

itr-104-2000

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 104 OF 2000

Indian Machine Tools & Manufacturers' Association]
having their office at 85, Free Press House,]
215, Free Press Journal Road, Nariman Point]
Mumbai 400 021.].. Applicant.
v/s.
The Director of Income Tax (E)]
having his office at Aayakar Bhavan,]
Maharshi Karve Road, Mumbai 400 020.] .. Respondent.

Ms. Aarti Sathe with Mr. Nirav Barot i/b. Maneksha & Sethna, for the
Applicant.
Mr. A. R. Kotangle with Ms. Pratima Singh i/b. A. K. Saxena, for the
Respondent.

**CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA,JJ.**

**RESERVED ON: 21st FEBRUARY, 2018.
PRONOUNCED ON: 9th MARCH, 2018.**

JUDGMENT (Per M. S. Sanklecha, J):-

This Reference by the Income Tax Appellate Tribunal (the Tribunal) under Section 256(1) of the Income Tax Act, 1961 (the Act), seeks our opinion on the following question of law:-

“ Whether in the facts and in the circumstance of the case the assessee had fulfilled all the requirements of section 11(4A)

and if so, whether it is entitled to exemption u/s. 11 and whether the decision of the Tribunal that the assessee has not fulfilled all the requirements of sec. 11(AA) is correct under law or is liable to be set aside?”

2 This Reference relates to Assessment Year 1992-93.

3 Before the Tribunal, both the Applicant-Assessee as well as the Respondent-Revenue had preferred applications for Reference to this Court under Section 256(1) of the Act. The Tribunal, in its statement of case has rejected the Revenue's application, as not giving rise to question of law. However, the application raising question of law filed by the Assessee, was allowed to the extent of the question formulated herein above.

4 In the above view, for the purpose of recording the facts leading to the question of law, we refer to the statement of case sent by the Tribunal to the extent it relates to Assessee's application to the Tribunal. The relevant extract of the facts from the statement of case for the question raised for our opinion, are as under:-

“5. Now, let us take up the assessee's references which comprises of three questions, which have been extracted by us in the prior paras. After hearing both the sides, we are of the opinion that a question of law does arise from our decision, but the question of law, according to us, should be only one consolidated question, which is as follows:

“ Whether, in the facts and circumstances of the case, the assessee had fulfilled all the requirements of sec.11(4A) and if so, whether it is entitled to exemption u/s. 11 and whether the decision of the Tribunal that the assessee has not fulfilled all the requirements of sec.11(4A) is correct under law or is liable to be set aside?”

The brief statement of facts of the case is as follows:

For the assessment year 1992-93, for which the previous year ended by 31.3.1992, the assessee first filed a return disclosing nil income on 30.12.1992. It was accompanied by audited accounts and the auditors' report in Form No.10B. The assessee is a company registered u/s.12A of the Income Tax Act, 1961. It is also registered u/s. 25 of the Companies Act. In the Memorandum and Articles of Association, the main objects of the assessee are set out and they are extracted in the A.O.'s order. During the year under consideration, the assessee had shown gross receipts of Rs.5,52,56,585/- the break up of which is the following:-

Income from membership fees	Rs.	4,61,000
Income from IMTEX-92	Rs.	4,76,80,230
Miscellaneous Income	Rs.	71,15,355
		=====
Total receipts	Rs.	5,52,56,585
		=====

The main source of receipts is by way of 'Income from IMTEX-92' which constitutes 86.29% of the total receipts. The A.O. asked the assessee to explain the details of IMTEX-92. During the course of hearing, it was explained that IMTEX-92 is the name of a Trade Fair Exhibition organized by the assessee at Pragati Maidan, New Delhi, in March, 1992. The total receipt from IMTEX-92 has been to the tune of Rs.4,76,80,230/-. The break-up of these receipts is the following:-

Rent (including power and other charges)	Rs.	4,65,78,748
Sale of passes/entry tickets	Rs.	5,03,732
Advertisements in Exhibition catalog	Rs.	5,54,750
Misc. receipts	Rs.	43,000

	Rs.	4,76,80,230
		=====

The expense were to the tune of Rs.3,04,65,018/- as detailed in Schedule 10 to the "Income & Expenditure Account". Thus, the assessee earned net surplus of Rs.1,72,15,212/- from IMTEX-92. The A.O. found that the assessee hired space from the Trade Fair Authority of India at Pragati

Maidan, New Delhi. It then offered the stall spaces to its members and also to the non-members on rent payments. In so doing, the assessee earned a surplus to the tune of Rs.1,72,15,212/-. The A. O. deduced that the assessee earned a profit of more than Rs.1.72 Crores by holding a Trade Fair Exhibition. The A. O. also held that this activity of the assessee appeared to be a business activity which is not incidental to the attainment of the objects of the assessee and he asked the assessee to explain as to why the income earned from IMTEX-92 be not considered as business income and taxed accordingly. The assessee vide its letter dt. 27.1.1995 objected to the proposed holding of IMTEX-92 as business activities and submitted that the association conducts the exhibition almost every alternate year. The assessee then explained how it conducts activities, exhibition, tariffs, rate for SSI units, premium for prime location, air-conditioning surcharge, rentals to be charged from foreign firms and organizations, additional charges for having open sides of the stall, for electrical power charges, telephone charges, security deposits and the payment to be made and all these were detailed by the A. O. upto page 8 of his orders. In its letter dt. 27.1.1995, the assessee took the stand that the predominant object of the Association is to carry out a charitable purpose viz: promotion and protection of Indian Machine Tools Industries and not to earn profits. Merely because some income may arise it does not lose its charitable purpose. The A. O. took the view that the submissions made by the assessee in the letter was not acceptable. He held that the main activity of the assessee during the year has been to hold trade fair and by doing so, the assessee has earned handsome profits. The AO held that for this reason alone the assessee's argument that its intention is not to earn profit is self-defeating. He felt unable to agree with the assessee's contention that they had no profit motive. He held that the assessee's profit motive was evidence in its circulating the above referred exhibition tariff and letter for earning huge profit. The A. O. held that what has to be considered is the result of the activity and not the motive of a person. If the result of the business activity is profit then there is no provision in the Income-tax to exempt such income on the basis of the assumed motive of the person. For this, he relied on the judgment in the cases of *Sole Trustee Loka Shikshana Trust v. CIT* (101 ITR 243) (SC) and *CIT v/s. Lahore Electric Supply Co. Ltd.*, (60 ITR 1) (SC). He also relied upon the decision of C Bench of ITAT, Mumbai in the case of *Prabodhan Prakashan* (ITA No.2661/Bom/93), which had held that even if the business is for charitable purpose, the income from such business is assessable under the

head 'profit and gains of business or profession'. In fact, the motive of a person is irrelevant in determining the liability under Income-tax Act. He held that the income of the assessee earned from IMTEX-92 cannot be exempted u/s. 11 as the same is profit and gains of business and the business is not incidental to the attainment of the objectives of the assessee association. He further held that the business carried out by the assessee is an 'independent' activity and not incidental to attainment of the objectives of the association. The activities undertaken by the assessee during the year clearly suggest that holding of a trade fair exhibition has been the primary object of the assessee which in fact is a business activity. The assessee vide its letter dated 27.1.95 has specifically mentioned that IMTEX-92 is only an integral activity of the assessee, no separate accounts of the same are kept. Therefore, for three reasons set out, viz: (i) holding of a trade fair exhibition- IMTEX-92 is a business undertaken by the assessee during the year under consideration, (ii) the business is not incidental to the attainment of the objectives of the association and is in fact an 'independent' activity, and (iii) no separate books of account are kept for this business activities, the A. O. held that the assessee is not entitled to exemption u/s. 11. Ultimately, he determined Rs.1,72,15,212 as taxable income.

6. As already stated, at para 7.1 of his orders, the learned CIT(A) held that the business of holding of exhibition is incidental to the business, i.e. to promote and develop exports of the products of the members of the industry for the purpose of trade and commerce. While discussing whether separate books of accounts are maintained, the CIT(A) held that the A.O. has given a finding that separate books of accounts are not maintained by the assessee. This finding has not been challenged with evidence to show that separate books of accounts are maintained. Since, separate books of accounts are not maintained, income of the assessee is taxable for holding exhibition which is in the nature of business.

7. Against the CIT(A)'s order, the assessee came up in second appeal before this Tribunal. The Tribunal extracted the rival submissions of the parties upto para 8 of their orders and gave the reasoning for its decision at para -9. In para-9, the Tribunal found that it could not be denied that the purpose for which the assessee-association was formed was for the general benefit of various types of trade and industry and in view of the case law cited by the learned Counsel, including several decisions of the Supreme Court on this issue, the Tribunal accepted that the purpose

of the assessee-association is charitable. It is further proved by the fact that it is registered as a company u/s. 25 of the Companies Act and is also registered u/s.12A of the Income Tax Act by the Income Tax Department itself. However, the questions which remained to be decided were, whether the holding of exhibitions by the assessee amounted to business and, if so, whether separate books of account had been kept for that. From the detailed arguments advanced by the learned D.R. it is obvious that the assessee has been organizing the exhibitions and fairs almost regularly after every alternate year. The Tribunal also noticed from the balance sheet of the assessee that as against very nominal amounts received by the assessee in connection with its normal association activities, it had collected more than Rs.4.76 Crores by way of receipts for organizing the trade fair/ exhibition. The Tribunal observed that the details on record and as pointed out by the A.O. showed that it was not as if some nominal fees were being charged from participants, including the members of the Association. The details further showed that it was a very well-organized activity and out of which according to the assessee itself, the net savings were to the tune of about Rs. 1.72 Crores. The balance sheet further indicates that the assessee's funds are being utilized in increasing investments rather than being utilized in expenditure for the benefit of the trade and industry for which the Association is made. Moreover, from the decision in the case of Plast India heaving relied upon by the learned Counsel for the assessee, it cannot be gathered that it was a regular activity of that Association. In fact, the Tribunal has observed in that order that when that assessee decided to hold trade fair for the benefit of the plastic industry and also to publicize and popularize the use of plastics, for which it invited foreign participants, it could not be ascertained whether finally it would result in profit/ surplus or loss. It is not for the first time that the assessee has organized such an exhibition. The surplus which it had got from this exhibition itself, i.e. IMTEX-92, shows that it had been organized with the past experience, to collect substantial amount of money. This would show that these were not the activities run on 'no profit and no loss basis' or only on the basis of earning marginal profits, which was considered by the Hon'ble Supreme Court in the case of India Chamber of Commerce v/s. CIT (101 ITR 796) (SC). For these reasons and for the detailed reasons given by the A.O. and the learned CIT(A) in their respective orders, the Tribunal held that it was unable to agree with the arguments of the learned counsel for the assessee that the surplus/ profits and gains from the IMTEX-92 were not profits of

business. In the opinion of the Tribunal, since it was a well-organized and regular activity for earning surplus almost every alternate year, the profits and gains arising from this had to be held as being profits and gains of business on the question whether the Assessee had maintained separate books of account for such a business, the Tribunal decided the issue in favour of the dependent in para 10 of their order, extract of which has already been made in prior paras.

8 Order of the A.O. order of the CIT(A) and the order of the Tribunal are marked as Annexures A, B and C respectively, forming part of the Statement of the case.

9 We, therefore, respectfully urge the Hon'ble High Court to render suitable answer to the question which is set out below under section 256(1) of the Income tax Act, 1961:

Whether in the facts and circumstances of the case, the assessee had fulfilled all the requirements of section 11(4A) and if so, whether it is entitled to exemption u/s. 11 and whether the decision of the Tribunal that the assessee has not fulfilled all the requirements of sec.11(4A) is correct under law or is liable to be set aside?"

5 From the question as referred to us for our opinion , it would be evident that it subsumes within it three independent issues as under:-

- (a) whether the activity of holding an exhibition IMTEX-92 by the Assessee would amount to an activity of business?
- (b) if the answer to question (a) is in the affirmative, whether the activity is incidental to the attainment of the objects of the Assessee ? and
- (c) if the answer to (b) is in the affirmative, then what is the proper interpretation of the words '*maintained separate books of accounts in respect of the business*' would it mean separate books or the same set of books, capable of separately identifying the income from business.

6 The learned Counsel for the parties very fairly point out that so far as issue (b) is concerned, the same has been decided in favour of

the Assessee by the Commissioner of Income Tax (Appeals) (CIT[A]). The Revenue did not challenge the aforesaid finding of the CIT(A) that the business carried out by the Assessee is incidental to its objects. Thus, question (b) stands concluded against the Revenue and would not arise for our consideration. However, if, issue (a) is decided in favour of the Assessee i.e. it is not business then issues (b) and (c) would not arise. Otherwise, if issue (a) is decided against the Assessee, then issue(b) already stands settled in its favour. Therefore, we shall first consider issue (a) and only on our answer to it will the occasion to consider the issue raised in (b) & (c) above, would arise.

7 Before dealing with the submissions of the respective parties, it would be beneficial if we reproduce the relevant provisions of the Act as existing during Assessment Year 1992-93 which arise for our consideration. The provisions are as under:-

“2(15):- “Charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.”

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

8 **Re Issue at (a) above:-**

(i) Ms. Sathe, learned Counsel for the Assessee states that the activity of holding exhibition-IMTEX-92 is not business. In support, she

relies upon the Registration granted to the Assessee under Section 12A of the Act, the object clause in the Memorandum of Association and its registration/ incorporation under Section 25 under the Companies Act. Further, it is submitted that on the test of per-dominant activity, the activity of holding an exhibition-IMTEX -92 cannot be held to be a business activity. In support of her aforesaid submissions, particularly, with regard to pre-dominant activity test, she has relied upon the following decisions:-

- (a) Additional CIT v/s. Surat Art Silk Cloth Manufacturers Association (1979) 121 ITR 1;
- (b) CIT v/s. Federation of Commerce and Industry 130 ITR 186 (SC);
- (c) CIT v/s. Western India Chamber of Commerce 136 ITR 67 (Bom.)
- (d) Addl. CIT v/s. Delhi Brick Kiln Owners Association 130 ITR 55 (Del.)
- (e) CIT v/s. Andhra Chamber of Commerce LV ITR 722 (SC);
- (f) DIT v/s. Lala Lajpatrai Memorial Trust v/s. CIT 383 ITR 345 (Bom.);
- (g) DIT v/s. Shri Vile Parle Kelvani Mandal 378 ITR 593 (Bom.);
- (h) Indian Trade Promotion Organization v/s. DGIT 371 ITR 333 (Delhi.);
- (i) GSI India v/s. Director General of Income Tax 360 ITR 138 (Delhi).

(ii) As against the above, Mr. Kotangle, learned Counsel for the

Revenue reiterated the view of the Tribunal, holding that the activity of the Assessee is a business activity.

- (iii) Before dealing with the rival submissions, it would be appropriate to refer to the indicia of a business activity and then examine the activity of holding exhibition-IMTEX-92 in that context. The term 'business' is defined in Section 2(13) of the Act, is an inclusive definition which includes within its ambit any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture. However, the word 'trade or commerce' has not been separately defined in the Act. Therefore, the common parlance test would decide its meaning in the context of the activity being examined. In fact, the Delhi High Court in GSI India (supra) has very beautifully expressed it in by stating that “*the words trade, commerce and business*” are etymological chameleon and suit their meaning to the context in which they are found”. In fact, long ago, the Apex Court in the context of the definition of the word 'business' as found in Section 2(4) of the 1922 Act which is identical to the definition of business in Section 2(13) of the Act, has observed in ***Narain Swadeshi Weaving Mills v/s. Commissioner of Excess Profit Tax 26 ITR 765*** that “*the word business connotes some real, substantial and systematic or organized course of activity or conduct with a set purpose.*”

- (iv) Now, let us examine the nature of activity carried on by the Assessee while holding the exhibition-IMTEX-92. From the statement of case, it is clear that the total receipts from holding the

exhibition -IMTEX-92 is Rs.4.76 Crores and the net surplus in Rs.1.72 Crores. It involves the activity of taking space on hire from Trade Fair Authority of India. Thereafter, it involves setting out the exhibition tariffs (lower rates for SSI Units), premium for prime location, air conditioning surcharge, rentals to be charged from foreign participants, security charges, telephone charges etc., as the statement of case records. Moreover, the statement of case also states that it is not the first time the Assessee is holding an exhibition-IMTEX-92 (we are informed at the bar, it is held every two years). On the above facts, the Authorities under the Act have all found that holding of an exhibition is a well organized activity, making use of its past experience, so as to earn substantial amount of money. The Tribunal held that it is not an activity carried on no-profit-no-loss basis or only for marginal/nominal gain. It therefore, does satisfy the test of business. Thus, on the above facts, the Authorities under the Act have held that holding of exhibition-IMTEX-92 is a business activity. This finding of fact has not been shown to be perverse. Therefore, no fault can be found with the view in the given facts that holding of exhibition, is a business activity.

- (v) In the above view, it was submitted by Ms. Sathe that in any case, mere carrying on of business would not necessarily result in the Applicant-Assessee ceasing to be for a charitable purpose. This, would be decided upon the test of predominant activity of the Institution. In this case, holding of the exhibition-IMTEX-92, she submits was not the predominant activity of the Assessee and, therefore, it continues to be charitable in nature. In support,

reliance was placed upon the above decisions at (a) to (e) above. However, the above decisions of predominant activity may not apply as they were rendered in the context of definition of charitable purpose as in force prior to 1984 and not in the context of the applicable definition read with Section 11(4A) of the Act.

- (vi) The decisions at Serial Nos. (a) to (d) were rendered in the context of Section 2(15) of the Act, defining charitable purpose as existing prior to 1st April, 1984. It did not have to deal with Section 11(4A) of the Act which came into statute in the present form w.e.f. 1st April, 1984, (though substituting earlier sub-section 4-A of Section 11 of the Act which was in effect from 1st April, 1981).

All the aforesaid four decisions were rendered in the context of Section 2(15) of the Act, which thus, read as under:-

“charitable purpose to include 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 or profit.”

It was in the above context that the tests of predominant activity test was applied while dealing with the objective of “*the general public utility, not involving any activity for profit.*” All the above decisions were in the context of whether general public utility would continue to be a charitable purpose even if it involves some activities for profit. The underlined portion herein above from the definition of charitable purpose was omitted w.e.f. 1st April, 1984 and the consequent amendment was brought in by way of amending sub-section (4A) to Section 11 of the Act in its present form. Similarly, the decision referred to (e) above, dealt

with charitable purpose defined in Section 4(3) of the Income Tax Act, 1922 (1922 Act) and was similar to one existing prior to 1984. Therefore, the decisions referred to at (a) to (e) are of no relevance for answering the question referred to us for our opinion, bearing in mind that we are concerned for the Assessment Year 1992-93.

(vii) So far as decisions at Serial Nos. (f) to (h) above are concerned, they were rendered in the context of the definition of charitable purpose as amended w.e.f. 2008. The amendment made in 2008 had a proviso to the definition of Section 2(15) of the Act, which made it similar to the definition referred to herein above i.e. prior to 1984. Besides, the decision at Serial No. (h) above, the challenge was to the constitutionality of the proviso introduced to Section 2(15) of the Act by the 2008 Amendment. This challenge was negatived. The Section 2(15) of the Act including the proviso thereto reads as under:-

“ Charitable purposes” 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 a activity.”

(viii) It would be noted that 2008 Amendment of the definition of charitable purpose after the addition of proviso would be similar to the definition of charitable purpose under Section 2(15) as existing

prior of 1984. Thus, it may have no application while dealing with the question referred to us in the context of Assessment Year 1992-93. In any event, it may be pointed out that the decision at (f) above of this Court in Lala Lajpatrai Memorial Trust (supra) it was found that letting out of 6 and 7th floor of the building to maintain the institution, was for an educational purpose. Thus, the proviso would not come into play. Similarly, the decision at (g) above in Shree Ville Parle Kelvani Mandal (supra), this Court observed that the Management and Development Programme conducted by the Respondent- therein was an educational activity. Therefore, not a business to be hit by the proviso to Section 2(15) of the Act. So far as letting out of halls for marriages, sale of advertisement rights are concerned, it was not a regular activity and it was only offered on hire when it was not required for its educational activities. Therefore, the Court held that it was merely an incidental activity and the income derived therefrom was used for educational purpose and the Respondent had maintained separate books of account, thus satisfying the conditions for exemption under Section 11(4A) of the Act. Therefore, the above two decisions also do not assist the Assessee.

- (ix) The two decisions which have some bearing on the issue arising for our consideration, are at (h) & (i) above i.e. decisions of the Delhi High Court in PDH Chamber of Commerce and Industry (supra) and GSI India (supra).
- (x) So far as PHD Chamber of Commerce & Industry (supra) is

concerned, the Court came to a finding that the assessee before it was a charitable institution under Section 2(15) of the Act. This on the ground as the secretarial services which were rendered by it to its members and non-members for a fee, was not income arising from business. This is on finding of fact, that there was non-profit motive in rendering services and the fees charged were only to cover its costs. In the context of above finding of fact, it was held that Assessee therein was not carrying on business. Therefore, it held that Section 11(4A) of the Act, will not be applicable in those facts. Its activity was not a business, therefore, no occasion to treat it as business incidental to the objects of the trusts arises. As against the above finding of fact in the above case, is that in this case it was found on facts, that the Assessee was carrying on business. Therefore, the above decision can have no application to the present facts.

- (xi) So far as the decision at Sr.No.(i) above i.e. GSI India (supra), is concerned, we find it does deal with the period prior to the amendment to the definition of charitable purpose under Section 2(15) of the Act in 2009. The Court posed a question to itself to decide whether the activity being examined is business or charitable in the following form:

'The quantum of fees charged, economic status of the beneficiaries who pay, commercial value of benefits in comparison to the fee, purpose and object behind the fee, etc., are several factors will decide the seminal question, is it business?'

On application of the above facts, the Court found that the activities carried out fulfilled the charitable purposes of the trust and was not

business. This on the ground that the Society was promoted by the Government of India and various business bodies with the objects of creating awareness and promoting global standards. The underlying objective was of the promotion of the GS1 system of coding and was not to earn profits. This is, particularly so, as the Revenue itself acknowledges the fact that it had a monopoly and yet charged nominal fees. The objective was not to earn profit, but the token fee had been fixed so as only to meet its costs. In the aforesaid facts, the Court found that its activity met the touchstone of charity and not that of business. In the above circumstances, it was held that it could not be said that the Petitioner therein was carrying on business. Therefore, it was only fulfilling its charitable purpose. In the present facts, the Exhibition IMTEX-92 on facts was found to be carrying on business. Thus, the above decision would have no application.

- (xii) In the above circumstances, so far as issue (a) above is concerned, we are of the opinion that the activities of holding exhibitions IMTEX-92 in the subject Assessment Year, was a business activity. Therefore, covered by the first part of Section 11 (4A) of the Act.

9 **Re Issues at (b):-**

- (i) So far as issue (b) above is concerned, the fact that the holding of exhibition-IMTEX-92 is a business which is incidental to the objectives of the Assessee, is concluded in favour of the Assessee and accepted by the Revenue.
- (ii) Therefore, this issue does not require our consideration as it stands answered in the affirmative.

10 **Re Issue at (c):-**

- (i) So far as issue (c) is concerned, we find that it is an accepted position that the holding of the exhibition IMTEX 92 by the Applicant-Assessee in the previous year relevant to the subject assessment year was business incidental to the attainment of the objectives of the Assessee – Institution. However, the benefit of Sub-Section 4A of Section 11 of the Act is being denied on the ground that the applicants have not maintained separate books of accounts in respect of such business.
- (ii) Ms. Sathe, learned Counsel appearing for the Applicant- Assessee in support of the Reference submits that the requirement to maintain separate accounts of the business is only with the objective to enable the Assessing Officer to determine the total receipts, total expenditure and net income earned from such incidental business activity. In this case, admittedly, no separate books of accounts were maintained for the purposes of carrying out the exhibition-IMTEX-92, yet the manner in which the accounts were maintained does sufficiently enable the Assessing Officer to determine the total receipts, expenditure and the net income from carrying out the activity of holding an exhibition. This is more than established by the fact that the Assessing Officer has been able to determine that the net income i.e. surplus on holding the exhibition was Rs.1.72 crores out of a total receipts of Rs.4.76 crores. Therefore, it is submitted that the requirement of maintaining separate books of accounts have been satisfied by the respondent. In support, she place reliance upon the decision of the Punjab & Haryana High

Court in **CIT v/s. Kartar Singh 77 ITR 338** – and also upon the reasoning given by the Tribunal in **ITO v/s. Trilok Tirath Vidyawati Chuttani Charitable Trust (2004) 90 ITD 569 (Chd.)** and seeks to adopt it as her submissions.

(iii) Mr. Kotangle, learned Counsel for the Revenue relied upon the orders of the authorities. He further submits that as held by the **Madras High Court in DIT v/s. Wellington Charitable Trust 2010 (195) Taxmann 232**, the maintenance of separate books of accounts is a mandatory requirement/ condition precedent for seeking the benefit of Section 11 of the Act.

(iv) It is well settled that fiscal legislation has to be strictly construed. It is not open to the Court to add and / or ignore words found in the statute. Long years ago, Justice Rowlatt in **Cape Brandy Syndicate v/s. IRC 1921 (1) KB 64** had expressed the principle of strict construction which has now become locus classicus in the following words :-

“ In a taxing Act, one has to look merely what is clearly said. There is no room for any interment, there is no equity about the tax, there is no presumption as to tax, nothing is to be read in, nothing is to be implied, one can only look fairly in the language used.”

(v) In fact, the Apex Court in **Mathuram Agarwal v/s. State of M. P. 1999 (8) SCC 667** has observed as follows:-

“12:-
The intention of the legislature in a taxing statute is to be gathered from the language of the provisions where the language is plain and unambiguous. In a taxing statute, it is not possible

to assume any governing purpose of the statute more than what is stated in plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally, impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature.”

- (vi) Therefore, the submission on behalf of the applicant that the substance / object / purpose of the legislation providing for maintenance of separate books of accounts be taken into account, cannot be accepted. To do so is to ignore the clear and unambiguous meaning of the words '*maintained separate books of accounts*'. The words used in sub-section (4A) of Section 11 of the Act, obliges an institution which seeks to have the benefit of Section 11 of the Act, if it carries on business incidental to its objects, to maintain separate books of accounts. The obligation cast upon an Applicant seeking the benefit of Section 11 of the Act is clear and unambiguous. Accepting the submission made on behalf of the assessee would mean, ignoring the words '*separate books of accounts*'. If the legislature did not want an assessee to maintain separate books of accounts in respect of its business which is incidental to the objective of the trust, then, there could have been no need for using the words '*separate books of accounts*'. The objective would have been fulfilled by using the words '*maintained books of accounts from which one can determine the net surplus earned from the incidental business*' or merely '*maintained books of account*'.

- (vii) The reliance upon the decision of the Punjab and Haryana High

Court in Kartar Singh (supra) does not in our view take the matter any further. In the above case, the Court was concerned with the expression '*books of the assessee*' and not '*separate books of accounts*'. In the above context, the Court observed that '*in the absence of the Act indicating any particular type of accounts to be maintained*', a memorandum book containing the relevant entries of purchase and sales can be considered to be a book within the meaning of books of the assessee under Section 10(2)(vii) of the 1922 Act. The aforesaid decision would have no application to interpreting Section 11(4A) of the Act, which requires maintaining separate books of accounts in respect of the business, which is incidental to the objects of the Trust.

- (viii) Further, the reliance upon the reasoning given in the order of the Tribunal in Trilok Tirath Vidyawati Chuttani Charitable Trust (supra) , in support to the effect that the purpose of maintaining separate books of accounts is only to enable the Assessing Officer to find out the surplus income earned by carrying on business incidental to the objective of the Trust. This reasoning of the Tribunal entirely overlooks the fact that the legislature has specifically used the words '*maintained separate books of accounts*' and it is not open to any Court to ignore any portion of the provision on the basis of the supposed intent in the absence of any ambiguity therein. Thus, the reasoning of the Tribunal in the above case which is adopted by the Applicant-Assessee, is of no avail.
- (ix) In the above view, we hold that the expression '*separate books of*

accounts' would mean books of accounts different and distinct from books of accounts maintained by the assessee in support of the activity of charitable purposes. In the above view, we hold that the Applicant- Assessee not having maintained separate books of accounts will not be entitled to the benefit of Section 11 of the Act.

11 So far as issue (a) of the question is concerned, we conclude that the holding of an exhibition IMTEX 92 is indeed a business venture;

 So far as issue (b) of the question is concerned, we conclude that the business of holding exhibition-IMTEX-92 is incidental to the objective of the Trust to share knowledge amongst its members;

 So far as issue (c) of the question is concerned, we hold that benefit of Section 11 of the Act is not available to the Applicant-Assessee as it had not maintained separate books of accounts in respect of its incidental business as mandated by Section 11(4A) of the Act.

12 Accordingly, the question raised for our opinion is answered in favour of the respondent Revenue and against the Applicant-Assessee.

Reference disposed of in the above terms.

(RIYAZ I. CHAGLA,J.)

(M.S.SANKLECHA,J.)