IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA.No.1712/Hyd/2014
Assessment Year 2011-2012

Institute for Development and Research in Banking Technology (IDRBT) Hyderabad -500057 PAN AAAI0204K	vs.	The Asst. Director of Income Tax (E)-1, Hyderabad.
(Appellant)		(Respondent)

For Assessee :	Mr. Laxminiwas Sharma
For Revenue :	Smt. K. Kamakshi

Date of Hearing :	20.05.2015
Date of Pronouncement :	30.06.2015

ORDER

PER INTURI RAMA RAO, A.M.

This appeal filed by the assessee directed against the Order of the Ld. CIT(A)-IV, Hyderabad dated 28.08.2014 for the A.Y. 2011-2012.

2. Brief facts of the case are that the Appellant Society was established by the Reserve Bank of India with the following objects :-

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(a) "The adopt, develop, plan and promote the study the dissemination of knowledge and conduct research in the area of Information Technology with particular reference to the business and financial sectors.

(b) To undertake projects and activities that may be necessary for furtherance of the use of Information Technology in Banking and Financial Sectors

(c) To serve as a Centre for promoting Cooperative endeavor and interaction in Research activities between the Technocrats and Users of Information Technology in the Banking and Financial Sectors.

(d) To establish and maintain data bank, libraries and information services.

(e) To initiate, establish and participate in collaborative activities with other researchers and institutions/organization within and outside the country.

(f) To sponsor, conduct/organize teaching and training programmes, conferences, seminars, lectures and similar other activities on subjects of relevance to the society."

3. For the assessment year 2011-12, the Appellant society filed the return of income on 29th September, 2011 declaring 'NIL' income after claiming exemption under the provisions of Section 11 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' – in short). After processing the said return of income under the provisions of Section 143(1) of the Act, the case was selected for scrutiny assessment and final assessment was passed under Section 143(3) of the Act vide Order dated 03.02.2014 at a total income of Rs.18,06,84,275/- after denying the exemption u/s. 11 of the

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Act. The claim of the Appellant society before the Assessing Officer was that it has been providing Banking Technology Services to the Banks apart from carrying out research in the field of Banking Technology. It was further submitted that the Appellant society was salso conducting a full time M. Tech. course in Banking Technology. Therefore, its activities are purely educational in nature and falls within the ambit of expression "charitable purposes" as defined under the provisions of Sec. 2(15) of the Act. However, the Assessing Officer turned down the submissions of the Appellant Society and held that the aims and objects of the society are mostly in the nature of advancement of any other objects of General Public Utility Services and for this purpose, he relied on the decision of Hon'ble Supreme Court in the case of ***Sole Trustee, Lok Shikshana Trust v CIT [1975] 101 ITR 234(SC)***. The Assessing Officer further held that the Appellant society generated surplus out of its receipts from the consultancy services rendered to various banking institutions and other organizations. Therefore, he held that the appellant society is engaged in rendering services in relation to trade, business and commerce. The Assessing Officer noted that the total receipts received by the Appellant society on account of rendering such services were Rs.48,06,14,013/-. Hence, he was of the opinion that the

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proviso to Section 2(15) of the Act is clearly applicable and, therefore, denied the exemption claimed u/s. 11 of the Act and accordingly he brought to tax the excess of income over expenditure of Rs.12,37,55,596/- and also disallowed the prior period expenses of Rs.1,26,807/- and provision for income tax of Rs.4,63,00,000/- and provision of deferred tax of Rs.5,01,728/- and depreciation of Rs.1,00,00,144/-debited to income and expenditure account.

4. Being aggrieved by the order, an appeal was filed before the Ld. Commissioner of Income Tax (Appeals)-IV, Hyderabad, who, vide Order dated 28.08.2014, partly allowed the appeal. However, concurred with the view of the Assessing Officer that the Appellant society was engaged partly in education and partly in activities aimed at advancement of any other object general public utility and held that the proviso to Section 2(15) of the Act is applicable and confirmed the additions made by the Assessing Officer.

5. Aggrieved, the Appellant society had come up with the present appeal before us by raising the following grounds of appeal:

GROUNDS OF APPEAL

(1) The CIT(A) erred in facts and law while passing the order.

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(2) The Learned CIT (A) has erred in holding that the activities of the assessee fall within the purview of the proviso to section 2(15) of Income Tax Act, 1961 ignoring the fact that activities of the assessee fall within the purview of 'imparting education' and 'research' in Banking Technology which is very much within the first three limbs of section 2(15) of the Income Tax Act, 1961.

(3) The Ld. CIT (A) has erred in concluding that the assessee is ineligible for the claim of exemption u/s. 11 even though the activities of the society are charitable in nature and are in line with the objectives of the society having got registered u/s. 12AA of the I.T. Act, 1961.

(4) The Ld. CIT(A) has erred in computing the income on mercantile basis instead of cash basis which is followed by the assessee consistently since A.Y. 1997-98 and as required for Sec. 12AA institutions. The Ld. CIT (A) erred in not appreciating that the assessee has filed the details of its Receipts and Payments along with income and expenditure account before the Assessing Officer.

(5) The Ld. CIT(A) has erred in disallowing prior period expenses of Rs.1,26,807/- which was claimed on cash basis, deferred tax liability of Rs.5,01,728/- and provision for income tax of Rs.4,63,00,000/- which were **not claimed as deduction** on the ground that assessee was following mercantile system of accounting. However for the purpose of computation of income assessee was **consistently following cash system** of accounting as **Section 11 allows only application and receipts of fund for the computation of income.**

(6) The Ld. CIT(A) has erred in disallowing the **depreciation** of Rs.1,00,00,144/- on assets, stating that where the entire cost of the asset stands allowed by way of application of income u/s.11(1). The depreciation claimed by the assessee u/s. 32(1) is not allowed ignoring the fact that such claim is **permissible under the law and allowed since inception consistently.** In this regard the Amendment is w.e.f. A.Y.2015-16.

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(7) For these and other grounds which may be raised during or before the appeal is heard. It is prayed that relief be granted.

6. It was argued before us by the Authorized Representative that the objects of the Appellant society are purely educational in nature. Rendering consultancy services on account of which the Appellant society had received some consideration is only for the purposes of attainment of the main objects and in connection with the main objects. Therefore, the proviso to Section 2(15) of the Act cannot be made applicable to the Appellant society since the proviso is applicable only in respect of the activities carried on, which are in the nature of objects for advancement of general utility services. He further argued that the Appellant society continues to enjoy the registration u/s.12A of the Act and therefore, the Assessing Officer was not justified in denying the exemption u/s. 11 of the Act. In this connection, he brought to our attention the earlier orders of the Co-ordinate Benches of this Tribunal whereby the registration u/s.12A of the Act was granted. In support of the contentions, he relied upon the decision rendered in the case of Indian Chamber of Commerce vs. Income-tax Officer – ITAT Kolkata 'C' Bench 167 TTJ and the Hon'ble Delhi High Court in the case of ***Indian Trade Promotion vs. Director General of Income***

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Tax 371 ITR 333 and Gujarat High Court in the case of ***Director of Income-tax (Exemption) vs. Ahmedabad Management Association*** *[2014]* 366 ITR 85.

7. On the other hand, the Ld. Principal CIT/DR argued that the proviso to Section 2(15) is clearly applicable to the Appellant society as the Appellant Society is engaged in rendering of services to trade and commerce and therefore, she urged upon that the orders of the lower authorities should be upheld.

8. We heard the rival submissions and perused the material on record. In this case, the question that comes up for adjudication by us is whether the appellant society is engaged in the activities which are in the nature of educational or advancement of any other objects of general public utility. If the activities of the appellant society fall within the ambit of expression "education", then clearly the proviso to Section 2(15) of the Act is not applicable. Therefore, it is necessary to consider the objects of the Appellant society. The objects of the appellant society are extracted supra. From those stated objects, it is abundantly clear that the primary objects of society is to promote study, dissemination of knowledge and conduct research in the area of Information and Technology

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Service in Banking Business and financial sectors. The Appellant society was also granted Associate Institute status of the University of Hyderabad for undertaking research for award of Ph.D Degree under External category in the areas of computer sciences information technology. This status enables the appellant society to enroll more Ph.D. students to carry out the research and development in various areas of banking technology. The appellant society also offers M.Tech (I.T.) to the students in collaboration with University of Hyderabad with specialization in banking technology and information security. But the primary object for which the Appellant society was created is to promote the Information Technology in the Banking Sector and undertake research in those areas. This is clear from the genesis of the organization (reproduced from website):

"During the first phase of reforms in the Indian Financial Sector, a need was felt to develop an Institute of Higher Learning, which would also provide the operational service support in Information Technology to Banks and Financial Institutions.

The foundation for induction of Computer Technology in the Indian Banking Sector was laid by Dr. Rangarajan Committee's two reports in the years 1984 and 1989. Both the reports strongly recommended computerisation of banking operations at various levels while suggesting the appropriate architecture.

In the year 1993, the Employees' Unions of Banks signed an agreement with Bank Managements under the auspices of Indian Banks' Association [IBA]. This agreement was a major breakthrough in the introduction of computerised applications and

development of communication networks in Banks.

In the following two years, substantial work was done and the top managements realised the urgent need for training, research and development activities in the area of Banking Technology. Banks and Financial Institutions started setting up Technology-based training centres and colleges. However, a need was felt for an Apex Level Institute, which would be the Brain Trust for Banking Technology and Spearhead Technology Absorption in the Indian Banking and Financial Sector.

In the year 1994, the Reserve Bank of India formed a committee on "Technology Upgradation in the Payment Systems". The committee recommended a variety of payment applications which can be implemented with appropriate technology upgradation and development of a reliable communication network.

The committee also suggested setting up of an Information Technology Institute for the purpose of Research and Development as well as Consultancy in the application of technology to the Banking and Financial sector of the country.

As recommended by the Committee, the Institute for Development & Research in Banking Technology [IDRBT] was established by the Reserve Bank of India in March 1996 as an Autonomous Centre for Development and Research in Banking Technology."

9. Now the issue that comes up for consideration is whether those objects fall within the definition of the term 'education' appearing in Section 2(15) of the Act. The term 'education' has not been defined by the provisions of the Income Tax Act, 1961. The term 'education' had come up for interpretation before the Hon'ble Supreme Court in the case of ***Sole Trustee, Loka Shikshana Trust v. Commissioner of***

Income-Tax, Mysore – 101 ITR 234 held as under at page 241:

> *"……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."*

Therefore, it is clear from the above judgment that in order to fall within the ambit and scope of the term "education" as envisaged under the provisions of Section 2(15) of the Act, there must be a schooling, systematic instructions or the process of training, developing the knowledge, skill, mind and

character of students by normal schooling. It may be noted that offer of M.Tech. programme to the students and as well as Ph.D. programme for students and grant of status of associate institution of University of Hyderabad are only incidental for attainment of the main objectives i.e., promotion of technology in banking sector. The Hon'ble Apex Court held in the case of ***CIT vs. Andhra Chamber of Commerce*** 55 ITR 722 that only the predominant object for which the organization was created is alone to be considered for the purpose for determining whether the nature of activities fall within the scope and ambit of 'charity'. The ratio laid down in this case was followed again in the case of Five Judges decision of the Hon'ble Supreme Court in the case of ***Additional Commissioner of Income-tax, Gujarat v. Surat Art Silk Cloth Manufacturers Association*** 121 ITR 1, which held as under vide pages Nos.11 and 12:

".....The law is well settled that if there are several objects of a trust or institution, some of which are charitable and some non-charitable and the trustees or the managers in their discretion are to apply the income or property to any of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income would be exempt from tax. In other words, where the main or primary objects are distributive, each and everyone of the objects must be charitable in order that the trust or institution might be upheld as a valid charity—Mohammed Ibrahim Riza v. CIT [1930] LR 57 IA 260 and East India Industries (Madras)Pvt. Ltd. v. CIT [1967] 65 ITR 611. But if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but

which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity— CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722 . The test which has, therefore, to be applied is whether the object which is said to be non-charitable is a main or primary object of the trust or institution or it is ancillary or incidental to the dominant or primary object which is charitable. It was on an application of this test that in CIT v. Andhra Chamber of Commerce (supra), the Andhra Chamber of Commerce was held to be a valid charity entitled to exemption from tax. The Court held that the dominant or primary object of the Andhra Chamber of Commerce was to promote and protect trade, commerce and industry and to aid, stimulate and promote the development of trade, commerce and industry and to watch over and protect the general commercial interests of India or any part thereof and this was clearly an object of general public utility and though one of the objects included the taking of steps to urge or oppose legislation affecting trade, commerce or manufacture, which, standing by itself, may be liable to be condemned as non-charitable, it was merely incidental to the dominant or primary object and did not prevent the Andhra Chamber of Commerce from being a valid charity. The Court pointed out that if "the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose, e.g., promotion of or opposition to legislation concerning that purpose, was contemplated". The Court also held that the Andhra Chamber of Commerce did not cease to be charitable merely because the members of the Chamber were incidentally benefitedin carrying out its main charitable purpose. The Court relied very strongly on the decisions in Commissioner of Inland Revenue v. Yorkeshire Agricultural Society [1920] 13 Tax Case 58 and Institution of Civil Engineers v. Commissioner of Inland Revenue [1931] 16 Tax Case 158 for reaching the conclusion that merely because some benefits incidentally arose to the members of the society or institution in the course of carrying out its main charitable purpose, it would not by itself prevent the association or institution from being a charity. It would be a question of fact' in such case "whether there is no such personal benefit, intellectual or professional, to the members of the society or body of persons as to be incapable of being disregarded."

10. The ratio laid down in the above cases is that in the case of entity or organization whose objects are several, some of which are charitable and non-charitable; the test of predominant object for which the organization was set up is alone to be applied. Therefore, in the present case, the research and development in the Information Technology in the Banking Sector is the prime object for which the Appellant society was created by the Reserve Bank of India as evident from the genesis of the organization. Offer of M.Tech course, Ph.D. programmes are only incidental for attainment of main objects of the organization. The primary object of promoting the technology in banking and financial sectors does not fall within the ambit of expression 'education' as defined above, since the said activity does not involve systematic instruction, schooling or training given to the young in preparation for the work of the life. The projects undertaken and the research activities by the Appellant society are only aimed at improvement of technology in Indian Banking and Financial sectors. As a result of developments in these areas, society at large shall be benefited and shall promote the welfare of general public. The improvement in technology related to Banking Sector leads to economic prosperity which enures for the benefit of entire community. Therefore, these objects can be said to be for advancement of any other objects of general

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public utility, which is a fourth limb in the definition of 'charitable purpose' in Section 2(15) of the Act. The principle enunciated by Hon'ble Apex Court in the case of ***CIT vs. Andhra Chamber of Commerce -- 55 ITR 722*** holds good. When an object seeks to promote or protect the interests of a particular trade or industry, that object becomes an object of public utility, but not so, if it seeks to promote the interests of those who conduct the said trade or industry. The distinction between the protection of the interests of individuals and the protection of interests of an activity which is of general public utility goes to the root of the whole problem : *CIT v. Andhra Chamber of Commerce, (1965) 55 ITR 722, 727 (SC); Addl. CIT v. Ahmedabad Millowners' Association, (1977) 106 ITR 725, 738 (Guj)].* Applying the ratio laid down in the above cases to the facts of the present case, we have no demur to hold that the objects of the Appellant are aimed at improving the Information Technology in the Banking and Financial Sector. The question of private gain or profit motive cannot be attributed to the appellant society as the Reserve Bank of India is the creator of the appellant society. Therefore, undoubtedly, the objects of the trust fall within the ambit and scope of the expression "*general public utility services*", which is a fourth limb of the

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definition of word "*charitable*" as defined under Section 2(15) of the Act.

11. Having held that the objects of the Appellant society are in the nature of "general public utility services", we now have to consider whether the proviso to Section 2(15) of the Act is applicable or not. The proviso to Section 2(15) of the Act was added by Finance Act, 2008. The said proviso reads as under :

"***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 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 [twenty-five lakh rupees] or less in the previous year;]"*

The scope of the proviso was explained by the CBDT in its Circular No.11 of 2008, dated 19.12.2008, as follows :

"Departmental circular.—1. *Definition of "Charitable purpose" under section 2(15) of he Income-tax Ac, 1961---reg.---'Section 2(15) of the Income-tax Act, 1961 ("he Act"), defines "charitable purpose" to include the following:--*

(i) relief of the poor
(ii) education
(iii) medical relief, and
(iv) the advancement of any other objection of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of "charitable purpose". Therefore, 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.

2. *The following implications arise from this amendment—*

2.1 *The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute "charitable purpose" even if it incidentally involves the carrying on of commercial activities.*

2.2 *"Relief of the poor" encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged*

women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that---

(i) the business should be incidental to the attainment of the objectives of the entity, and

(ii) separate books of account should be maintained in respect of such business.

Similarly, entities whose object is "education" or "medical relief" would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

3. *The newly inserted proviso to section 2(15) will apply only to entities whose purpose is "advancement of any other object of general public utility" i.e., the fourth limb of the definition of "charitable purpose" contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 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 the activity.*

3.1 *There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under "any other object of general public utility". Under the principle of mutuality, if trading takes place between 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 any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

3.2 *In the final analysis, however, 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 relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of "general public utility" will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessees, who claim that their object is "charitable purpose" within the meaning of section 2(15), would be well advised to eschew any activity which*

is in the nature of trade, commerce or business.' [Circular No.11 of 2008, dated 19th December, 2008]."

Furthermore, in the Memorandum regarding Delegated Legislation – Rationalisation and Simplification Measures, it has been noted as under:—

'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 1st day of April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.'

12. A reference can be made to the following extract from the Speech of the Minister of Finance on 29.02.2008:—

"180. 'Charitable purpose' includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade commerce or business and earning income have sought to claim that their purpose would also fall under 'charitable purpose'. Obviously, this way not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected."

13. Further reference can be made to the reply of the Hon'ble Finance Minister to the Debate in the Lok Sabha on the Finance Bill, 2008:—

"6. Clause 3 of the Finance Bill, 2008 seeks to amend the definition of 'charitable purpose' so as to exclude 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 or use of application, or retention, of the income from such activity. The intention is to limit the benefit to entities which are engaged in activities such as relief of the poor, education, medical relief and any other genuine charitable purpose, and to deny it to purely commercial and business entities which wear the mask of a charity. A number of Honourable Members have written to me expressing their concern on the possible impact of the proposal on Agricultural Produce Market Committees (APMC) or State Agricultural Marketing Boards (SAMB). Since there is no intention to tax such committees or boards, and in order to remove any doubts, I propose to insert a new clause (26AAB) in section 10 of the Income tax Act to provide exemption to any income of an APMC or SAMB constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce. I once again assure the House that genuine charitable organisations will not in any way be affected. The CBDT will, following the usual practice, issue an explanatory circular containing guidelines for determining whether an entity is carrying on 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. Whether the purpose is a charitable purpose will depend on the

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totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility." (Emphasis supplied)

14. From the above, it is clearly discernible that the intention of Parliament in introducing the *proviso* to Section 2(15) of the Act is to deny exemption to those organizations or entities, which are purely commercial or business in nature or the commercial business entities, which wear the mask of a charity. The genuine charitable organizations are not affected in any way. It was further clarified that Chambers of Commerce and similar organizations rendering service to its Members could not be affected by introduction of the proviso. We, therefore, are required upon to find out whether the objects of the Appellant society are commercial or business in nature. Keeping this in mind, it is to be examined what is meant by the expression *"commercial or business".* The words 'trade', 'commerce' and 'business' were enumerated and elucidated in *Institute of Chartered Accountants of India v. Director-General of Income-tax (Exemptions) [2012] 347 ITR 99 (Delhi) as under (page 113):*

> *"Trade, as per the Webster's New Twentieth Century Dictionary (2nd edition), means, amongst others, "a means of earning one's living, occupation or work. In Black's Law Dictionary, "trade" means a business which a person has learnt or he*

carries on for procuring subsistence or profit ; occupation or employment, etc.

The meaning of "commerce" as given by the Concise Oxford Dictionary is "exchange of merchandise, specially on large scale". In ordinary parlance, trade, and commerce carry with them the idea of purchase and sale with a view to make profit. If a person buys goods with a view to sell them for profit, it is an ordinary case of trade. If the transactions are on a large scale it is called commerce. Nobody can define the volume, which would convert a trade into commerce. For the purpose of the first proviso to section 2(15), trade is sufficient, therefore, this aspect is not required to be examined in detail.

The word "business" is the broadest term and is encompasses trade, commerce and other activities. Section 2(13) of the Income-tax Act defines the term "business" as under :

"2. Definitions.—. . .(13) 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture."

The word "business" is a word of large and indefinite import. Section 2(13) defines business to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The intention of the Legislature is to make the definition extensive as the term "inclusive" has been used. The Legislature has deliberately departed from giving a definite import to the term "business" but made reference to several other general terms like "trade", "commerce", "manufacture" and "adventure or concern in the nature of trade, commerce and manufacture".

In Black's Law Dictionary, Sixth Edition, the word "business" has been defined as under :

"Employment, occupation, profession or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. Union League Club v. Johnson18 Cal 2d 275. Enterprise in which person engaged shows willingness to invest time and capital on future outcome. Doggett v. Burnet 62 App DC 103 ; 65 F. 2D 191. That which habitually busies or occupies or engages the time, attention, labour and effort of persons as a principal serious concern or interest or for livelihood or profit."

> *According to Sampath Iyengar's Law of Income Tax (9th edition), a business activity has four essential characteristics. Firstly, a business must be a continuous and systematic exercise of activity. Business is defined as an active occupation continuously carried on. Business vocation connotes some real, substantive and systematic course of activity or conduct with a set purpose. The second essential characteristic is profit motive or capable of producing profit. To regard an activity as business, there must be a course of dealings continued, or contemplated to be continued, normally with an object of making profit and not for sport or pleasure (Bharat Development P. Ltd. v. CIT [1982] 133 ITR 470 (Delhi)). The third essential characteristic is that a business transaction must be between two persons. Business is not a unilateral act. It is brought about by a transaction between two or more persons. And, lastly, the business activity usually involves a twin activity. There is usually an element of reciprocity involved in a business transaction.'*

In the said case reliance and reference was made to State of Punjab v. Bajaj Electricals Ltd. [1968] 2 SCR 536, Khoday Distilleries Ltd. v. State of Karnataka [1995] 1 SCC 574, Bharat Development (P) Ltd. v. CIT [1982] 133 ITR 470/[1980] 4 Taxman 58 (Delhi), Barendra Prasad Ray v. ITO[1981] 129 ITR 295/6 Taxman 19 (SC), State of Andhra Pradesh v. H. Abdul Bakhi & Bros. [1964] 15 STC 664 (SC), State of Gujarat v. Raipur Mfg. Co. [1967] 19 STC 1(SC), Director of Supplies & Disposal v. Member, Board of Revenue [1967] 20 STC 398(SC) and Mrs.Sarojini Rajah v. CIT[1969] 71 ITR 504 (Mad) to explain the terms "trade, commerce or business".

The Hon'ble Delhi High Court after referring to the above judgment in the case of ***GSI India v. Director General of Income-tax (Exemption) & another*** [2014] 360 ITR 138 succinctly held vide para 19 as follows:-

"*The final and determining factors, it was observed was consequential profit motive or purpose behind the activity and when an activity is trade, commerce or business was elucidated in Institute of Chartered Accountants of India (supra) in the following words:*

> *'Section 2(15) defines the term charitable purpose. Therefore, while construing the term business for the said Section, the*

object and purpose of the Section has to be kept in mind. We do not think that a very broad and extended definition of the term business is intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act to include any transaction for a fee or money. 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 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. The test as prescribe in Raipur Manufacturing Company (supra) and Sai Publications Fund (supra) can be applied. The six indicia stipulated in Lord Fisher (supra) are also relevant. Each case, therefore, has to be examined on its own facts."

15. Applying the test enumerated above to the present case, by no stretch of imagination, it can be said that the Reserve Bank of India had set up the Appellant society with a profit motive. It is most significant to note that the provisions of the Reserve Bank of India do not empower it to carry on any activity with profit motive. As already held in the paragraph supra that the activities of the appellant society are charitable, it is needless to say that the activities of the appellant society are not in the nature of commercial, or business. When the main objects of the appellant society are not business, the incidental activity, which is pursued for attainment of the main objects, cannot be called "business", merely because the

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appellant society renders services against payment as fees or cess, even if resulting in profit. The Hon'ble Apex Court in the case of *CIT vs. Andhra Chamber of Commerce* – (1965) 55 ITR 722 – laid down the principle that if the primary purpose of institution was advancement of objects of general public utility, it would remain charitable, even if some incidental or ancillary activity or the purpose for achieving the main purpose, was profitable in nature. It was held as follows :

> "That if the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose, e.g. promotion of or opposition to legislation concerning that purpose was contemplated."

It was only for the purpose of securing its primary aims that it was mentioned in the memorandum of association that the Chamber might take steps to urge or oppose legislative or other measures affecting trade, commerce or manufactures. Such an object ought to be regarded as purely ancillary or subsidiary and not the primary object." In connection to the above case it is laid out the said case dealt with the assessment of the assessee in the A.Ys 1948-49 to wherein relevant to the said AYs 1948-49 to 1952-53, by the last paragraph of sub-section (3) of the IT Act, 1922", charitable purposes" was defined as

> *"... ... In this sub-section "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in clause (i) or clause (ii) shall operate to exempt from the provisions of this Act part of the income from property held under a trust or other legal obligation for private religious purposes which does not enure for the benefit of the public. "*

The adding of the words "not involving the carrying on of any activity for profit: was introduced by the Income tax Act, 1961. Hon'ble Apex court in the earliest decision in the case of *Surat Art Silk Cloth Manufacturers Association* (Supra) held the theory of

dominant or primary object of the trust to be the determining factor so as to take the carrying on of the business activity merely ancillary or incidental to the main object, as extracted *supra*.

Again the Hon'ble Apex Court in the case of *CIT* vs. *Federation of Indian Chambers of Commerce & Industry* 130 ITR 186 held:

> *"that the dominant object with which the Federation was constituted being a charitable purpose viz. promotion, protection and development of trade, commerce and industry, there being no motive to earn profits, the respondent was not engaged in any activity in the nature of business or trade, and, if any income arose from such activity it was only incidental or ancillary to the dominant object for the welfare and common good of the country's trade, commerce and industry, and its income was, therefore, exempt from tax under s.11 of the IT Act, 1961"*

Again reiterating the dominant purpose theory, the Hon'ble SC in the case of CST v. *Sai Publication Fund* 258 ITR 70 laid out as follows:

> *"... If the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on "business ": connected with or incidental or ancillary sales will rest on the Department.*
>
> *Thus, if the main activity of a person is not trade, commerce etc., ordinarily incidental or ancillary activity may not come within the meaning of "business".*

In the recent decision which deals specifically with the newly amended section 2(15) of the Act, in the case of *Institute of Chartered Accountants of India* v. *Director General of Income-tax (Exemptions)* [2012] 347 ITR 99/202 Taxman 1/13 taxmann.com 175 Delhi HC, laying down the very same principle held as under:

> *"that the fundamental or dominant function of the Institute was to exercise overall control and regulate the activities of the members/enrolled chartered accountants. A very narrow view had been taken that the Institute was holding coaching classes and that this amounted to business. "*

In another case, the Hon'ble Delhi High Court in the case of ICAI Accounting Research Foundation & anr. Vs. Director General of Income-tax (Exemptions) & Ors. - (2010) 321 ITR 73, after referring to the judgment of Hon'ble Supreme Court in the case of CIT (Addl.) vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 (SC) (paras 29) held that (a) the activities undertaken by the institution amounted to "advancement of an object of general public utility" in the definition of charitable purpose in section 2(15) of the Act. Charging of amounts from the Government bodies for undertaking these research projects would not make the activity "commercial". The projects were undertaken at the instance of the Government of India or the State Governments for improving the accounting and budgetary systems in these local bodies. The expertise of the Foundation in carrying out research in this field was sought to be utilized. Therefore, it could not constitute business/commercial activity. Merely because some remuneration was taken by the Foundation for undertaking these projects that would not alter the character of these projects, which remained research and consultancy work. Most of the amount received qua these projects was spent on the project and the surplus, if any, is used for advancement of the objectives for which the Foundation was established.

(b) The projects undertaken on behalf of these local bodies were not a regular activity of the Foundation. The primary activity remained research in accounting related fields. Even these projects which were taken up on behalf of those local bodies fit in the description of "research projects" which could be termed ancillary activity only.

(c) The amended definition of "charitable purpose" would not alter this position. Merely on understanding those three research projects at the instance of the Government/local bodies the essential character of the Foundation could not be converted into the one which carries on trade, commerce or business or activity of rendering any service in relation to trade, commerce or business."

Again, the Hon'ble Delhi High Court in the case of Bureau of Indian Standards vs. Director General of Income-tax (Exemptions) (2013) 358 ITR 78 held as follows vide para 16 of the judgment :

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"16. *What survives to be determined is whether any of BIS's activities fall within the latter and larger category of "involved in the carrying on of any activity of rendering any service in relation to any trade, commerce or business". The expressions "any activity," "rendering any service" and "in relation to any trade, commerce or business" imply that the intention of the legislature was to make the latter part of the exception broad and inclusive. It seems that the exception (the first proviso) is intended to catch with its ambit any and all commercial activity, except what falls within the second proviso (which bars application of the exception in cases where the aggregate value of the receipts from the activities mentioned therein is less than ten lakh rupees in the relevant previous year). The Bureau, it would appear at the first blush, renders service in relation to trade, commerce or business by granting certification/quality marks in return of license fee. Apparently, Parliament intended to clarify that not all activities of State agencies (some of which might be set up to carry on trading and commercial activities) can be considered charitable. This can be gathered from the Notes on clauses attached to the Finance Bill, 2008:*

> *"Government feels that claim of status of 'charitable organisation' by the organisations carrying out activities on commercial lines is contrary to legislative intention.*
>
> *Finance Bill, 2008 seeks to amend section 2(15) w.e.f. April 1, 2009, by substituting existing definition with following definition:*
>
> *'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."*

In these circumstances, "rendering any service in relation to trade, commerce or business" cannot, in the opinion of the Court, receive such a wide construction as to enfold regulatory and

sovereign authorities, set up under statutory enactments, and tasked to act as agencies of the State in public duties which cannot be discharged by private bodies. Often, apart from the controlling or parent statutes, like the BIS Act, these statutory bodies (including BIS) are empowered to frame rules or regulations, exercise coercive powers, including inspection, raids; they possess search and seizure powers and are invariably subjected to Parliamentary or legislative oversight. The primary object for setting up such regulatory bodies would be to ensure general public utility. The prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection etc, cannot be considered as trade, business or commercial activity, merely because the testing procedures or accreditation involves charging of such fees. It cannot be said that the public utility activity of evolving, prescribing and enforcing standards, "involves" the carrying on of trade or commercial activity."

Similarly, the Hon'ble Delhi High Court in the case of *GSI India vs.Director General of Income-tax (Exemption) & anr. [2014] 360 ITR 138* held vide para 36 of the judgment as under:

".....The object of the proviso is to draw a distinction between charitable institutions covered by the last limb which conduct business or otherwise business activities are undertaken by them to feed charity. The proviso applies when business was/is conducted and the quantum of receipts exceeds the specified sum. The proviso does not seek to disqualify charitable organization covered by the last limb, when a token fee is collected from the beneficiaries in the course of activity which is not a business but clearly charity for which they are established and they undertake."

Again, the Hon'ble Delhi High Court in the case of *India Trade Promotion Organization vs. Director General of Income-tax (Exemptions) & Ors. [2015] 371 ITR 333, held vide para 58 as follows:-*

***"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 fowl 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."

The rational that can be culled out from the above decisions is that once the primary objects of an institution are established to be in the nature of charity, then the proviso to section 2(15) of the Act can not be made applicable. In other words, the existence of the proviso in substance will not make any difference. The proviso will hit only such cases where the entity or organization is carrying on business activity with a profit motive in the garb of charitable purpose. It will not however affect the case of institution which are genuinely carrying on charitable activities. The words used by the legislature in the proviso "**In the nature of trade, commerce or business**". If we give due importance to the above mentioned words, the only

conclusion will be that the proviso will effect only such cases where the activities of a charitable institution can be considered to be in the nature of trade, commerce or business. In fact, the same controversy, which has been there in the past, whether a charitable institution is carrying on the activities only of charitable nature or is carrying on activities which are in the nature of business, is emerging from this proviso also. In other words, the proviso will not give rise to any new controversy which had not been in the past. The further words used in the proviso, that for a cess or fee or any other consideration, have to be read alongwith the nature of activities, *i.e.*, trade, commerce or business. When an institution is carrying on activities in the nature of trade, , commerce or business obviously it will be charging fee, etc. It may be charging fee even when rendering/providing services as part of charitable activity in order to supplement its income for carrying on charitable activities. In that case the proviso will not have any implication as the activities would not be in the nature of trade, commerce or business. Accordingly, the proviso inserted in the definition of 'charitable purpose' will not substantially have any impact on the meaning of charitable purpose.

16. The circumstances under which the services rendered by the appellant society to the Banks make clear that there is no profit motive in such activities because these activities were entrusted to the appellant society by the Reserve Bank of India as a part of its supervisory role over the Banks in India. In our considered opinion, viewed from any angle, the objects, either main or ancillary, are not in the nature of

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business or trade or commerce. The banks merely used the expertise of appellant society in the banking operations. The question of the profit motive in undertaking such activities can not be imagined keeping in view the circumstances under which the appellant society is operated. The objects of the appellant society are totally charitable in nature and do not carry on any activity in the nature of trade, commerce or business. Therefore, the proviso to Section 2(15) of the Act cannot be applied to the Appellant society as clarified by the Circular No.11 of 2008 issued by the CBDT. It is worthwhile to mention here that the Hon'ble Finance Minister had also clarified, during the course of the debate in the Parliament, that the proviso to Sec. 2(15) of the Act is not intended to apply to genuine charitable organizations. It was further clarified by the Hon'ble Finance Minister that the Chambers of Commerce and similar organizations rendering services to their members would not be affected by introduction of this proviso. It is fairly settled law now that reference can be made to the speech made by the Hon'ble Finance Minister at the time of piloting the bill in the Parliament in order to ascertain the true meaning of the words and the language employed in the Statute. The Hon'ble Supreme Court in the cases of ***K.P.Varghese v. ITO*** 131 ITR 597***, Kerala Sate Industrial Development Corporation vs. CIT*** 259 ITR 51 and

Deshbandhu Gupta & Co. v. Delhi Stock Exchange Association Ltd. AIR 1979 SC 1049 had held that the Hon'ble Finance Minister's speech can be relied upon to throw light on the object and purpose of particular provision introduced by the Finance Bill. This is in the nature of *contemporaneous exposition* furnishing legitimate aid to construction.

17. In this backdrop, which needs to be considered is as to whether the charging of amounts from the banks for the services rendered by the appellant society would make the activity 'commercial' as held by the Assessing Officer.The mere fact that the appellant society had generated surplus, during the course of carrying on the ancillary objects, shall not alter the character of the main objects so long as the predominant object continues to be charitable and not to earn the profit. Please refer to the judgments rendered by the Hon'ble Apex Court in the cases of ***Addl. CIT vs. Surat Art Silk Cloth Manufacturers' Association*** [1980] 121 ITR 1 and ***CIT v. A.P. State Road Transport Corporation*** [1986] 159 ITR 1. The Hon'ble Supreme Court in the case of ***CIT v. A.P. State Road Transport Corporation*** held as under:

*".....It is now firmly established by the decisions of this court in **Surat Art Silk Cloth Manufacturers Association's case** [1980] 121 ITR 1 (SC) and **Bar Council of Maharashtra's case** [1981] 130 ITR 28 (SC), that the test is "What is the predominant object of the activity—whether it is to carry out a charitable purpose or to earn profit?" If the predominant object is to carry out a charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity."*

The ratio in the above case was again followed by the Hon'ble Supreme Court in the case of ***Thiagarajar Charities v. Addl. Commissiner of Income-tax & another*** 225 ITR 1010 and A.P. High Court in the case of ***Girijan Co-operative Corporation Ltd. v. Commissioner of Income-tax*** 178 ITR 359.

18. Recently, the Hon'ble Supreme Court in the case of ***Queen's Educational Society v. CIT [2015] 372 ITR 699*** had reversed the decision of the Uttarkhand High Court, which held that when there is heavy profit the educational institution is intended for profit and therefore, exemption was denied. The very fact that the profit was large made the Hon'ble High Court to believe that there was a profit motive in establishing the educational institution. The Hon'ble Supreme Court after referring to the judgments of the Punjab & Haryana High Court in the case of ***Pinegrove International Charitable Trust v. Union of India [2010] 327 ITR 73*** and Delhi High Court in ***St. Lawrence Educational Society (Regd.) v. CIT*** [2013] 353 ITR 320 and ***Tolani Education Society v.***

Deputy DIT (Exemptions) [2013] 351 ITR 184, which are contrary to the judgment of Uttarakhand High Court in the case of ***CIT v. Queen's Educational Society*** 319 ITR 160, held as follows:-

> *".....We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit."*

19. Needless to mention, the ratio laid down in the cases ***Surat Art Silk Cloth Manufacturers Association, Aditanar Educational Institution*** and ***American Hotel and Lodging Association Educational Institute*** is that mere existence of surplus from the activity does not mean that it will cease to be one existing solely for charitable purpose. The test to be applied is only the nature of predominant activity to determine whether the institution is existing for charitable purpose or otherwise. Therefore, in the instant case also, the mere fact that there was a surplus from the ancillary activities carried on by the appellant society does not mean that its objects ceases to be charitable.

20. Therefore, viewed from any angle, we hold that the Appellant society is entitled from exemption of income under

the provision of Section 11 of the Act and the proviso to Section 2(15) of the Act cannot be applied to the appellant society as it is not engaged in any activity which are in the nature of trade, commerce and business. Accordingly, we direct the Assessing Officer to allow the exemption under the provisions of Sec. 11 of the Act.

21. The next ground of appeal relates to the disallowance of prior period expenses of Rs.1,26,807/- and deferred tax liability of Rs.5,01,728/- and provision for income-tax of Rs.4,63,00,000/-. It appears the A.O. has disallowed these expenses on the ground that appellant society was not entitled to exemption under the provisions of Sec. 11 of the Act. In the preceding para, we already held that the appellant society is entitled for exemption under the provisions of Section 11 of the Act. Once it is held that the appellant society is eligible for exemption u/s. 11 of the Act, as a logical corollary, the income of the appellant society has to be computed on commercial principles as held by the Hon'ble Supreme Court in the case of ***CIT v. Programme for Community Organization*** (2001) 248 ITR 1. If the commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the appellant society for charitable purposes in the earlier

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year against income earned by the appellant society in the subsequent year will have to be regarded as application of income of the appellant society for charitable purpose in the subsequent year in which such adjustment has been made having regard to the benevolent provisions contained in section 11 and will have to be excluded from the income of the appellant society under section 11(1)(a) Reliance in this regard is placed on the decision in the case of ***CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal***, (1995) 211 ITR 293, 300 (Guj). Further, we also note that the provisions of section 11(1)(a) of the Act does not prescribe that income of the year should have been applied only in the year in which income has arisen. Therefore, we hold that the pre-operative expense of Rs.1,26,807/- should be allowed as deduction.

22. Similarly, the provisions for payment of tax should be allowed as application of income for charitable purposes. Expenditure by way of payment of tax out of current year's income has to be considered as 'application' for charitable purposes because the payment has been made to preserve the *corpus,* the existence whereof is essential for the appellant society itself. Please refer to *CIT v. Janaki Ammal Ayya Nadar Trust, (1985) 153 ITR 159 (Mad). Also see, CIT v. Ganga Charity Trust Fund, (1986) 162 ITR 162 (Guj); CIT v. Ganga*

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Charity Trust Fund, (1993) 115 CTR (Guj) 325, 326; CIT v. Apostolos Raptakos Trust, (1998) 143 Taxation 387, 388 (Bom), CIT v. Nizam's Supplemental Religious Endowment Trust (1981) 127 ITR 378 (AP). However, we note from the assessment order that the appellant society had debited the above provision for taxation to income and expenditure account. The Assessing Officer had adopted the excess of income over expenditure for taxation and further addition of provision for income tax was made. For the purpose of computation of income available for application for charitable purposes, it is only the actual receipts and payments which are all alone to be considered. Therefore, we direct the Assessing Officer to allow the provision for taxation only in the year in which actual payment is made.

23. The next ground of appeal relates to the allowability of depreciation. The issue is no more *res integra* and it is covered by the decision of Co-ordinate Bench, Hyderabad in the case of ***A.P. Olympic Association***, held vide para 8 to 16 as follows:

"8. …. We have considered the rival submissions and examined the issue. There is no dispute with regard to the fact that the assessee is registered under section 12AA of the Income-tax Act. There is also no dispute that the assessee has shown all the receipts in income-expenditure account and claimed various

expenses in its computation of income, while declaring excess of income over expenditure. It is also not in dispute that the income of the assessee-trust has to be computed with reference to the provisions of sections 11 and 13. Therefore, the principles governing the computation of income under the head "Business" may not apply to the computation of income under the above provisions, since the income of a charitable institution has to be computed under ordinary principles of commercial accounting, and depreciation has to be allowed on depreciable assets held by a charitable institution to arrive at the income of 75 per cent. (now 85 per cent.) which is required to be applied for charitable purpose. In the decision of the hon'ble Supreme Court in the case of Escorts Ltd./J.K. Synthetics Ltd. (supra), the hon'ble Supreme Court was to consider the issue wherein the depreciation was also claimed on an asset which was claimed as a deduction while using for research, as "capital expenditure on scientific research". On those facts, the hon'ble Supreme Court held that depreciation was inadmissible since the entire cost of the asset used for research was claimed as deduction. However, the same principle may not apply to the computation of income under section 11 of the trust.

9. *The hon'ble Kerala High Court in the case of Lissie Medical Institutions (supra), taking into consideration of clarification issued by the Central Board of Direct Taxes ignoring its own Circular 5-P (LXX-6) of 1968 dated June 19, 1968, opined that there could be leakage of revenue and generation of black money, if depreciation was allowed. Thus, the hon'ble Kerala High Court gave decision in favour of the Revenue and directed the assessee to re-draw the accounts.*

10. *The decision of the co-ordinate Bench, which the learned Commissioner of Income-tax (Appeals) relied on, i.e., in the case of Sri Venkata Sai Educational Society (supra) however, did not decide the issue but restored the matter to the file of the Assessing Officer to examine ; whether assets have been claimed as exemption in earlier years on which depreciation was claimed. However, in a later order by the co-ordinate Bench of the Income-tax Appellate Tribunal, Hyderabad in the case of Asstt. DIT (Exemption) v. Royal Educational Society in IT Appeal No. 1378/Hyd/2011, dated June 28, 2012, however, allowed the claim of depreciation and dismissed the Revenue's appeal. The co-ordinate Bench relied on the decision of the hon'ble Punjab and Haryana High Court in the case ofManav Mangal Society (supra)*

and CIT v. Market Committee [2011] 330 ITR 16/[2012] 20 taxmann.com 559 (Punj. & Har.), in arriving at that decision. Thus, there was a difference of opinion on the above issue at that point of time.

11. *The hon'ble Punjab and Haryana High Court in the case of Manav Mangal Society (supra) has considered and allowed the claim of depreciation (page 423) :*

> *"The amount spent on construction of school building at Panchkula is a capital expenditure but for the purpose of section 11 it is an outgoing expenditure which is application of income of the appellant-trust for charitable purpose. The appellant shall also be entitled to claim depreciation on the school building".*

12. *This decision was followed in the case of CIT v. Tiny Tots Education Society [2011] 330 ITR 21/ 11 taxmann.com 242 by the hon'ble Punjab and Haryana High Court.*

13. *This issue has elaborately been discussed by the hon'ble Delhi High Court in the case of Vishwa Jagriti Mission (supra) and took a over view of the existing decisions on the issue while holding as under :*

> *"11. The Revenue is in appeal against the aforesaid order of the Tribunal. We are not inclined to admit the appeal and frame any substantial question of law since none arises from the order of the Tribunal. There is no dispute that the assessee has been granted registration under section 12AA vide order dated September 11, 2009, and, therefore, it was entitled to exemption of its income under section 11. The only question is whether the income of the assessee should be computed on commercial principles and in doing so whether depreciation on fixed assets utilised for the charitable purposes should be allowed. On this issue, there seems to be a consensus of judicial thinking as is seen from the authorities relied upon by the Commissioner of Income-tax (Appeals) as well as the*

Tribunal. In CIT v. The Society of the Sisters of St. Anme, an identical question arose before the Karnataka High Court. There the society was running a school in Bangalore and was allowed exemption under section 11. The question arose as to how the income available for application to charitable and religious purposes should be computed. Jagannatha Setty, J. speaking for the Division Bench of the court held that income derived from property held under trust cannot be the 'total income' as defined in section 2(45) of the Act and that the word 'income' is a wider term than the expression 'profits and gains of business or profession'. Reference was made to the nature of depreciation and it was pointed out that depreciation was nothing but decrease in the value of property through wear, deterioration or obsolescence. It was observed that depreciation, if not allowed as a necessary deduction for computing the income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. The circular No. 5-P (LXX-6) of 1968, dated July 19, 1968 was reproduced in the judgment in which the Board has taken the view that the income of the trust should be understood in its commercial sense. The circular is as under :

'Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word "income" should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purpose of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent. Of the latter, if the trust is to get the full benefit of the exemption under section 11(1).'

12. A similar view was earlier expressed by the Andhra Pradesh High Court in CIT v. Trustee of H.E. H. The Nizam's Supplemental Religious Endowment Trust [1981] 127 ITR 378 (AP) and by the Madras High Court in CIT v. Rao Bahadur Calavala Cunnan Chetty Charities [1982] 135 ITR 485 (Mad). The Madhya Pradesh High Court in CIT v. Raipur Pallottine

Society [1989] 180 ITR 579 (MP) has held, following the judgment of the Karnataka High court cited above, that in computing the income of a charitable institution/trust, depreciation of assets owned by the trust/institution is a necessary deduction on commercial principles. The Gujarat High Court, after referring to the judgments of the Karnataka, Maharashtra and Madhya Pradesh High Courts cited above, also came to the same conclusion and held that the amount of depreciation debited to the accounts of the charitable institution has to be deducted to arrive at the income available for application to charitable and religious purposes.

13. The judgment of the Supreme Court in Escorts Ltd. v. Union of India [1993] 199 ITR 43 (SC) has been rightly held to be inapplicable to the present case. There are two reasons as to why the judgment cannot be applied to the present case. Firstly, the Supreme Court was not concerned with the case of a charitable trust/institution involving the question as to whether its income should be computed on commercial principles in order to determine the amount of income available for application to charitable purposes. It was a case where the assessee was carrying on the business and the statutory computation provisions of Chapter IV-D of the Act were applicable. In the present case, we are not concerned with the applicability of these provisions. We are concerned only with the concept of commercial income as understood from the accounting point of view. Even under the normal commercial accounting principles, there is authority for the proposition that depreciation is a necessary charge in computing the net income. Secondly, the Supreme Court was concerned with the case where the assessee had claimed deduction of the cost of the asset under section 35(1) of the Act, which allowed deduction for capital expenditure incurred on scientific research. The question was whether after claiming deduction in respect of the cost of the asset under section 35(1), can the assessee again claim deduction on account of depreciation in respect of the same asset. The Supreme Court ruled that, under general principles of taxation, double deduction in regard to the same business outgoing is not intended unless clearly expressed. The present case is not one of this type, as rightly distinguished by the Commissioner of Income-tax (Appeals).

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14. Having regard to the consensus of judicial opinion on the precise question that has arisen in the present appeal, we are not inclined to admit the appeal and frame any substantial question of law. There does not appear to be any contrary view plausible on the question raised before us and at any rate no judgment taking a contrary view has been brought to our notice. In the circumstances, we decline to admit the present appeal and dismiss the same with no order as to costs".

14. *Similar view was also taken by the co-ordinate Bench of the Income-tax Appellate Tribunal, Bangalore in the case of Asstt. CIT v. Shri Adichunchanagiri Shikshana Trust [2013] 141 ITD 575/31 taxmann.com 157 wherein it was held that charitable or religious trust registered under section 12A can claim benefit under section 11 in the form of application of funds as well as depreciation under section 32 in respect of property held under the trust. The same opinion was followed by the Income-tax Appellate Tribunal, Bangalore Tribunal in the case of Dy. DIT (Exemption) v. Cutchi Memon Union [2013] 60 SOT 260/38 taxmann.com 276 wherein also similar opinion was expressed.*

15. *Thus, on this issue, there are decisions of the hon'ble Gujarat High Court, the Madhya Pradesh High Court, the Kerala High Court, the Bombay High Court, the Punjab and Haryana High Court and the Delhi High Court in favour of the assessee, whereas, there is only a lone judgment of the hon'ble Kerala High Court against the above opinion confirming the Revenue's contention. In view of the majority opinion of various High Courts, we are of the opinion that amount of depreciation debited to the account of charitable institution has to be allowed in order to arrive at the income available for application to the charitable purpose.*

16. *Since the hon'ble Delhi High Court in the case of Vishwa Jagruti Mission (supra) has distinguished various judgments on the issue, we do not intend to discuss the same again. However, we respectfully agree with the principles laid down by the hon'ble Delhi High Court, which were in favour of the assessee allowing the claim of depreciation."*

24. Respectfully following the above decision, we direct the Assessing Officer to allow the depreciation as an application of income.

25. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 30 .06.2015.

Sd/-	Sd/-
(SAKTIJIT DEY)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad Dated 30th June, 2015

Copy to

1.	Institute for Development and Research in Banking Technology (IDRBT), Castle Hills, Road No.1, Masab Tank, Hyderabad -500 057
2.	Assistant Director of Income Tax (E)-1, Hyderabad.
3.	CIT(A)-IV, Hyderabad
4.	Director of Income Tax (Exemptions), Hyderabad.
5.	D.R. ITAT "B" Bench, Hyderabad
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