# IN THE INCOME TAX APPELLATE TRIBUNAL
# CHANDIGARH BENCHES 'A' CHANDIGARH

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND
SHRI T.R. SOOD, ACCOUNTANT MEMBER

**ITA No. 1273/Chd/2012**
Assessment Year: 2009-10

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| The ACIT,<br>Circle 4(1),<br>Chandigarh | Vs. | The Tribune Trust,<br>Sector 29-C.<br>Chandigarh<br><br>PAN No.AAATT2141D |
| (Appellant) | | (Respondent) |

Appellant By : Smt. Jyoti Kumari, CIT DR
Respondent By : Shri Rohit Jain

Date of hearing : 28.10.2014
Date of Pronouncement : 26.11.2014

**ORDER**

**PER T.R.SOOD, A.M.**

The appeal filed by the Revenue is directed against the order dt 3.09.3012 of CIT(A), Chandigarh.

2. In this appeal the Revenue has raised the following effective grounds:-

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.*

2. *On the facts and in the circumstances of the case and, in law the Ld. CIT(A) has erred in reversing the action of the Assessing Officer who relying upon Circular No. 11 of 2008 dated 19.12.2008 and provisions of Section 2(15) treated the assessee as business entity and thereby assessed the income of the assessee at Rs. 26,81,557/- against returned loss of Rs. 38,74,62,223/-.*

3. After hearing both the parties we find that assessee filed a return declaring loss of Rs. 38,74,62,223/- after claiming exemption u/s 10(23C)(iv) of the Income-tax Act, 1961 amounting to Rs. 1,97,95,36,211/-. It was noted by the Assessing Officer that assessee has been notified by the CBDT as eligible for exemption u/s 10(23C)(iv) of the Act vide notification No. 60/2007 in File No. 197/67/2006-ITA.I vide order dated 28.2.2007 for assessment year 2007-08 onwards. It was further noted that exemption was renewed by CBDT since 1984-85 periodically on the basis of decision of privy council in assessee's case reported at 7 ITR 415 wherein it was held that "*objects of the trust may 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 as an object of general public utility.*"

Later on, the return was revised on10.09.2010 but the same figures had been filed. However, a following note was added:-

> *"The Tribune Trust had been granted exemption under section 10(23C)(iv) of the Income Tax Act, 1961("the Act") by the CBDT during the financial year 1984-1985, which was continuously renewed thereafter. The last of such exemption was provided to the assessee by the CBDT vide Notification No. 60/2007 dated 28.02.2007, which is applicable for the assessment years 2007-08 onwards.*
>
> *In view of the newly inserted proviso under section 2(15) by the Finance Act, 2008, with effect from 01.04.2009, the asseseee, to err on the said of caution, is hereby revising its return of income for the assessment year 2009-10, without claiming exemption under section 10(23C)(iv) of the Act and payment of tax accordingly, although the assessee believes that it is still eligible for exemption under that section. It is, therefore, respectfully prayed that the assessee may continue to be allowed exemption under section 10(23C)(iv) of the Act, which reads as under:*

*"10(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;"*

Thereafter the Assessing Officer referred to the amendment made in section 2(15) of the Act and observed that after the amendment if a trust is engaged in advancement of general public utility for carrying on any activity in the nature of trade, commerce or business etc for which a cess or fee or any other consideration was charged, irrespective of its application then such obejct cannot be termed as charitable. The Assessing Officer noticed that in view of this amendment perhaps assessee has itself revised the return without claiming the exemption u/s 10(23C)(iv) and, therefore, the assessee could not be treated to be as trust, carrying on the activities which were covered under the definition of charitable purposes. In this background the assessee was denied exemption u/s 10(23C)(iv) of the Act and income was computed as under:-

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|---|---|---|---|
| *Gross receipts as per income & expenditure account* | | | *Rs. 1,59,20,73,988/-* |
| *Add:* | *Provision for credit notes to be issued Wrongly reduced* | | *Rs. 1,85,75,596/-* |
| | *Total Gross receipts* | | *Rs. 1,61,06,49,584/-* |
| *Less:* | *amount applied on* | | |
| | *Revenue expenses as per Income & expenditure A/c* | *Rs. 1,61,07,42,671* | |
| | *Less: Provision for bad & doubtful debts* | *Rs. 27,74,644/-* | *Rs. 1,60,79,68,027/-* |
| *Taxable Income* | | | *Rs. 26,81,557/-* |

4. On appeal, detailed written submissions were filed and the relevant portion has been extracted by Ld. CIT(A) vide para 4.2 which is as under:-

> *"4.2 The assessing officer, it is respectfully submitted, failed to appreciate that the Notification issued by the CBDT granting approval for exemption under section 10(23C)(vi) of the Act to the appellant was very much operating not only at the time of filing the original/ revised return as well as at the time of completing assessment. The assessing officer further failed to take note of the fact that the appellant had itself clarified in the note appended to the revised return that the revised return was filed only as a measure of abundant precaution as there was amendment in provisions of section 2(15), even though the appellant continued to believe that its income was still exempt under section 10(23C)(iv) of the Act. Despite such a clear and categorical stand of the appellant, the assessing officer, in gross violation of principles of nature justice and without even examining the claim of the appellant on merits, simply proceeded to deny exemption under section 10(23C)(iv) of the Act."*

5. The Ld. CIT(A) after considering the above submissions found merit in the same. He observed that this institute has been approved by the prescribed authority and definition of charitable purpose in section 2(15) has no reference to the exemption provided u/s 10. This means that exemption was not subject to any restriction. In other words, the Ld. CIT(A) allowed the exemption on the basis of notification issued by CBDT approving the assessee for exemption u/s 10(23C)(iv) of the Act.

6. Before us, the Ld. DR carried us through contents of assessment order as well as relevant portion of the impugned order. In this background she submitted that assessee has itself revised its return as noted by the Assessing Officer in which in view of the amendment in section 2(15) by Finance Act, 2008 w.e.f. 1.4.2009, the exemption was sought to be withdrawn. This itself shows that assessee by itself admitted that it is no more entitled for exemption.

She also referred to the copy of the notification issued by the Board which is placed at page 39 of the paper book and invited our attention to clause (c) which reads as under:-

> *"(c ) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the Institution and separate books of account are maintained in respect of such business."*

The above clearly shows that notification regarding exemption is not applicable because assessee has business income. The main business of the assessee is printing and publication of newspaper. In this regard she referred to the income and expenditure account which is filed at page 44 of the paper book which clearly shows that out of the total Revenue of about 161 cores a sum of Rs. 124.87 cores is received from advertisements, Rs. 17.49 crores from sale of newspaper, Rs. 3.07 crores from subscription of the dailies and Rs. 11.38 crores from the interest on FDRs, Rs. 2.39 crores from sale of clippings. All these items were pertaining to the business activities of the assessee. She also submitted that assessee has itself filed return under Fringe Benefit Tax u/s 115WA which also shows that assessee was clear that assessee is not eligible for exemption u/s 10(23C)(iv) of the Act because proviso to section 115W which gives definition of the employer clearly provides that provision of FBT are not applicable because such persons which are exempt by way of registration u/s 12AA or under sub section (23C) of section 10 are not to be treated as employer.

7. She vehemently argued that in any case the issue is squarely covered against the assessee by the decision of Hon'ble Apex Court in the case of Sole Trustee, Loka Shikshana Trust Vs CIT(1975) 101 ITR 234 (SC) wherein it is clearly observed that printing and publication of

newspaper is not charitable activity. She also relied on the decision of Hon'ble Supreme Court in the case of Yogiraj Charity Trust vs Commissioner Of Income- 103 ITR 777.

8. On the other hand, Ld. Counsel for the assessee submitted that assessee has technically revised the return but still claimed the exemption u/s 10(23C)(iv) of the Act and in this regard he invited our attention to the notes in the revised return which has been reproduced by the Assessing Officer at para 2.3. He also submitted that there is no force in the contention that because of the clause (c) of the notification the exemption is not available because that clause was applicable to exempt income which are covered by section 11 and not to exemption of income u/s 10(23C). However, on query by the Bench he clearly admitted that despite the notification the exemption can still be denied because of the last proviso to section 10(23C).

9. The Ld. Counsel for the assessee emphasized that activity of the assessee trust were held to be chartable nature by Privi Council in the assessee's own case and notification has been issued on the basis of that decision. He submitted that assessee is still carrying on the same activity and in fact was not earning any profit. In this regard he referred to pages 38 and 44 of the paper book and submitted that assessee got Revenue of only Rs. 17 crores from sale of newspaper whereas expenses on printing and stationary was much more amounting to about Rs. 160 cores. Therefore, no profit was being made from the publication of newspaper. He also referred to page 38 which shows that financial position of the various years would clearly show that assessee is incurring losses for many years. Once assessee was not making any profit then it cannot be said that decision of the Sole Trustee, Loka Shikshana Trust Vs CIT

(supra) is applicable. He contended that after amendment meaning of section 2(15) has been explained in detail by Hon'ble Delhi High Court. The Institute of Chartered Accountants of India Vs. The Director General of Income Tax (Exemptions) 347 ITR 99 (Delhi). He particularly referred to paras 14, 21, 25 and 32 of this decision. He contended that there has to be a profit motive for holding that a particular activity falls in the nature of trade and business as defined in section 2(15) and in the absence of such profits, the activity cannot be treated as trade business or commerce. He also relied on the following case laws:-

a) The Director of Income Tax (Exemptions), Chennai Vs. M/s Vallal M D Seshadri Trust, Teynampet (Tax case Appeal Nos. 554 & 555 of 2011)

b) Himachal Pradesh Environment Protection and Pollution Control Board Vs. CIT, Chandigarh 42 SOT 343(Chd)

c) Sevagram Ashram Pratisthan Vs. CIT 129 TTJ 506 (NAG.)

d) PHD Chamber of Commerce and Industry v. DIT (Exemptions) (2013) 357 ITR 296

He read out various portions of these judgments to enlighten us that which activities were charitable and which activity cannot be construed as charitable. While concluding his arguments he submitted that in any case the Revenue has itself granted exemption to the assessee in the assessment year 2010-11 and copy of the assessment order is placed on record at pages 182 to 183 of the paper book. Therefore, following the principle of consistency, exemption should be allowed in the present year also.

10. In the rejoinder Ld. DR pointed out that the decision of Hon'ble Delhi High Court in the case of The Institute of Chartered Accountants of India v The Director General of Income Tax (Exemptions) (supra) is distinguishable on facts. In that case the assessee Institute is a statutory authority constituted by Government. Of India under the Chartered Accountant Act, 1949 and was

basically engaged in regulating the profession of Chartered Accounts. The activity of conducing coaching classes was only an ancillary activity. Whereas in the case of assessee the main purpose is printing and publishing of newspapers and publishing advertisements. At best it can be said that assessee is providing a service but a fee is being charged for the same, therefore, it would be hit by proviso to section 2(15). Similarly, the other decisions quoted by Ld. Counsel for the assessee are distinguishable on facts.

11. We have considered the rival submissions carefully. Admittedly the assessee trust is doing only one activity of printing and publishing of newspaper. This activity was held to be of charitable in nature by the Privy Council in the Trustees of The Tribune Press Lahore 7 ITR 415**.** In this decision it was observed that though the assessee cannot be termed as an educational institute but it was held to be a trust providing service in the nature of general public utility. The issue why assessee cannot be held to be engaged in the activity of education has been further elaborated by the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust Vs CIT (supra) (at page 241 of the report )which is 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."*

Therefore, as held by Privi Council in the Trustees of The Tribune Press (supra), we are proceeding further on the basis that assessee is covered by "other objects of general public utility". Further, a proviso has been inserted by Finance Act, 2008 w.e.f. 1.4.2009 which reads as under:-

*"15. Charitable purposes includes relief of the poor education 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 of application, or retention, of the income form such activity."*

12. From the above, it becomes clear that a restrictive clause has been added in respect of the advancement of any other object of general public utility i.e. if

the same involves carrying on of any activity in the nature of trade, commerce or business then such activity would not be of charitable nature.

13. Originally, in the old Act, 1922 definition of Charitable Purpose reads as under:-

> *"Charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility".*

The expression "not involving the carrying of any activity for profit" were added in the in the definition given for charitable purposes u/s 2(15) in the 1961 Act.

14. Now the question arises to what an extent this fetter of "not involving the carrying of any activity for profit" would operate. In this regard Ld. counsel vehemently relied on the decision of Hon'ble Delhi High Court in the case of The Institute of Chartered Accountants of India Vs. The Director General of Income Tax (Exemptions) 347 ITR 99 (Delhi) wherein the new provision to section 2(15) which put a rider on other objects of general public utility have been analyzed and it has been held that unless and until such activity leads to generation of profit, the exemption cannot be denied. However, at this stage we would like to recall the caution given by Hon'ble Supreme Court in respect of treating a particular case law as a precedent or authority in case of Padmasundara Rao (Decd) and Others v State of Tamil Nadu and Others 255 ITR 147 (SC) . The Constitute Bench consisting of five learned judges gave the following observation at page 153 of the report.

> ***"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative***

> ***enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morrin in Herrington v. British Railways Board [1972] 2 WLR 537 (HL). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."***

Therefore, it becomes clear that unless and until factual situation of an earlier decided case fits into the factual situation of case in hand, the earlier case cannot be taken to be a precedent. The decision in the case of The Institute of Chartered Accountants of India Vs. The Director General of Income Tax (Exemptions) (supra) was rendered by Hon'ble Delhi High Court wherein institute was mainly engaged in the regulatory functions of controlling the profession of Chartered Accountants and holding of coaching classes of the students was only an ancillary activity. This becomes clear from para 10 of the judgment which reads as under:-

> *"No doubt, the petitioner holds classes and provides coaching facilities for candidates/articled and audit clerks who want to appear in the examinations and want to get enrolled as chartered accountants and as well as for members of the petitioner-Institute who want to update their know-ledge and develop and sharpen their professional skills, but this is not the sole or primary activity. The petitioner-Institute may hold classes and give diploma/degrees to the members of their Institute in various subjects but this activity is only an ancillary part of the activities or functions performed by the petitioner-Institute. This one or part activity by itself, does not mean that the petitioner is an educational institute or is predominantly or exclusively engaged in the activity of education. The petitioner-Institute is engaged in multifarious activities of diverse nature, but the primary and the dominant activity is to regulate the profession of chartered accountancy. For this purpose it holds entrance examination and enrolls members. It regulates the conduct of its members, prescribes and fixes accountancy standards, etc.*

Therefore, the above case cannot be taken as a precedent for deciding the issue raised before us. Similarly, the other decisions relied upon by the Ld. Counsel for the assessee are distinguishable on their facts.

15. Now this leaves us with the decision of Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust Vs CIT (supra). This decision is being relied on by us because in this case also following question was raised:-

> *"Whether, on the facts and in the circumstances of the case, the income of the Loka Shikshana Trust was entitled to exemption under section 11 of the Income-tax Act, 1961, read with section 2(15) of the same Act, for the assessment year 1962-63 ? "*

16. In this case also the assessee was mainly engaged in printing and publication of newspapers in Kannad language. Therefore, the issue raised before Hon'ble Apex Court was exactly the same which has been raised before us. The Hon'ble Supreme Court discussed in detail the various clauses of the trust as well as meaning of 'charitable purposes'. It was noted that why this Trust can not be held to be for educational purposes and the relevant Para have already been extracted by us above. Thereafter, it was noted that there was an amendment in the definition of 'charitable purposes' and the words of 'any activity for profit' have been added at the end of the definition as was given in section 4(3) of the Indian Income Tax Act, 1922. The Court observed that in view of this change a Trust can be held to be of charitable nature only if (1) the purpose of the trust is advancement of any other object of general public utility, and (2) the above propose does not involve carrying of any activity for profit." The court found that Trust was started with a sum of Rs. 4308-10-9 on April 1947 by 1962-63, the total value of assets increased to Rs. 2,97,558/-. In fact the detailed observation in this regard are at page 243 to 243 which reads as under:-

*"Question then arises as to whether the purpose of the appellant-trust can be considered to be one not involving the carrying on of any activity for profit. So far as this question is concerned, we find that the appellant-trust started with a sum of Rs. 4,308-10-9. The schedule attached to the trust deed dated April 10, 1947, shows that the assets of the trust consisted of printing machines, accessories, motor-cars, building, stocks of paper and other miscellaneous things. The total value of the assets was Rs. 2,97,558, out of which the value of the building sites and the buildings was Rs. 47,500. As against that, the liabilities of the trust amounted to Rs. 1,24,086. The net value of the assets of the trust rose in 1947 to a figure of Rs. 1,73,571-14-4. For the assessment year 1962-63, which is the year under appeal, the total receipts of the trust were of the amount of Rs. 22,55,077. The main sources of these receipts were sales of newspapers and magazines through agents, receipts on account of advertisement, receipts for job printing bills besides some other minor items. As against the receipts, the major items of expenditure were the purchase of newsprint, paper, printing types, printing and other material, the salaries and allowances of the staff, remuneration to news agencies and railway freight. There can, therefore, be no doubt that the trust has been carrying on the business of publishing newspaper and weekly and monthly magazines. The profits from the aforesaid business would also apparently account for the manifold increase in the value of the assets of the trust. The emphasis on business activity of the trust is also manifest from clauses 6, 10, 14, 16 and 18 of the trust deed reproduced above. The fact that the appellant-trust is engaged in the business of printing and publication of newspaper and journals and the further fact that the aforesaid activity yields or is one likely to yield profit and there are no restrictions on the appellant-trust earning profits in the course of its business would go to show that the purpose of the appellant-trust does not satisfy the requirement that it should be one " not involving the carrying on of any activity for profit ".*

Then Court further went into the discussion about the meaning of profit in the following paras:-

> *"It is true that there are some business activities like mutual insurance and co-operative stores of which profit making is not an essential ingredient, but that is so because of a self-imposed and innate restriction on making profit in the carrying on of that particular type of business. Ordinarily profit motive is a normal incident of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit. The expression " business ", as observed by Shah J., speaking for the court in the case of State of Gujarat v. Raipur Mfg. Co. (1), though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive. By the use of the expression " profit motive " it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity. In the case of Commissioner of Income-tax v. Lahore Electric Supply Co. Ltd. (1), Sarkar J., speaking for the majority, observed that business as contemplated by section 10 of the*

*Indian Income-tax Act, 1922, is an activity capable of producing a profit which can be taxed. In the case of the appellant-trust the activity of the trust, as already observed earlier, has in fact been yielding profits and that apparently accounts for the increase in the value of its assets.*

*We are not impressed by the submission of the learned counsel for the appellant that profit under section 2(15) of the Act means private profit. The word used in the definition given in the above provision 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 is not there. There is 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 are very wide. These words, as held by the Judicial Committee in the case of All India Spinners' Association v. Commissioner of Income-tax (2), exclude objects of private gain. It is 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. 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 Tribune (3) and All India Spinners' Association (2). If despite that fact, the legislature added new words in the definition of charitable purpose, it would be contrary to all rules of construction to ignore the impact of the newly added words and to so construe the definition as if the newly added words were either not there or were intended to be otiose and redundant.*

In the above case, Justice M.H. Beg delivered a separate judgment. In his judgment he referred to divergent view of different Courts in understanding the meaning of "charitable proposes, and ultimately noted as under:-

> *"Some of the decisions on income for which exemption was claimed on the ground that it was meant for a charitable purpose falling within the wide residuary class perhaps travelled even beyond the " bursting point " to which, according to Lord Russell of Killowen, English courts had stretched the concept of charity (see In re Grove-Grady (2)). At any rate, the reason which induced our Government to make an amendment to section 2(15) of the Act of 1961 was thus stated by the Finance Minister, Shri Morarji Desai, in the course of his speech in Parliament explaining the proposed amendment (See Lok Sabha Debates (3), dated August 18, 1961) :*
>
> > *"The other objective of the Select Committee, limiting the exemption only to trusts and institutions whose object is a genuine charitable purpose has been achieved by amending the definition in clause 2(15). 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. " (page 3074)."*

18. In respect of reliance placed on the speech of Finance Minister, some details arguments were made and the concept is dealt at pages 252 to 253 and ultimately the Court relied on the decision of Privi Council (supra) in the following paras:-

a) Jerold Lord Strickland v Camelo Mifsud Bonnici AIR 1935 PC 34.

b) Englishman Ltd v Lajpat Rai [1910] ILR 37 Cal 760

c) Anandi Haridas & Co. Pvt Ltd v Engineering Mazdoor Sangh [(1975)} 99 ITR 592, 595 (SC

The Court ultimately relied on the speech of Finance Minister as well as recommendation of the Select Committee and observed that similar meaning has to been attached to the expression “not involving the carrying of any activity of profit”: and at that stage the Court noted the contention of Ld. counsel on behalf of the assessee on the merits of the decision in the case of the Trustees of The Tribune Press.

19. On the above contention the Hon'ble Court observed as under:-

*“It seems clear to us that the amended provision, section 2(15) in the Act of 1961, was directed at a change of law as it was declared by the Privy Council in the Tribune case (3). The amended provision reads as follows :*

> *"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. "*

*It is apparent that, even now, charitable purposes has not been defined. The four-fold classification, which was there in the Act of 1922, is there even in the amended provisions, but the last or general category of objects " general public utility " is now qualified by the need to show that it did not involve profit making. The question before us, therefore, is : What is the meaning or purpose of introducing the limitation " not involving the carrying on of any activity for profit " ? The contention of Mr. Palkhivala is that it merely indicates that, as was held in the Tribune case(1) and other cases, the purpose must not be private profit making, or, in other words, the benefit must be to an object of " general public utility ". This involves reading of the word " private " before " profit " which is quite unjustifiable. Furthermore, if that was the*

*sole purpose of the amendment, we think that the amendment was not necessary at all. It had been declared repeatedly by the courts even before the amendment that activities motivated by private profit making fell outside the concept of charity altogether. We think that it is more reasonable to infer that the words used clearly imposed a new qualification on public utilities entitled to exemption. It was obvious that, unless such a limitation was introduced, the fourth and last category would become too wide to prevent its abuse. Wide words so used could have been limited in scope by judicial interpretations ejusdem generis so as to confine the last category to objects similar to those in the previous categories and also subject to a dominant concept of charity which must govern all the four categories. But the declaration of law by the Privy Council in the Tribune case(1) had barred this method of limiting an obviously wide category of profitable activities of general public utility found entitled to exemption. Hence, the only other way of cutting down the wide sweep of objects of " general public utility " entitled to exemption was by legislation. This, therefore, was the method Parliament adopted as is clear from the speech of the Finance Minister who introduced the amendment in Parliament***."***

The above clearly shows that according to the Hon'ble Supreme Court the decision of Privi Council in the Trustees of The Tribune Press Lahore (supra) is not more a good law because of the amendment made in the Act itself. Ultimately, some other observations were made and it was held that assessee trust is not entitled for exemption.

20. From the above it becomes absolutely clear that after insertion of expression “not involving the carrying of any activity for profit: the decision of Privi Council in the case of Trustees of The Tribune (supra) cannot be followed.

21. The words ‘not involving the carrying of any activity of profit’: were omitted by Finance Act, 1983 from 1.4.1984, this amendment was in fact

consequential to the amendment made in section 11 of the Income Tax Act by section 6(b) of Finance Act, which made the profits and gains of business in the case of charitable or religions trust and institution taxable under that section, if they were carrying on any business. A more elaborated proviso has been again added u/s 2(15) which has been extracted above and which makes it clear that if a Trust is engaged in the advancement of any other object of general public utility, it cannot be called for charitable purpose, if it involves carrying on any activity in the nature of trade, commerce or business.

23. The decision by the Privi Council was rendered in 1939 and lot of water has flown in the Ganges thereafter, may be at that time publication of newspaper could be construed as advancement of general public utility. However, in the present days a great competition is there in media and thousands of newspapers are being published and each one of them is competing with the others to increase circulation. In fact, the main purposes of these newspapers and magazines is to sell advertisements and to earn profits and for that they are subsidizing the cost of newspapers. For example a paper X may be costing after publication at Rs. 10/- but it is sold at Rs. 2/- just to increase the circulation and such subsidized cost is recovered through revenue collected from advertisements which is generally much more than the sale price of the particular daily newspaper or magazine or weekly or monthly magazine. Such newspaper in today's world had to face further competition from television where again hundreds of news channels have been launched, both this media are facing further competition from the internet and social media. So every organization is trying to sell its media reports by various means adopting various techniques i.e. in case of internet all the search engines including Google or Yahoo and social medial like face book are free of cost and whole of revenue is collected through advertisements.

24. In the above background in the case of assessee it was found from the income and expenditure account that assessee has collected only a sum fo Rs. 17.49 crores from sale of newspaper and in addition to Rs. 3.07 crores from subscription of such dailies and Rs. 2.39 crores from sale of clippings. Against this revenue of approx 21 cores, the assessee has earned advertisement revenue of Rs. 124.87 crores. This itself shows that assessee is earning profits though figures for original corpus at the time of established of trust are not available before us because it is a very old Trust but as on 31.3.2009, the balance in corpus account is Rs. 120.71 cores and we are very sure that at the time of establishment of trust, the value of corpus must have been only in lakhs of rupees, therefore, it makes it absolutely clear that as observed by the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust Vs CIT (supra) the assessee has definitely earned profits. This fact further get fortified from the fact that assessee has received interest of more than Rs. 11.38 cores on its fixed assets. This fact again shows that assessee is earning profits. One moiré question arises whether the exemption is to be granted automatically once the assessee trust has been notified by the CBDT for the purpose of section 10(23C) (iv). The answer is available in the same provision and the last proviso to section 10(23C) reads as under:-

> ***"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 ;"***

25. The above clearly shows that even if the approval has been granted, income can still be assessed if it is found that proviso to first provision of clause 15 of section (2) is applicable. Further, we also found some merit in the

contention of Ld. DR that assessee itself has entertained doubts about its exemption and filed a revised return, which itself shows that assessee was not eligible for exemption. The following note was given by the assessee in the revised returned:-

> *"The Tribune Trust had been granted exemption under section 10(23C)(iv) of the Income Tax Act, 1961("the Act") by the CBDT during the financial year 1984-1985, which was continuously renewed thereafter. The last of such exemption was provided to the assessee by the CBDT vide Notification No. 60/2007 dated 28.02.2007, which is applicable for the assessment years 2007-08 onwards.*
>
> *In view of the newly inserted proviso under section 2(15) by the Finance Act, 2008, with effect from 01.04.2009, the asseseee, to err on the said of caution, is hereby revising its return of income for the assessment year 2009-10, without claiming exemption under section 10(23C)(iv) of the Act and payment of tax accordingly, although the assessee believes that it is still eligible for exemption under that section. It is, therefore, respectfully prayed that the assessee may continue to be allowed exemption under section 10(23C)(iv) of the Act, which reads as under:*
>
> > *"10(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;"*

26. Again the assessee has admittedly filed the return under fringe benefit tax (FBT) as per the provisions of 115WA As pointed out by the Ld. DR the expression employer has been defined u/s 115W which reads as under:-

> *(a) "employer" means,—*
>
> *(i) a company ;*
>
> *(ii) a firm ;*
>
> *(iii) an association of persons or a body of individuals, whether incorporated or not, but excluding any fund or trust or institution*

*eligible for exemption under clause (23C) of section 10 or registered under section 12AA ;.*

*(iv) a local authority ; and*

*(v) every artificial juridical person, not falling within any of the preceding sub-clauses ;*

***[provided that any person eligible for exemption under clause (23C) of section 10 or registered under section 12AA or a political party registered u/s 29A of the Representation of the People Act, 1951(43 of 1952) shall not be deemed to be an employer for the purposes of this Chapter]"***

The proviso to the above provision clearly shows that if a person is eligible for exemption u/s 23C of section 10 or is registered u/s 12AA or is a charitable organization then such persons could not be called employer. If the assessee was clear in its mind that it is entitled for exemption u/s 23C (iv) of section 10, then there was no need for assessee to treat itself as employer and file return under the FBT provisions. In regard to these facts, Ld. counsel gave only evasive reply and we are not satisfied with the same as assessee trust is a large organization employing lot of qualified people including chartered accountants and is being advised by best of advocates, then how it can make such a slip of filing the return under FBT on the one hand and claiming exemption u/s 10(23C) on the other hand.

27. One more question needs to be answered. The Ld. Counsel has contended that Revenue has itself granted the exemption in assessment year 2010-11 and therefore, following the principle of consistency the exemption should be granted in this year also. The copy of the assessment order is available at pages 182 to 183 of the paper book and para 3 of the assessment order reads as under:-

*"objects of the trust may 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 as an object of general public utility".*

28. The above clearly shows that this order has been passed though the Assessing Officer himself was in doubt about the exemption. It seems that the Assessing Officer was not aware of the last proviso to section 10(23C) that notification itself will not grant exemption. Therefore, it is a not factual position. It is a legal issue as we have seen in the above noted paras, the law is very clear and assessee is not entitled for exemption, therefore, the principle of consistency cannot be followed.

29. In view of the above detailed discussion, we set aside the order of Ld. CIT(A) and restore that of Assessing Officer.

30. In the result, appeal of the Revenue is allowed.

Order pronounced in the Open Court on 26.11.2014

**Sd/-** **Sd/-**

**(BHAVNESH SAINI)** **(T.R. SOOD)**
**JUDICIAL MEMBER** **ACCOUNTANT MEMBER**

Dated : 26th November 2014
rkk

*Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR*