the case of a trust or institution will not be liable to tax if the business is incidental to the attainment of the objectives of the trust or institution, as the case may be. In addition, separate books of account are to be maintained by the trust or institution in respect of such business. Income of any other business which is not incidental to the attainment of the objectives of the trust or institution will not be exempt from tax.*

31. The major change, in our view, brought by amendment to section 11(4A), is that earlier the phrase “not involving the carrying on of any activity for profit” was applicable to the fourth limb of definition of “charitable purposes” as per the provisions of section 2(15) of the 1961 act i.e. in respect of the institutions carrying out the activity for advancement of general public utility. However dropping the crucial words “not involving the carrying on of any activity for profit” from section 2(15) and bringing the crucial words “unless the business is incidental to the attainment of the objectives of the trust” by way of amendment in section 11(4A) allowed the institutions carrying out the activity for the advancement of object of General Public Utility to carry out business activity also, if the business activities are incidental to the

attainment of their objective. Earlier , the provisions of section 13(1)(bb) provided that the institutions carrying out the activity under the first three limbs i.e. relief to the poor, education and medical relief are permitted to business activity in the course of the actual carrying out of their primary purpose. However, the omission of section 13(1) (bb) and corresponding amendments brought in section 11(4A) brought the institutions carrying out the activity of General Public Utility at par with the Institutions carrying on the activity as per first three limbs of section 2(15) of the Act allowing the carrying of business activity incidental to attainment of their object. This was inconsonance with the interpretation made by the hon'ble Supreme Court in the case of "Surat Art Silk Cloth Manufacturers Association" (supra).

32. The phrase **'business is incidental to the attainment of the objectives of the trust'** came up for interpretation before the Supreme Court in the case Asstt. CIT v. Thanthi Trust [2001] 247 ITR 785 / 115 Taxman 126. The assessee therein was involved in activity of publishing of a newspaper. The object of the trust was to establish the said newspaper as an organ of educated public opinion for the Tamil-speaking reading public to disseminate news and to ventilate opinion upon all matters of public interest and to establish and run schools, colleges, hostels and orphanages. The Court held that a business, whose income is utilized by the trust or the institution for the purposes of achieving the objectives of the trust

or the institution, is, surely, a business which is incidental to the attainment of the objectives of the trust. The findings of the Hon'ble Supreme court can be divided into three parts:

(i) Discussing the position for the period from the assessment years **1979-80 to 1983-84**, when the provisions of section 13(1)(bb) remained on the statute, the court held to claim the exemption under section 11 the business must be carried on in the course of the actual accomplishment of relief of the poor, education or medical relief. As an example, a public charitable trust for the relief of the poor, education and medical relief that carries on the business of weaving cloth and stitching, clothing by employing indigent women carries on the business in the course of actually accomplishing its primary object of affording relief to the poor and it would qualify for the exemption under section 11 of the Act. The court however observed that In the instant case, (Thanthi Trust) the business that the trust carried on was that of running a newspaper. That business, though it was held by the trust as a part of its corpus and, therefore, in trust, did not directly accomplish, wholly or in part, the trust's objects of relief of the poor and education. Its income only fed such activity. It could not be held to be carried on in the course of the actual accomplishment of the trust's objects of education and relief of the poor. It was, therefore, not possible to accept the argument on behalf of the trust that it was entitled to the exemption under section 11.

(ii) However, in respect of the assessment years **1984-85 to 1991-92** when the provisions of section 13(1)(bb)) stood omitted the court observed that Sub-section (4) of section 11 remains on the statute book and it defines the words 'property held under trust' for the purposes of section 11 to include a business held under trust. Sub-section (4A) restricts the

benefit under section 11 so that it is not available for income derived from business unless (a) the business is carried on by a trust only for public religious purposes and it is of printing and publishing books or any other notified kind. That the newspaper business that was carried on by the trust did not fall within sub-section (4A). The trust was not only for public religious purposes, so it did not fall within clause (a). It was a trust not an institution, so it did not fall within clause (b). It must, therefore, be held that for the assessment years in question, the trust was not entitled to the exemption contained in section 11 in respect of the income of its newspaper.

(iii) However, in respect of the assessment year 1992-93 and thereafter considering the provisions of amended section 11(4A) of the Act the court held that the substituted sub-section (4A) (with effect from 1-4-1992) states that the income derived from a business held under the trust wholly for charitable or religious purposes shall not be included in the total income of the previous year of the trust or institution if "the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution" and separate books of account are maintained in respect of such business. Clearly, the scope of sub-section (4A) is more beneficial to a trust or institution than was the scope of sub-section (4A) as originally enacted. In fact, the substituted sub-section (4A) gives a trust or institution a greater benefit than was given by section 13(1)(bb). If the object of the Parliament was to give trusts and institutions no more benefit than that given by section 13(1)(bb), the language of section 13(1)(bb) would have been employed in the substituted sub-section (4A). As it stands, all that is required for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of the objectives of the trust or

> institution. A business whose income is utilized by the trust or the institution for the purpose of achieving the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust. In any event, if there be any ambiguity in the language employed, the provision must be construed in a manner that benefits the assessee. Since it was not in dispute that the income of its newspaper business had been employed to achieve its objectives of education and relief to the poor and that it had maintained separate books of account in respect thereof, it was therefore, held that the trust was entitled to the benefit of section 11 for the assessment year 1992-93 and thereafter.

The Supreme Court, therefore, has drawn the distinction between the Pharse “in **the course of** the actual carrying out of their primary purpose” and the phrase "the business **is incidental to the attainment of the objectives** of the trust.” It was therefore, held that if all the surplus in acquiring business assets is invested or ploughed back to the business, business will be a business incidental to the attainment of the objects of the trust .

33. The Supreme Court again considered the applicability of the last limb of the definition of ‘charitable purpose’ in the case of ‘CIT v. Gujarat Maritime Board’ [2007] 295 ITR 561 [2008] 166 Taxman 58 (SC), the Court observed that he expression ‘any other object of general public utility’ is of the widest connotation. The expression would prima facie include all objects which promote the welfare of the general public.

34. The amendment brought by Finance Act 1983 to Section 2(15) remained in force from 1984 to 2009. The legal position remained that to claim exemption from taxation under section 11 of the Act, making profits from a business activity must be incidental to the attainment of objectives of the trust i.e. it must subserve the end result for the end motive of charity. Further that separate books of accounts should be maintained in respect of such business activity by the assessee.

35. However vide Finance Act, 2008 w.e.f. 1.4.2009, a new proviso (i.e. fist proviso) was added to this provision, carving out an exception in the cases of 'advancement of any other object of general utility:

> *"**2 (15) "charitable purpose**" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility:*
>
> *Provided that the advancement of any other object of general public utility shall not be a charitable purpose, **if it involves** the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, **irrespective of the nature of use or application, or retention, of the income from such activity;'***
>
> *(Emphasis supplied by us)*

36. There are two limbs of the above proviso to section 2(15) of the Act, introduced w.e.f. 1.4.2009, i.e. the advancement of any other object of general public utility" shall not be a charitable purpose if it involves the carrying on of:

> *(a) any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business,*
>
> *(b) irrespective of the nature of use or application, or retention, of the income from such activity;'*

37. The above amendment was carried in section seeks to overcome the decisions of the hon'ble Supreme Court in the cases of 'Surat Art Silk' (supra) and 'Thanthi Trust' (supra) as relevant to the period post substitution of the section 11(4A) of the Act. Firstly, the position that the carrying of business incidental to the attainment of the objectives of the trust as was allowable to the intuitions u/s 11(4A) carrying the activity under the all the limbs of section 2(15) of the Act is no more available to the institutions carrying on the advancement of object of public utility. The institutions carrying out the object of public utility have been barred from doing any activity in the nature of trade, commerce or business for claiming their activity for "charitable Purposes". Secondly this bar is irrespective of application of income from such commercial activity. That it will be immaterial whether the income from the commercial activity is utilized or ploughed back to such activity serving object of public utility. However, the restriction imposed by the above amendment is / was applicable only in respect of

fourth limb of section 2(15) of the Act i.e. for the institutions or trusts carrying out the activity of advancement of any other object of general public utility. Hence, the restriction put by section 11(4A) was still applicable to the other limbs in the definition of charitable purposes u/s 2(15) of the Act.

38. The Note on Clauses-Memorandum explaining the clause read as under:—

'RATIONALISATION AND SIMPLIFICATION MEASURES

Streamlining the definition of "charitable purpose"

Section 2(15) of the Act defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under section 10(23C) or Section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engaged in the "advancement of an object of general public utility" as is included in the fourth limb of the current definition of "charitable purpose". Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

With a view to limiting the scope of the phrase "advancement of any other object of general public utility", it is proposed to amend section 2(15) so as to provide that "the advancement of any other object of general public utility" shall not be a charitable purpose if it involves the carrying on of:—

(*a*) any activity in the nature of trade, commerce or business, or

(*b*) any activity of rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or the retention of such income, by the concerned entity.

This amendment will take effect from the Ist day of April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.'

39. The CBDT issued a circular dated 19.12.2008, paragraph-3 whereof reads as under:—

"3. The newly amended s. 2(15) will apply only to the entities whose purpose is 'advancement of any other object of general public utility' i.e., the fourth limb of definition of 'charitable purpose' contained in s. 2(15). Hence, such entities will not be eligible for exemption under s. 11 or under s. 10(23C) of the Act, if they carry on commercial activities. **Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of activity.**

3.1 There are industry and trade associations who claim exemption from tax under s. 11 or on the ground that their objects are for charitable purposes as these are covered under the 'any other object of public utility'. Under the principle of mutuality, if trading takes place between the persons who are associated together and contribute to a common fund for the financing of some venture or object, and in this respect have no dealings or relations with any outside body, then the surplus returned to such persons is not chargeable to tax. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual members, these would not fall under the purview of s. 2(15) owing to the principle of mutuality. However, if such organizations have dealings with the non-members, their claim for

charitable institution would now be governed by the additional conditions stipulated in proviso to s. 2(15).

3.2 In the final analysis, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in connection to trade, commerce or business, it would not be entitled to claim that its object is for charitable purposes. In such a case, the object of 'general public utility' will only be a mask or a device to hide the true purpose which is trade, commerce, or business or rendering of any service in relation to trade, commerce or business. **Each case would, therefore, have to be decided on its own facts, and generalizations are not possible.** An assessee who claims that their object is 'charitable purpose' within the meaning of s. 2(15) would be well advised to eschew any activity which is in the nature of trade, commerce or business or rendering of any service in relation to any trade, commerce or business."

(emphasis supplied by us)

40. The above explanation given by the CBDT that the newly amended s. 2(15) will apply only to the entities whose purpose is 'advancement of any other object of general public utility' and that such entities will not be eligible for exemption under s. 11 or under s. 10(23C) of the Act, if they carry on commercial activities irrespective of application of income from such activity has not gone well with the interpretation given by the High Courts. The Jurisdictional Punjab & Haryana High Court has discussed at length

the effect of newly inserted proviso to section 2(15) of the 1961 Act w.e.f. 1.4.2009 while referring to several case laws of other High Courts of the country and held that by the insertion of the proviso, the position has restored/reverted to legal position as declared by the Hon'ble Supreme court in 'Surat Art Silk Case' (supra) while interpreting the unamended provisions of 1961 Act. The Hon'ble High Court has observed that the crucial words "not involving the carrying on of any activity for profit" as were mentioned originally in the section 2(15) of the 1961 Act, were akin to the wording introduced vide Finance Act 2008 w.e.f. Ist April 2009 i.e. ""any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business." The Hon'ble High court has observed that while the legislature in the 1984 amendment which continued up to the year 2009 altered the position by deleting the words "not involving the carrying on of any activity for profit", it reintroduced an exclusionary clause albeit in different and wider terms in the 2009 amendment. The exclusionary clause related to the object of general public utility and not the advancement thereof. The Hon'ble High Court thereafter referring to the words "any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business" as mentioned in the proviso to section 2(15), as amended in 2009, observed that such activities are carried for profit only. The Hon'ble High Court

rejected the contention of the revenue that the meaning of the above words “nature of trade, commerce or business” was of wider import and that even if the advancement of object of general public utility involves any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, it will be out of the definition of the word “charitable purposes”. The Hon’ble high court held that a wider meaning ought not to be given to these words especially in a taxing statute. The Hon’ble High Court observed that if a trade or business for a commercial activity did not result in profit, it would not be necessary to deal with the same in the Income Tax Act. The hon’ble High Court observed that there was nothing in the Act and particular in section 2 (15) thereof that indicated that the Legislature contemplated a trade or a business or a commercial activity other than for profit. The Hon’ble High Court in this respect referred to the several judgments of the Delhi High Court including in the case of Bureau of Indian Standards v. DGIT (Exemptions) [2013] 358 ITR 78/212 Taxman 210/[2012] 27 taxmann.com 127, The Institute of Chartered Accountants of India v. DGIT (Exemptions), [2013] 358 ITR 91/217 Taxman 152/35 taxmann.com 140 wherein it has been held that while construing the term business for the purpose of Section 2(15) of the Act the object and purpose of the Section must be kept in mind and a broad and extended definition of business would not be applicable for the purpose of interpreting and applying

the first proviso to Section 2(15) of the Act. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose. The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable, any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce". Although, it is not essential that an activity be carried on for profit motive in order to be considered as business, but existence of profit motive would be a vital indicator in determining whether an organisation is carrying on business or not. The Hon'ble High Court also referred to the decision of the Delhi High Court in the case of India Trade Promotion Organization v. DGIT (Exemptions) [2015] 371 ITR 333/229 Taxman 347/53 taxmann.com 404 wherein it was held as under:-

> "An activity would be considered 'business' if it is undertaken with a profit motive, but in some cases, this may not be determinative. Normally, the profit motive test should be satisfied, but in a given case activity may be regarded as a business even when profit motive cannot be established / proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business.
>
> 58. In conclusion, we may say that the expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take

colour and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running foul of the principle of equality enshrined in Article 14 of the Constitution of India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. **If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'.** On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes."

(emphasis supplied by us)

41. The crucial point for the entire discussion in the above case of ‘India Trade Promotion Organization v. DGIT (Exemptions)’ was relating to the interpretation of section 2(15) r.w.s. 10(23C) (iv) of the Income Tax Act. The Hon’ble High Court has observed that the expression “charitable purposes” in context of section10 (23C) (iv) has a reference to income. It is only when an institute has an

income that it will claim exemption from its inclusion in the total income. The Hon'ble Delhi High Court therefore held that merely because an institution which otherwise was established for a charitable purpose, receives income would not make it any less a charitable institution. That it is not the income but the objects of the institution that have to be looked into. The Hon'ble Delhi High Court observed that it was undisputed that the institute (India Trade Promotion Organization) had been established for charitable purpose. The Hon'ble High Court took the notice that prior to the amendment introduced w.e.f Ist April, 2009 the institute had been recognized as an institution established for charitable purposes and that this had been done having regard to the objects of the institution and its importance throughout India. The Hon'ble High Court further observed that if a meaning is given to the expression 'charitable purpose' so as to suggest that in case an institution, having an objective of advancement of general public utility, derives an income, it would be falling within the exception carved out in the first proviso to Section 2(15) of the said Act, then there would be no institution whatsoever which would qualify for the exemption under Section 10(23C)(iv) of the said Act and the said provision would be rendered redundant.

42. The Hon'ble Punjab & Haryana High court in the case of 'The Tribune Trust' (supra) following the decision of the Hon'ble Supreme Court in 'Surat Art Silk' (supra) and in the light of the

several decisions of the Hon'ble Delhi Court has held that the predominant object of the trust or institution is the deciding factor , if the profit is the pre-dominant motive, purpose and object of the assessee Trust then its activities cannot be considered for charitable purposes as per the definition of charitable purposes in the light of newly inserted proviso w.e.f. 1.4.2009. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity.

43. From the above discussion and in the light of decisions rendered by the Delhi High Court in the cases as discussed above and of the Jurisdictional Pb. & Hry. High court in the case of 'The Tribune Trust' (supra) the position that has emerged is that as if the new proviso to section 2(15) has never been brought in and has been rendered redundant or otiose. The theory of predominant object or activity and incidental income therefrom can well be applied as per the provisions of section 11(4A) of the Act and as interpreted by the Supreme Court in the case of 'Thanthi Trust' (supra) and several High Court decisions thereafter. Even with all due respect, in our humble opinion, the restriction put by newly inserted proviso was applicable only to the activity of 'any other object of general public utility' but not to the other limbs of the definition as provided u/s 2(15) of the Act. Hence, to say that the newly inserted proviso would make for all purposes the section 2(23)(iv) or section 11 (4)

of the Act redundant or otiose, in our humble view, may not be correct. Even the crucial words in the second limb of the proviso 'irrespective of the nature of use or application, or retention, of the income from such activity' are also required to be considered and the same, in our view, cannot be ignored. By the insertion of these words, intention of the government is to overcome the 'ultimate or end object or to say predominant object theory' as was laid down by the Hon'ble Supreme Court in the cases of 'Surat Art Silk' (supra) and 'Thanthi Trust' (supra). To be more precise, the effect of the above introduced words is that it will be immaterial if the funds or the profits from business activity are ploughed back to subserve the main or the predominant object of the trust. Again, even at the cost of repetition, it is to be mentioned here that this restriction is applicable only to the activity of advancement of any other object of general public utility but not to the other limbs of the activity as included in the definition provided u/s 2(15) of the Act.

We may further add here that the prohibition put by the above proviso is not applicable in respect of non-business income of the institution or the trusts carrying on the advancement of other objects of general public utility but only in respect of income earned from the activity in the nature of trade, commerce or business. In other words, this exclusionary provision will not exclude the institutions having income other than the business income.

44. It is pertinent to mention here that Parliament also realized that the absolute restriction on any receipt of commercial nature imposed by the proviso inserted w.e.f. 1.4.2009 to section 2(15) may create hardship to the organizations which receive sundry or incidental considerations from such activities. Therefore by the Finance Act 2010, there was yet another proviso (i.e. second proviso) inserted with retrospective effect from 1.4.2009; now the section read as under:

> *"2 (15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility:*
>
> *Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;*
>
> ***Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is 10 lakh rupees or less in the previous year.'***
>
> *(emphasis supplied by us)*

45. The CBDT issued explanatory notes to the provisions of the Finance Act, 2010 vide circular no. 01/2011 dated, the 6th april, 2011, the relevant part in respect of the aforesaid amendment read as under:

> ***"4. Change in the Definition of "charitable purpose"***
> *4.1 For the purposes of the Income-tax Act, "charitable purpose" has been defined in section 2(15) which, among others, includes "the advancement of any other object of general public utility".*

4.2 However, "the advancement of any other object of general public utility" is not a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

4.3 The absolute restriction on any receipt of commercial nature may create hardship to the organizations which receive sundry considerations from such activities. Therefore, section 2(15) has been amended to provide that "the advancement of any other object of general public utility" shall continue to be a "charitable purpose" if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business do not exceed Rs.10 lakhs in the previous year.

4.4 Applicability - This amendment has been made effective retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent years."

46. The above prescribed limit of receipts up to Rs.10 lakhs from the ancillary activity in the nature of trade business or commerce by the institutions carrying out the object of General Public Utility was increased to Rs. 25 lakhs vide finance Act 2011 w.e.f.1.4.2012.

47. By the Finance Act 2015, the first and second provisos also stand substituted, with effect from 1st April 2016, with a new proviso to Section 2(15). The section now is read as under:

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

Provided that the advancement of any other object of general public utility shall not be a charitable

purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year

48. The Memorandum explaining the clause read as under:—

"Rationalization of definition of charitable purpose in the Income-tax Act

The primary condition for grant of exemption to a trust or institution under section 11 of the Act is that the income derived from property held under trust should be applied for charitable purposes in India. 'Charitable purpose' is defined in section 2(15) of the Act. The section, inter alia, provides that advancement of any other object of general public utility shall not be a charitable purpose, **if it involves** the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. However, this restriction shall not apply if the aggregate value of the receipts from the activities referred above is twenty five lakh rupees or less in the previous year.

The institutions which, as part of genuine charitable activities, undertake activities like publishing books or holding program on yoga or other programs as part of actual carrying out of the objects which are of charitable

nature are being put to hardship due to first and second proviso to section 2(15).

The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. Therefore, it is proposed to include 'yoga' as a specific category in the definition of charitable purpose on the lines of education.

In so far as the advancement of any other object of general public utility is concerned, there is a need is to ensure appropriate balance being drawn between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken by the genuine organization as part of actual carrying out of the primary purpose of the trust or institution.

It is, therefore, proposed to amend the definition of charitable purpose to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed twenty percent. of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year .

These amendments will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

(emphasis supplied by us)

49. Thus, the respective memorandums explaining the clauses in 2015 explain that the purpose of insertion of second proviso to section 2(15) and subsequent amendments there to was to remove

the hardship faced by the institutions genuinely carrying on the advancement of any other object of general public utility due to first proviso to section 2(15) and to bring appropriate balance between the object of preventing business activity and at the same time protecting the genuine charitable activities. The amendments brought out to second proviso w.e.f. 1.4.2016 seeks remove hardship of restriction of receipts of Rs.25 lakh to the institutes who carry on the genuine charitable activities for the advancement of their object of general public utility on a large scale and receives incidental or sundry receipts as per their large volume of activity which may cross the prescribed limit of Rs. 25 Lakhs. Hence to rationalize the definition of 'Charitable purposes' the limit of receipt of Rs. 25 Lakhs has been substituted with 20% of the total receipts.

50. At this stage, it is important to note that vide finance Act 2012, with retrospective effect from 1.4.2009 has inserted subsection (8) to section 13 of the Act, which read as under:

> *" [(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."*

51. The parliamentary notes on clauses explaining the above amendment to section 13 read as under:

Clause 6 of the Bill seeks to amend section 13 of the Income-tax Act relating to section 11 not to apply in certain cases.

It is proposed to insert a new sub-section (8) in the aforesaid section 13 so as to provide that nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.

This amendment will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-2010 and subsequent assessment years.

52. A corresponding amendment has also been brought in section 10(23C) of the Act inserted by the Finance Act, 2012, w.r.e.f. 1-4-2009 adding the following proviso added:

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—
(23C) any income received by any person on behalf of—
……..
(iv) any other fund or institution established for charitable purposes which may be approved by the prescribed authority , having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or
(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority , having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;
…….
Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded;"

53. A corresponding amendment has also been brought to section 143(3) of the Act inserted by the Finance Act, 2012, w.r.e.f. **1-4-2009** which deals with the assessment, adding third proviso thereto:

> **"Assessment :**
> **143. (1)……**
> **(3) On the day specified in the notice,—**
> **…….**
> **Provided also that notwithstanding anything contained in the first and the second proviso, no effect shall be given by the Assessing Officer to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded."**

54. Therefore, with the introduction of second proviso to section 2(15) there is a paradigm shift from the earlier position. Though, some of the decisions of the Delhi High Court as referred to above and that of the Pb. & Hry. High Court in the case of The Tribune Trust (supra) have been delivered subsequent to the introduction of the second proviso to section 2(15) of the Act, however in none of the above referred to decisions there is any discussion about the effect of the introduction of second proviso to section 2(15) of the act and subsequent amendments thereto, amendments brought in section 10(23C), section 13 and section 143 of the Act. Though the courts of law have interpreted the first proviso to section 2(15) taking not consideration the hardships faced by the institutions genuinely involved in carrying out the charitable activities and thereby did not go by the literal meaning of the words of the provisions and interpreted the provision to mitigate the hardship to

such institutes and to bring rational to the definition of charitable purposes and thereby holding that the crucial words " in the nature of trade, commerce or business" find mentioned in the second proviso have the same meaning as was ascribed to the words " not for making profits' as were there in the originally introduced provisions of section 2(15) in the 1961 Act. However, in our view, that was perhaps never the intention of the parliament to restore the position to that was operative or as interpreted by the courts of law from the year 1961 to the year1983. That is why immediately in the next financial year vide Finance Act 2010 with retrospective effect from 1.4.2009, the date with effect from which the first proviso to section 2(15) was introduced, the second proviso was brought in with the sole purpose of diluting the rigours of the first proviso and to mitigate the hardship created to the institutes genuinely carrying out the object of general public utility. Since with the introduction of second proviso, the rigour of the first proviso was diluted to ensure appropriate balance being drawn between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken by the genuine organization, hence the interpretation given by the courts taking into consideration the hardship caused by the first proviso , in our view, can not be applied as such at this stage, but the same is required to be looked into in the light of the second proviso and the amendments brought in other related sections also, as discussed

above. In our view, it will not be proper to just ignore the second proviso brought in by the parliament on the statute by following the interpretation given by the courts of the first proviso which was to mitigate the hardship created by the first proviso to the institutions genuinely carrying on the activity of general public utility. Since the interpretation adopted by the courts was not the literal interpretation of the proviso, but there was departure from the literal meaning because of the hardships which may be faced by the trusts carrying genuine charitable activities in giving literal and plain meaning to first proviso, hence under the circumstances, when the Parliament itself has introduced the second proviso to remove the rigour of the first proviso and to mitigate the hardships created by the first proviso, hence the interpretation of the section 2(15) in the changed scenario is to be given by taking into consideration the section in its entirety and also in the light of consequential amendments carried out in sections 10(23C), 13, and 143 of the Act and thereby making the newly inserted second proviso and amendments thereto and other amended section meaningful and workable so as to achieve and serve the intended purposes for which they have been introduced by the legislature in the statute.

55. It is to be noted that the section 2(15) as it stood post insertion of the first proviso w.e.f.1.4.2009, the charitable purposes included relief to the poor, education, medical relief, preservation of environment and preservation of monuments or places or objects

of artistic or historic interest and advancement of any other object of general public utility. The first proviso does not control or restrict the definition of 'charitable purposes' in respect of trust carrying out the activity such as relief to poor, education, medical relief, preservation of monuments etc. as specifically mentioned. However section 11(4A) do put restriction on business activity of such institutions and provides that the same should be incidental to their main objects. Subsection 4A of section 11 neither makes inoperative or redundant the provisions of section 2(15) nor of subsection 4 of section 11. On the other hand the provisos to section 2(15) only put restrictions on the benefits available to the trusts carrying on the advancement of any other object of general public utility which also involves the incidental activity in the nature of trade, commerce or business. Newly inserted proviso to section 10(23C) also controls or restricts the benefit available to the institutions claiming benefit thereunder, however none of the provisions, in our view, in any manner, makes the other section inoperative, otiose or redundant. On the other hand, in our view, adopting the interpretation as given by the courts to the first proviso to section 2(15) bereft of second proviso and ignoring section 13(8) of the Act and other related amendments brought into section 10(23C) and section 143(3) of the Act with retrospective effect from 1.4.2009, would make these provisions redundant, otiose and inoperative.

56. It is pertinent to point here that the hon'ble supreme court in the case of "Thanthi Trust" (supra) while interpreting the relevant provisions as they stood for the period from AY 1984-85 to AY 1991-92, denied the benefits of exemption to the assessee trust applying and adopting the literal interpretation of the more stringent provisions of section 11(4A) of the act as were there in the statute for the aforesaid period. Though, the provisions of Sub-section (4) of section 11 remained on the statute book which defines the words 'property held under trust' for the purposes of section 11 to include 'a business held under trust', yet, the supreme court observed that Sub-section (4A) restricts the benefit under section 11 so that it is not available for income derived from business unless the business is carried on by a trust only for public religious purposes and it is of printing and publishing books or any other notified kind. The court held that the newspaper business that was carried on by the trust did not fall within sub-section (4A). This finding of the Hon'ble Supreme Court is in departure from the earlier interpretation made by it in the case of "Surat Art silk Cloth Manufactures Association"(supra) wherein it was held that the literal and plain meaning of the provisions of section 2(15) in context of the words "not for making profit" would render the provisions of section 11 (4) wholly superfluous and meaningless, despite the fact that these words barring the activity of the making

of profit were applicable only in respect of institutions carrying on the activity in respect of advancement of other objects of public utility, whereas, the provisions of section 11(4) still holding good for the institutions carrying in the activity in respect of first three limbs i.e. relief to poor, education and medical relief. However in the subsequent decison in the case of Thanthi Trust (supra) , the supreme court applied the plain literal meaning to the more stringent provisions of subsection 4A of section 11 as these stood during the period from AY 1984-85 to AY1991-92 and held that subsection 4A restricts the benefits under section 11, despite noticing the existence of the provisions of subsection 4 of section 11 on the statute. The latter decision of the Supreme Court in the case of Thanthi Trust (supra), in our view, cannot be ignored or overlooked, while interpreting the newly amended provisions of section 2(15) of the Act, especially the second proviso, which also strives to control the benefit available to the institutions involved in the activity of advancement of any other object of general public utility and not of the institutions carrying out the activity in respect of other limbs, to which the provisions of amended subsection 4A to section 11 continue to apply.

57. Another crucial phrase brought in the first proviso are “irrespective of the nature of use or application, or retention, of income from such activity”. The addition of the above crucial words obviously is to overcome the decision of the Hon'ble

Supreme court in the case of Surat Art Silk (supra) as well in the case of 'Asstt. CIT v. Thanthi Trust' (supra) wherein it was held that if all the surplus or profit from the business activity is invested or ploughed back into the assets of the assessee or applied to the main activity, the business will be a business incidental to the attainment of the objects of the trust. However, this proposition has been made inapplicable or to say bygone by the Legislature for the institutions carrying on object of general public utility by way inserting the crucial words " **irrespective of the nature of use or application, or retention, of the income from such activity**" in the first proviso to section 2(15) of the Act.

58. The Government realized need to curb the practice of business houses to claim exemption on the ground that they were carrying out of objects of general public utility and thereby making the benefit of exemption in respect of business carried out by them in the mask of charity and that is why they introduced first proviso to section 2(15) thereby excluding the institutions carrying on the object of the general public utility if their activities involves carrying on the activity of business trade or commerce or the services in relation to business trade or commerce for a cess or fee and even it was also clarified that application or the retention of such income from such activity will be immaterial.

The High Courts of Delhi and Pb. & Hry. in the cases as referred to above , however, held that the above provision was a harsh

provision and the consequences of the same could be like as it were that the introduction of words “not for making profits” in section which operated from 1961 to 1983. Even the Courts of law also following the proposition laid down by the Hon'ble Supreme Court in the case of ‘Surat Art Silk’ (supra) held that the literal and plain meaning cannot be given to the said first proviso to section 2(15) of the Act and therefore, propounded the ‘pre-dominant object theory’ or ‘the ultimate fulfilment of object theory’ on the same lines as was given in the case of ‘Surat Art Silk’ (supra) by the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of ‘Surat Art Silk’ (supra) in para 11 of the decision has held that in the ordinary course, the different interpretation should not be done if the words of the statute taken could not alter the meaning of a statutory provision where such meaning is plain and unambiguous, but they can certainly help to fix its meaning in case of doubt or ambiguity. The Hon'ble Supreme Court thereafter discussed as to what would be the consequence of the construction of the provisions contained for on behalf of the Revenue and held that in such an event no trust or institution whose purpose is promotion of object to general public utility would be able to carry on any business, even though such business is held under trust or legal obligation **to apply its income** wholly to the charitable purpose carried on by the trust or institution. However, the Hon'ble Supreme Court held that in such an event the provisions of section

11 (4) would be rendered wholly superfluous and meaningless. The High Courts of Delhi and Pb. & Hry. followed the obove construction made by the Supreme Court in the caae of 'Surat Art Silk Cloth Manufacturers Assn.' (supra)

59. However, the Govt. very soon, even before the coming of above interpretations by the High Courts, realized the consequence that were likely to arise from the above amendment. Therefore, taking into consideration the harsh and strict meaning of the first proviso, it was felt that the plain and literal meaning to the first proviso would be of great hardship to the trust or institution which were genuinely carrying out the object of general public utility and that in the course of which it also generates some incidental or ancillary income. It was under such circumstances that the second proviso was brought in the next financial year itself with retrospective effect so as to make the first proviso to section 2(15) workable and to remove the ambiguity in the provisions of section 2(15) of the Act. Now with the insertion of second proviso, meaning and interpretation which is more rational has to be arrived at.

However, if the interpretation of section (2(15) as per the decision of the Hon'ble Pb. & Hry. High court in the case of "Tribune Trust'(supra) and in other decisions of the Delhi High court as discussed above considering the first proviso to section 2(15) alone and ignoring the subsequent amendments, is applied to the amended

section 2(15), then it will not only make the second proviso to section 2(15) but also section 13(8) and corresponding amendments to section 10(23C) and section 143(3) redundant, meaningless and inoperative and the situation will be as if the second proviso was never inserted or existed in the Act, what to say its subsequent amendment by way of increasing the limit of Rs. 25 lacs and then to the 20% of the total receipts and other corresponding amendments to section 10, section 13, and section 143. In our view, sticking to the interpretation which was given by the Courts before introduction or bereft of second proviso to section 2(15) of the Act, would lead to unintended construction, which will be against the spirit of statutory provisions. The subsequent amendments, as discussed above, in our view, definitely have a bearing on the interpretation which was done by the Courts of law taking into consideration the harshness of the first proviso to section 2(15) alone. However, the leverage provided to the institution by way of insertion of second proviso would prompt us re-think and re-appraise about the literal interpretation of the section. The subsequent amendments brought in section 10(23C), section 13 and section 143 of the act with retrospective effect from 1.4.2009, the date on which the first proviso comes in effect, also cannot be ignored or rendered redundant. As it stands, post insertion of second proviso, allows the institutions to carry on the incidental activity in the nature of trade, commerce or business while

pursuing objects of general public utility of the trust or institution, but restricts the receipts to a specified limit. The said limit perhaps was made so as to allow only genuine institutions to claim exemptions who were carrying out the activity of charitable purposes and their motive is not to earn huge profits.

60. Now, let us, assume that the interpretation that the income derived by the Trust from ancillary commercial activity while carrying out the pre-dominant object of general public utility is totally exempt as stood canvassed by the Ld. Counsel for the assessee in the light of the various case laws including the decision of the Hon'ble Jurisdictional High Court of Punjab & Haryana in the case of 'The Tribune Trust' (supra) . In that event the argument that can be reasonably put is that the second proviso inserted by Finance Act 2010 with retrospective effect from 1.4.2009 allowing the carrying out of the business activity up to the prescribed limit of receipts from such activity would be applicable in those cases where an institution or trust is carrying out the activity of advancement of general public utility but at the same time its object is also to make profits as observed by the hon'ble Supreme Court in the case of 'Surat Art Silk Cloth Manufactures Association' (supra) in respect of the privy Council decision in the case of "Trustees of the Tribune" (supra) and then by the Hon'ble Pb. & Hry. High court in respect of activities carried out by the Tribune Press Trust in the case of "The Tribune Trust" (supra), in

that event such institutions would also be eligible to claim exemption u/s 2(15) subject to the condition that their total receipts would not exceed the prescribed limit of Rs. 10 lacs or Rs. 25 lacs or 20% of the total receipts as applicable from time to time. In that scenario, each and every trust or institution indulged into business activity involving the providing of some sort of public utility services will claim exemption if total receipt of such institution does not exceed the prescribed limit. As held by the Hon'ble Supreme Court in the case of 'CIT v. Gujarat Maritime Board' [2007] 295 ITR 561 /[2008] 166 Taxman 58 (SC), that he expression 'any other object of general public utility' is of the widest connotation. The expression would prima facie include all objects which promote the welfare of the general public.

61. A company or trust involved in the insurance business for profit will claim that the object, purpose and activity of the insurance activity is towards the advancement of object of general public utility as it provides security against unforeseen events to the insured . An industrialist will also claim exemption on the ground that by way of establishing industry, it has contributed towards the advancement of object of general public utility as with the establishment of industry, it generated employment and that it has also contributed towards infrastructure development and boosting the economy of the country. A manufacturer of medicine will also so claim that medicines are made by him with the object

of providing people of country the essential and useful drugs for fighting dreaded disease and sickness and even lifesaving drugs and also contributing towards improvement of health of the people for advancement of object of general public utility. A road contractor will also claim that the road maintained or constructed by it, though with profit motive are for the advancement of object of general public utility as it ease mode of transport not only of the people but also of the goods and other material. Even a general merchant, opening shop in a rural area or village may claim that though it is doing the retail business with the motive of profit, however, it is also doing the activity of general public unity by way of making available different goods on day to day need and necessity of the people of the village who otherwise would have to travel large distances to get the same. The taxation limits fixed by the Department will fail and the taxation in respect of such persons doing different business will start only if their receipts during the year would cross the limit as prescribed from time to time.

Even big institutions or companies will divide themselves into subsidiaries or smaller units ensuring that income of each of such taxable unit or entity should not increase the prescribed monetary limit of the receipts. Such an interpretation of the second proviso to section 2(15) would lead to absolute absurdity, confusion and unwanted and uncalled for consequences. Even it will be also an issue in dispute as which of the activity/activities of

an assessee is/are towards the advancement of object of General Public Utility though may be with profit making object also and which of these is/are of a pure commercial venture. Thus. in our view, the different but related provisos of the Act are to be read in harmony with each other. The interpretation as canvassed for the period prior to the introduction of the second proviso, if adopted now, will render the newly inserted amended provisions of the Act as infructuous and redundant.

62. The issue relating to the effect of insertion of first and second provisos to section 2(15) of the Act vide Finance Acts 2008 and 2009 respectively came into consideration in the case of 'Jammu Development Authority vs. CIT' (supra) wherein, it has been held that if activities of any Institution/Trust/Society under the fourth limb i.e. `the advancement of any other object of general public utility' are in the nature of trade, commerce or business for cess or fee and the receipts therefrom crosses the prescribed limit then they are not eligible to continue with registration u/s 12A and the same is required to be withdrawn. However, subsequently the impact of these provisions was also considered by the Coordinate Mumbai Benches of the Tribunal in the cases of "Ghatkopar Jolly Gymkhana v. Director of Income-tax (E)" reported in [2013] 40 taxmann.com 207 (Mumbai - Trib.) and "Cotton Textiles Exports Promotion Council v. Director of Income-tax (Exemption), Mumbai reported in [2014] 44 taxmann.com 168 [Judicial Member of this

Bench being party to the said decisions also) wherein it has been held that the first proviso to section 2(15) is a very rigorous provision which excludes the institution or trust from the definition of charitable trust, if such trust carries activities in the nature of trade, commerce or business....irrespective of the nature of use or application or retention of the income from such activity. That, however, by the insertion of the second proviso w.e.f. 01.04.2009 the rigour of the first proviso has been diluted and that the first proviso will not apply even if the trust carrying on business activities in the course of its dominant activities for the purpose of advancement of any other objects of general public utility and the gross receipts from such activities is Rs.10.00 lacs or less in the previous year. However where the gross receipts of a charitable institution, from its business activities exceeds limit of Rs. 10 lakhs, assessee will not be entitled for exemption or other admissible tax benefits for that relevant year but it does not result in cancellation of its registration as charitable institution. The above view, now has been affirmed by the Hon'ble Bombay High Court in the case of Director of Income-tax (Exemption) v. North Indian Association [2017] 79 taxmann.com 410 (Bombay) wherein the Hon'ble High court while further relying upon its another decision in the case of "DIT (Exemption) v. Khar Gymkhana[2016] 385 ITR 162/240 Taxman 407/70 taxmann.com 181 (Bom.) has duly taken note of the provisions of section 13(8) of the Act inserted

vide Finance Act 2012 w.r.e.f. 1.4.2009 as well as the CBDT Circular No.21 of 2016 and though, held that merely because in one year income of assessee-trust exceeded prescribed limit provided under second proviso to section 2(15), that by itself, could not warrant cancellation of registration of trust, however, where the receipts are hit by the proviso to Section 2(15) of the Act, the benefit of exemption to its income for the previous year relevant to the subject assessment year will not be available. However it has been further held that if this happens on continuous / regular basis, it could justify further probe / inquiry before concluding that the trust is not genuine.

63. Though in the above referred to decisions of Mumbai Bench of the Tribunal and that of the Hon'ble Bombay High Court (supra), the question was whether the registration granted u/s 12 to the charitable institution can be cancelled if the monetary receipts from its business activity crosses the limit prescribed as per the second proviso to section 2(15) of the Income Tax Act and it was held that the registration on this ground granted to a charitable institution cannot be cancelled. However, it is to be noted that it was also held that in the previous year during which such income from business activity of the trust or institution crosses the prescribed limit, benefit of exemption u/s 11 for that year will not be available to such trust or institution. It is, therefore, to be noted that not only second proviso to section 2(15) of the Income Tax Act but also

insertion of corresponding provisions of section 13(8) of the Act have been duly noted and their effect discussed. What we want to convey is that existence and effect of the amended provisions of sections 2(15), section 13, section 23 and section 143 of the Act cannot be just ignored or negated rather the same are to be read along with other relating provisions of the Act such as sections 11(4) and 11 (4A) of the Act and a harmonious construction is to be arrived at.

64. We may point out here that in the decision of the Coordinate Amritsar Bench of the Tribunal in the case of 'Hoshiarpur Improvement Trust (supra)', the issue relating to the effect and consequences of insertion of the second proviso w.e.f. 1.4.2009 did not come for discussion , however, the Tribunal did take the note amendment to section 2(15) by Finance Act 2015 w.e.f. 2016 and held that the new proviso, with effect from 1st April 2016, seeks to exclude, from the scope of section 2(15), the situations in which even in the course of pursuing advancement of any objects of general public utility when any activities in the nature of trade, commerce or business etc is undertaken in the course of actual carrying out of such advancement of any other object of general public utility, unless, the activity level remains within the threshold limit i.e. receipts from such activities are less than twenty percent of total receipts of that year. The relevant part of the order is reproduced as under:

"19. This substitution of proviso to Section 2(15), in our considered view, may be viewed as representing a paradigm shift in the scope of the exclusion clause.

20. The paradigm shift is this. So far as the scope of earlier provisos is concerned, the CBDT itself has, dealing with an assessee pursing **"the advancement of any object of general pubic utility"**, observed that **"If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in connection to trade, commerce or business, it would not be entitled to claim that its object is for charitable purposes"** because **"In such a case, the object of 'general public utility' will only be a mask or a device to hide the true purpose which is trade, commerce, or business or rendering of any service in relation to trade, commerce or business."** The advancement of any objects of general public utility and engagement in trade, commerce and business etc. were thus seen as mutually exclusive in the sense that either the assessee was pursuing the objects of general public utility or pursuing trade, commerce or business etc. in the garb of pursing the objects of general public utility. As the CBDT circular itself demonstrates, there could not have been any situation in which the assessee was pursing the objects of general public utility as also engaged in trade, commerce of business etc. In the new proviso, however, even when the assessee is engaged in the activities in the nature of trade, commerce or business etc. and **"such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility"** it is excluded from the scope of charitable purposes only when **"the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year"**. In other words, even when the activities are in the course of advancement of any other object of general public utility, but in the nature of trade, commerce or business etc, the proviso seeks to exclude it only when the threshold level of activity is not satisfied. Whether such a statutory provision stands the legal scrutiny or not is another aspect of the matter, and that is none of our concern at present anyway, it is beyond doubt that the new proviso, with effect from 1st April 2016, seeks to exclude, from the scope of section 2(15), the situations in which even in the course of pursuing advancement of any objects of general public utility when any activities in the nature of trade, commerce or business etc **"is undertaken in the course of actual carrying out of such advancement of any other object of general public utility",** unless, of course, the activity level remains within the threshold limit i.e. receipts from such activities are less than twenty percent of total receipts of that year."

65. We may point out here that the Amritsar Bench of the Tribunal has held that substitution of proviso to Section 2(15), by Finance

Act 2015 has brought a paradigm shift in the scope of the exclusion clause i.e first proviso to section 2(15) of the Act. However the paradigm shift brought by the insertion of second proviso to section 2(15) did not come for discussion before the Coordinate Bench of the Tribunal. In the first proviso, the words '**if it involves**' before the words 'the carrying on of any activity in the nature of trade, commerce or business....' is crucial and important which means that it is the carrying on of any other object of general public utility which may involve the activity in the nature of trade, commerce or business. The activity in the nature of trade, commerce or business should not be separately or distinctly carried out but it should be a part of the main activity of the institution.

In our view, by way of above amendment by Finance Act 2015, the Parliament just has reiterated its earlier intention and purpose, as was for introducing the amendments to section 2(15) w.e.f. 1.4.2009, by way of again introducing the clause (a) to the proviso, wherein, it has been mentioned that the first proviso is applicable if the receipts are generated in actually carrying out the object of the general public utility being incidental or ancillary to the main object. We do not find that the above words introduced by the Finance Act 2015 are clarificatory or explanatory, rather the same ,in our view, is reiteration of the wording which already was there in the first proviso to section 2(15) of the Act. Rather the scope otherwise, of the provisio has also been curtailed by bringing in the

more restrictive words “in the course of actual carrying out of such advancement of any other object of general public utility” in clause (a) to the proviso to section 2(15) of the act. These words are crucial in the light of differentiation drawn between the phrases “ in the course of the actual carrying out of their primary purpose” and the phrase "the business is incidental to the attainment of the objectives of the trust.” by the Supreme Court in the case of “CIT vs Thanthi Trust” (supra).

66. Now coming to the point as to when the provisions of section 2(15) are read along with other related or corresponding provisions in plain English grammar meaning, whether they would render each or any of them redundant or inoperative, if it is so, which provision is to be read and in what manner to arrive at the correct interpretation? The relevant arguments and decisions that can be referred in this respect to are enumerated as under:

(i) The decision of Hon'ble Delhi High Court in the case of ‘India Trade Promotion Organization v. DGIT (Exemptions) (supra) wherein the hon’ble high court has held that if the literal interpretation is given to the proviso to Section 2(15) of the Act, then there would be no institution whatsoever which would qualify for the exemption under Section 10(23C)(iv) of the said Act and the said provision would be rendered redundant. That in order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv).

(ii) That section 11(4) recognizes that "property held under trust" includes a business undertaking and, therefore, the business activity is not excluded from the charitable activity or charitable purpose and that the literal and plain meaning to first proviso to section 2(15) of the Act will make this section redundant. Reference has been made to the decision of the Hon'ble Supreme Court in Surat Art Silk case wherein the Hon'ble Supreme court has observed that **Section 11(4) , would be rendered wholly superfluous and meaningless, after the insertion of clause (bb) in section 13(1) with effect from 1-4-1977.**

(iii) Then there is section 13(8) of the Income Tax Act, which states that nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income if the provisions of first proviso to clause (15) of section 2 become applicable in the case of such person. This section if read isolation or in conjunction with the first proviso to section 2(15) of the Act, will make the provisions of section 10 (23C) (iv) and section 11(4) of the Income Tax Act inoperative, meaningless or redundant.

67. To address all the above noted points of arguments and to properly analyse the relevant provisions on the statute and their *interse* relation or effect ,we deem it proper to reproduce, even at the cost of repetition, the relevant provisions here under:

" Definitions.

Section 2.

In this Act, unless the context otherwise requires,

…….

(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic

or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

(24) "income" includes—

(i) ……..;

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(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.

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<u>Incomes not included in total income.</u>

Section 10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

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(23C) any income received by any person on behalf of—

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(iv) any other fund or institution established for charitable purposes which may be approved by the prescribed authority , having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority , having regard to the manner in which the affairs of the trust or institution are

administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;

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Provided also that the income of a trust or institution referred to in sub-clause (iv) or sub-clause (v) shall be included in its total income of the previous year if the provisions of the first proviso to clause (15) of section 2 become applicable to such trust or institution in the said previous year, whether or not any approval granted or notification issued in respect of such trust or institution has been withdrawn or rescinded;"

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Income From Property Held For Charitable Or Religious Purposes.

Section 11.

(1) Subject to the provisions of section 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—

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

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

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Section 13. …….

(8) Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.

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"ASSESSMENT" :

143. (1)……

(3) On the day specified in the notice,—

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Provided also that notwithstanding anything contained in the first and the second proviso, no effect shall be given by the Assessing Officer to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded."

68. The provisions of different sections as enumerated above, in our view, are to be read to be in harmony with each other so that each and every section should aid and supplement to the meaning and construction of other, so as to arrive at the correct interpretation rather than to read any or each of them in contradiction of each other making the other provision/s redundant and inoperative leading to confusion, anomaly and absurdity. Therefore, these provisions are to be read as each provision of the section supplement to other and not supplant the other and so that a reasonable construction may be arrived at and applied as may be intended by the Parliament while introducing the above provisions in the Statute.

69. In our view, when we read the aforesaid relevant provisions of the different but related sections in harmony to each other, a valid and proper construction can be arrived giving a meaning interpretation .

69 (1) The introduction of second proviso to section 2(15) of the Act, as discussed above, has removed the anomalies which have occurred due to the aforesaid different provisions present in the statute. The proposition that if any surplus is generated from business activity which is again ploughed back for the activities of the trust exemption u/s 11 is to be allowed has been done away with by the crucial words "*irrespective of the nature of use or application, or retention, of the income from such activity"* introduced in the first proviso of section 2(15) of the Act.

69 (2). Now, coming to the provisions of section 10(23C)(iv) of the Act, the income received by any person, on behalf of any fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States exempt from taxation. Now for approval to claim exemption u/s 10(23C)(iv), the institute for the fund must fall in the definition of 'charitable purposes' which includes activity under all or any limb as discussed above and can not be said to be applicable solely for activity of General Public Utility. So far institutes established for the objects of relief to the poor, education yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest, their income may be claimed as exempt u/s 10(23C) (iv) if they otherwise fulfill the conditions as enumerated

u/s 10(23C)(iv) of the Act. So far as the institute carrying on the advancement of any other object of general public utility, as noted above, their commercial income has also not been excluded in the light of second provision to section 2(15) of the Act but subject to the limit prescribed of the quantum of receipts. In respect of the question that if an institute or a trust will not be engaged in the commercial activity, it will not have any income and where is the question of claiming exemption is cornered, we may point out here that the income of a charitable institution cannot be only from commercial activity, but there are other modes of income also as per the provisions of section 2(24)(iia) of the Act. Voluntary contributions received by the trust created wholly or partly for charitable or religious purposes and included in the definition of income apart from voluntary contribution, such charitable trust or institution may receive grants from other modes or activity which may not in strict term to be said to be the activities in the nature of trade, commerce or business. Suppose, a trust or institutions engaged in the activity of imparting training in sports receives a nominal registration fee from the trainees. Can it be said to be an activity in the nature of trade, commerce or business? The answer will be in negative. Whether a particular activity is in the nature of trade, commerce or business is to be examined taking into consideration the nature of activity, the object and purpose of such activity, the volume of such activity and the nature and volume of

the receipts and further the application thereof also. Every receipt of income, in our view, cannot be termed as activity in the nature of trade, commerce or business.

69(3). Moreover the restriction placed in the first proviso is only in respect of the institutions or trusts carrying out the activity for the advancement of any other object of Public Utility, and not in respect of activity for the other limbs of section 2(15). Hence, it cannot be said that the first proviso controls, restricts or bars any institution established for charitable purposes for carrying out the objects or activities in respect of other limbs and generating incidental income also therefrom.

69(4). Moreover, the anomaly, if any, has been removed with the introduction of second proviso to section 2(15) of the Act wherein the income from incidental or ancillary commercial activity has also been allowed and included while carrying out the advancement of object of general public utility also subject to the limit prescribed of the receipts. The second proviso of the section is in consonance of the provisions of section 11(4) & (4A) of the Income Tax Act.

69(5). We may point out here that the provisions of sections 11(4) and 11 (4A) of the Act are general provisions and are applicable to all the institutions claiming exemption u/s 11 of the Act carrying out activity for charitable purposes. Definition of the

'Charitable purposes' as provided u/s 2(15) of the Income Tax Act includes relief to the poor, education yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility. Sub section 4A do not bar the carrying on of business activity , however, puts restriction that such business should be incidental to the attainment of the objectives of the trust or institution and separate books of account are maintained. The restriction put by earlier section 13(1)(bb) and after its omission and by the subsequently inserted section 11(4A) have been well considered, interpreted and applied by the Hon'ble Supreme Court in the case of "Thanthi Trust" (supra) and thus it can not be said to be said there is any anomaly created by the above provisions .

69(6). Then there is sub section (8) to section 13 of the Income Tax Act which states that nothing contained in sections 11 or 12 shall operate so as to exclude any income from total income of the previous years if the provisions of first proviso to clause (15) of section 2 becomes applicable. So the construction that any type of receipt which is incidental or ancillary to the carrying out of the advancement of objects of general public utility will be considered as income from charitable purposes if applied, such construction would not only render the first and second proviso to section 2(15) as amended from time to time and but also section 13(8) of the

statute redundant and inoperative defeating the purpose for which they were brought into statute by Parliament will be defeated. At the same time, when we read the provisions of section 13(8) in isolation, it will make the provisions of sections 11 (4) and 11 (4A) of the Act inoperative for the institution carrying of object of advancement of general public utility, which also involves the activity of carrying of business, trade or commerce generating ancillary or incidental income. However, by the insertion of second proviso to section 2(15) as amended from time to time, the anomaly, if any, has been removed.

70. A harmonious construction of these amended provisions will lead to the conclusion that each of the provisions are in aid to and supplement each other. In our view, a reasonable and meaningful construction that may be arrived now is that as per the provisions of section 2(15) of the Act, 'charitable purposes' on the first part will include relief to the poor, education, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and advancement of any other object of general public utility and further as per the provisions of section 11(4) of the Act, such trust or institution can hold business assets also. However, as per the provisions of section (4A), such business for profit should be incidental to the attainment of the objectives of such trust or institution and separate books of account are to be maintained. Further, to claim exemption u/s

10(23C)(iv) of the Act, the fund or institutes must be established for charitable purpose and is approved / registered by the prescribed authority having regard to their objects and importance throughout India and otherwise fulfill the other conditions as enumerated u/s 10(23C) of the Income Tax Act. Here we may point out the restriction put by section 11(4A) or section 13(8) do not in any manner comes into play or otherwise restrict the business activity of the fund or institutions established for charitable purposes and claiming exemption u/s 10(23C)(iv) of the Act. But the restriction inter alia created by the provisos to section 2(15) read with the newly inserted 18th proviso to section 10(23C) (as reproduced above) and newly inserted proviso to section 143 (as inserted by Finance Act 2012 w.e.f. 1.4.2009) will apply that too only to the Institutions carrying on the activity of advancement of any other object of General public utility and not to the institutions established under other limbs of the definition of "Charitable Purposes". Thus the provisos to section 2(15) or to section 10(23C) or to section 143 do not make the provisions of section 10(23C)(iv) redundant or inoperative, but only put some restrictions on the institutions carrying on the object of General Public Utility in respect of their business activity.

71. As per the second proviso to section 2(15) of the Act, income from incidental business activity should not cross the limit as prescribed from time to time as per the amendments carried out in

second proviso of the Income tax act and the provisions of sections 11(4) & (4A) and section 10(23C)(iv) can be applied accordingly and such a construction will not make any provision contrary or in contradiction to the other, rather will supplement each other. Even the section 13(8) of the Act can also be meaningfully applied which will be required to read in the light of the second proviso to section 2(15) of the Act and thus harmonious construction of the related provisions will give a meaningful and workable interpretation as intended by the Parliament.

Hence, in the light of discussion made above of the relevant provisions of the Act, the interpretation that may be arrived is that for the trusts or the institutions carrying on the activity included in the first part of definition of 'charitable purposes' as defined u/s 2(15) of the Act *viz.* for the objects of relief to the poor, education yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and are also carrying on the business activity which is incidental to the attainment of objective of such trust or institution [as provided u/s 11(4A)], they are entitled to claim exemption of their income including the income from incidental business activity under section 11 of the Act subject to compliance or fulfilment of the otherwise required conditions including inter alia registration of such trust or institution u/s 12 A of the Act or maintaining of separate books of account regarding business activity as per the provisions of section

11(4A) of the Act etc. and subject to the applicability of the relevant provisions of section 11, 12 and 13 of the Act, irrespective of the quantum of income earned from such incidental business activity. In other words, there is no cap or limit prescribed for such receipts to be eligible for claiming exemption from taxation u/s 11 of the Act.

As discussed in the paras above of this order, any income received by a person on behalf of any fund or institutions established for charitable purposes as included in the first part of the definition as defined u/s 2(15) of the Act i.e. for the objects of relief to the poor, education yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest can be claimed as exempt from levy of tax u/s 10(23C)(iv) of the Act irrespective of the quantum of such income i.e without any cap or limit on such income subject to fulfilling the other conditions as prescribed therein such as approval of such fund or institution by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States.

However, the trusts or institutions carrying on such activity or established to carry on such activity, as the case may be, that is falling in the last limb of the definition of charitable purposes as defined u/s 2(15) of the Act i.e. for the advancement of any other object of public utility which also involves the carrying of

incidental activity in the nature of trade commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee, the restrictions inter alia put by the provisos to section 2(15) such as that the incidental business activity should be in the course of actual carrying out of the main object and the receipts therefrom should not cross the limit or cap (as applicable from time to time) and further that it will be immaterial that the funds or the profits from business activity are ploughed back to sub serve the main or the predominant object of the trust. In this respect the words *"irrespective of the nature of use or application, or retention, of the income from such activity"* finding place in the first proviso to section 2(15) of the Act would come into play. However, the other restrictions as provided under section 11(4A), 13(8) and 143(3) as discussed above, would accordingly apply for claiming exemption u/s 11 of the Act; However, the restriction inter alia put under the provisos to section 10(23C)(iv) and section 143(3) along with restrictions put by the provisos to section 2(15), as discussed above, will apply for claiming exemption u/s10(23) (iv). These restriction put under the provisos to section 2(15) are applicable only to the activity of advancement of any other object of general public utility.

72. However, even after holding that the harmonious reading of the related provisions of the Act, as discussed above, will lead to the conclusion that it cannot be said that any of the related section

is in contradiction to the other or in any manner making inoperative or redundant the other, we still are of the view, that there remains still an anomaly which has not been addressed by the Parliament till date by way of introduction of the suitable provision. Suppose the income from incidental and ancillary activity of an institution in the course of carrying out of activity for advancement of object of general public utility crosses the limit, as prescribed for different assessment years as per the provisos to section 2(15), can it be said that such an institution will not be an institution carrying out the objects for 'charitable purposes'. For example for the assessment year 2009-10, the total receipts of an institution from the ancillary activity in the shape of trade and commerce or business are Rs. 9.95 lacs, the institution will be treated as an institution for charitable purposes and its entire income exempt from taxation either u/s 11 or 10(23C) as the case may be, whereas, if there is a slight increase of Rs. six thousands only in such business income, say it crosses the limit of Rs. 10 lacs, i.e say at Rs. 10.01 lacs, then such trust or institution will be out of purview of the 'charitable purpose' and its entire income will be included in the total income, including the receipts which are not directly connected with the carrying of the incidental activity in the nature of trade, commerce or business. Such an anomaly will create utter confusion and will operate as restriction on the institution genuinely involved in carrying out the objects of general public utility. The Institutes which are rather

carrying of the activity of general public utility on large scale will not be entitled to claim the benefit under the provisions of sections 11 & 12 of the Income Tax Act. Even the non-business income in the form of voluntary contribution and donations or directly relating to charitable activities (as discussed in para 61 (2) above) and not relating to the activity in the nature of trade, commerce or business would also become taxable. The moment the receipts from the commercial activity crosses the stipulated limit, the provisions of section 13(8) of the Act and provisos to section 10(23C) and section 143 , as the case may be, will come into play. It will mean that the entire income of an institution carrying on the object of general public utility on a small scale involving incidental commercial activity will be treated as exempt as it will not cross the prescribed limit of Rs. 10 lacs or Rs. 25 lacs or 20% of the total receipt as applicable for the different assessment years, however, the income of an institution carrying on the activity of general public utility on large scale will become taxable if the receipts from the incidental commercial activity crosses the limits as prescribed for different assessment years as noted above. Though by way of amendment to second proviso vide Finance Act 2015 w.e.f. 1.4.2016, the government has tried to remove the anomaly by substituting fixed limit of receipts of Rs. 25 lacs with the 20% of the total receipts, however, the question is that the receipts from the incidental or ancillary commercial activity cannot, in our view, be controlled or

restricted by way of measuring or controlling the activities with golden scale or to say to check the same on day to day basis and the stop carrying out the incidental activity, which otherwise may be necessary to achieve the main object of general public utility, the moment the receipts touch the threshold. The Hon'ble Supreme Court in the case of " Surat Art Silk Cloth Manf. Assn." (supra) has held, "It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realization but would also reflect unsound principle of management." The same analogy can well be applied in the facts and circumstances as discussed above.

73. To remove this anomaly, proper construction will be that the institution carrying out the object of advancement of general public utility which involve the incidental or ancillary activity in the nature of trade, commerce or business and generating income therefrom, the income to such an extent as is limited by the second proviso to section 2(15) of the Income Tax Act should be taken as exempt being treated as income from charitable purposes as per the relevant provisions of sections 2(15), section 10, section 11, section 12 or section 13, as the case may be and wherever applied. The other income which is not from the commercial activity, such as, by way of voluntary donations, contributions, grants or nominal registration fee etc. or otherwise will remain to be from charitable

purposes and eligible for exemption under the relevant provisions. However, the income from activity in the nature of trade, commerce or business over the above limit prescribed from time to time as per the second proviso to section 2(15) of the Income Tax Act, should be treated as income from the business activity and liable to be included in the total income. In this way, the receipts of incidental business income while carrying out the objects of advancement of general public utility, when these cross the limit prescribed u/s 2(15) of the Act, will not render such institute as non-charitable bringing into taxation its entire income including non-business income or even income from charitable activity itself including voluntary contributions and donations. Only the business income which will be over and above the prescribed limit will be subjected to taxation. The above interpretation of the different provisions of the Act will lead to a harmonious construction of the provisions removing hardship created by the first and second proviso to section 2(15) read with section 13(8) of the Act and will also strive to achieve the objects and purpose of sections 11(4) and 11 (4A), 10(23C)(iv) as well as the provisions of section 2(15) along with its proviso and section 13(8) of the Income Tax Act. Any other interpretation or conclusion, in our view, would not be towards the achievement of the object or purpose for their insertion or introduction in the statute and even will lead to hardship to the

institutions genuinely carrying on the activities of advancement of general public utility.

74. After holding as above, now, let us revert to the facts of the present case. The assessee herein, inter alia, has taken a plea that that the assessee- association is involved in imparting training to boys and girls in Tennis and is running a tennis academy having coaches and instructor therefore the assessee trust can be said to be engaged in imparting education and thus, is covered in the first limb of section 2(15) and not under the last or residual limb. The Ld. Counsel, in this respect, has relied upon the decision of the Delhi Bench of the Tribunal in the case of 'Pitanjali Yog Peeth Nyas Vs ADIT' (Exemptions) (supra) wherein it has been held that imparting training in Yoga amounts to educational activity.

75. We are not convinced by the above argument of the ld. Counsel for the assessee. 'Education' as defined under section 2(15) of the Act, in our view, can not be ascribed to such an extended meaning. It does not appear the intention of the legislature to include 'training in sports' in definition and scope of term 'Education' for the purpose of section 2(15) of the Act. Not only in general parlance but also in specific terms, the sports activity is considered as a separate and distinct activity as compared to 'education or studies'. The term training implies the act of imparting a special skill or behavior to a person, but it is not exactly

same as education, which is undertaken for the purpose of furthering of knowledge and developing of intellect through a process of systematic learning something in an institution that develops a sense of judgment and reasoning. As discussed above in the opening paras of this order, Hon'ble supreme court in the case of 'Sole Trustee, Lok Shikshana Trust vs. CIT'(supra) while further relying on the decision of the Judicial Committee in the case of 'In re Trustees of the Tribune' [1939] 7 ITR 415 (PC) has held that the word 'education' has not been used in that wide and extended sense so far as the provisions of section 2(15) of the Act are concerned. His Lordship Justice H.R. Khanna, writing the majority view (for himself and Justice A.C. Gupta) observed as under :

> "The sense in which the word "education" has been used in section 2(15) in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and

developing the knowledge, skill, mind and character of students by normal schooling.

The question as to whether a trust the object of which is to supply the people with an organ of educated public opinion should be considered to be one for education or for any other object of public utility was considered by the Judicial Committee in the case of *In re Trustees of the Tribune* [1939] 7 ITR 415 (PC). In that case a person who owned a press and a newspaper created a trust by his will by which his property in the stock and goodwill of the press and newspaper was made to vest permanently in a committee of certain members. It was the duty of the said committee of trustees under the will "to maintain the said press and newspaper in an efficient condition, and to keep up the liberal policy of the said newspaper, devoting the surplus income of the said press and newspaper after defraying all current expenses in improving the said newspaper and placing it on a footing of permanency". It was also provided by an arrangement made subsequently that in case the paper ceased to function or for only other reason the surplus of the income could not be applied to the object mentioned above, the same should be applied for the maintenance of a college which had been established out of the funds of another trust created by the same testator. There was surplus income in the hands of the trustees after defraying the expenses of the press and newspaper. Question arose as to whether that income was liable to be assessed in the hands of the trustees. The Judicial Committee held that the object of the settlor was to supply the province of the Punjab with an organ of educated public opinion and this was *prima facie* an object of general public utility. Their Lordships unequivocally expressed the view that they were not prepared to hold that the property referred to in the various paragraphs of the will was held for the purpose of "education" in the sense that word was used in section 4 of the Indian Income-tax Act of 1922. The above decision of the Judicial Committee applies directly to the present case and, in view of this decision, we would hold that the object of the appellant-trust was "the advancement of any other object of general public utility".

76. So far as the reliance of the ld. Counsel on the decision of the Delhi Bench of the Tribunal in the case of ‘Pitanjali Yog Peeth Nyas Vs ADIT’(Exemptions)’(supra) is concerned, the Bench has considered the specific and distinct features of “yoga” as compared to a game or sport. Apart from holding the systematic and regular classes in Yoga as ‘educational activity’, the

Tribunal has also held the 'Yoga' as falling under the other limb 'medical relief'. It has been considered that the subject 'Yoga" has been recognized as a separate stream of science and educational degrees courses such as M.A. (Yoga Science), M.Sc. (Yoga Science), B.A. (Yoga Science) Post Graduate Diploma in Panchkarma, Post Graduate Diploma in Yoga Science and Post Graduate Diploma in Yoga Health and Cultural Tourism have been offered in the University set up by the assessee trust in that case, which was duly recognized by the Govt. Even the matter went in appeal before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court while admitting the appeal of the revenue has however held that the dissemination of yoga or vedic philosophy or the practice of yoga or education with respect to yoga was well within the larger term "medical relief" and that no substantial question of law was involved on this aspect.

It is further pertinent to mention here that yoga has been specifically included as a limb of charity in section (15) of the Act w.e.f. 01.04.2016 on the same lines as education, medical relief, relief to the poor, etc. In view of the above discussion, the case law cited by the assessee is not applicable to the facts and circumstances of the case. The contention of the assessee that the activity of the assessee of providing training in tennis is education, therefor, can not be accepted, however, the same can very well be said to be towards the advancement of any other object of general public utility.

77. Now coming to the point as to whether the activity of the assessee is hit by the provisos to section 2(15) and other related provisions of the Act, it is neither the case of the Assessing officer nor of the CIT(A) that the assessee is regularly following commercial activity by exploiting its property and right to hold matches and thereby earning income by way of allocating broadcasting rights, advertisements, sale of tickets etc. The Ld. Counsel has brought on record that as per its aims and objects, the assessee society is carrying on the activity of the promotion of game of the tennis which also includes holding of domestic and international matches in tennis. He has further submitted that rights to conduct matches like Devis Cup, which are popular among the people are granted once a while to the assessee. That the assessee has also been running Chandigarh Academy of Rural Tennis, wherein, boys and girls from low income families of remote villages are selected, imparted training and are trained in tennis at the cost borne by the assessee society. Even other schooling expenses are borne by the assessee society. The Ld. Counsel in this respect has placed reliance on the brochure and scheme of assessee society. The Ld. Counsel has also placed on record the details of income derived from domestic as well as international tournaments for the year 2008-09 onwards. As per the chart / documents placed on record, for the year 2008-09, the assessee society organized six domestic championships in tennis and four international matches. However, it

suffered loss of Rs. 1,81,949/-in organizing domestic tournament and a loss of Rs. 6,24,724.14 in organizing the international tournament in tennis and thereby total loss of Rs. 8,06,673.14. For the year 2009-10, the assessee society suffered loss of Rs. 2,89,190/- in organizing domestic tennis, whereas, it received income of Rs. 6,28,468/- from organizing international tournament thereby net profit of the assessee was at Rs. 3,39,278/-. For the year 2010-11, the assessee society conducted 13 domestic tournaments suffering loss of Rs. 4,14,600/- and one international event for junior players suffering loss of Rs. 20,253/- and thereby totalling loss to Rs. 4,34,853/-. For the year 2011-12, the assessee suffered loss of Rs. 5,20,968/- from domestic tournament whereas it got profits of Rs. 5,95,078/- from international matches and the net income of the assessee stood at Rs. 74,110/-. For the year 2013-14, the assessee got positive net income from holding of domestic as well as international matches at Rs. 25,15,760/- and for the year 2012-13, the assessee got allotted Davis Cup and it got a positive net income of Rs. 1,06,14,830/- in respect of which exemption has been claimed for the year under consideration, however the same has been denied by the Revenue authorities holding that the assessee was indulged in commercial activity. However, for the next year 2013-14, the assessee got net income of Rs. 25,15,760/-. For the year 2014-15, the assessee suffered loss in domestic matches whereas it got positive income in one of the international

tournament, whereas, he suffered loss in two international tournaments and the net income of the assessee in holding all matches came to Rs. **2,07,766/-**. For the year 2015-16, the assessee suffered loss of Rs. **22,22,965/-** and similarly for the year 2016-17, though the assessee got net positive income from domestic matches, however, it suffered losses from holding of international matches and the net result was of loss of Rs. 13,42,858/-.

78. The Ld. Counsel for the assessee, therefore, has submitted that for the promotion of game of tennis, catching young talent, not only out of urban population, but also from rural population, imparting training in tennis to them and even financial help including the schooling of the economically weak players is also done. So far as the holding of Davis Cup and exploitation of the match rights was concerned, it was explained that the assessee society need funds for carrying out its activities and once and while it got right to organize match, which otherwise is part of main object of the society in the course of carrying out its objects, it got incidental income which is otherwise ploughed back for self- substance and for carrying the aims and objects of the assessee society, hence, it cannot be said that the assessee society's pre-dominant object is changed or that it has been indulged in commercial activity.

79. We find that except the above commercial exploitation of rights during the holding of Davis Cup match, there is no dispute

that the pre-dominant object of the assessee society is promotion of game of tennis including the selection of players, training of players, and conduct of matches both domestic and international. We, therefore, do not think that the other income of the assessee such as from nominal registration fees or nominal coaching fees which is charged so as to attract only the genuinely interested trainees / players can be said to be its business income as it sans the profit motive. The Ld. Counsel has explained in detail that the holding of matches for commercial purpose is not a regular feature or regular activity of the assessee. Even the Davis Cup was also organized as part of the objects of the assessee and even the incidental income has been ploughed back and applied for carrying the aims and objects of the assessee society. Therefore, in the light of the decision made above, we hold that though the assessee Chandigarh Lawn Tennis Association is carrying out the activities towards the advancement of objects of general public utility, which is its dominant activity, however, it has also involved in carrying out the incidental activity in the nature of trade, commerce or business in the course of actual carrying out of advancement of object of general public utility by way of commercially exploiting the rights of hosting the "Davis Cup Match". However, as per the amended provisions of section 2(15), 10(23C), 11(4), 11(4A), 13(8) and 143(3) of the Income Tax Act and in view of our discussion and interpretation of the relevant provisions as given above, the income

of the assessee from the incidental and commercial activity i.e. income from organizing of Davis Cup up to the limit prescribed as per the second proviso to section 2(15), which for the assessment year under consideration is Rs. 25 lacs, will be treated as income from 'charitable purposes' and the assessee will be entitled to claim the exemption u/s 11 of the Act up to that extent in respect of the said income along with other income, if any, from the non-business activity of the assessee. However, the income over and above amount for Rs. 25 lacs from the business activity i.e. from the exploitation of its right to hold Davis Cup will be treated as 'business income' of the assessee and will be liable to include in its total income. The assessing officer, therefore, is directed to bifurcate the income from commercial activity and non-commercial activity and assess the income of the assessee as directed above.

With the above observations, the appeal of the assessee is treated as partly allowed.

Order pronounced in the Open Court on 26.7.2018

Sd/-	Sd/-
(ANNAPURNA GUPTA)	**(SANJAY GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 26.7.2018
Rkk

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*