

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income Tax Appeal No.62 of 2015 (O&M)
DATE OF DECISION: 23.12.2016

The Tribune Trust

....Appellant

versus

Commissioner of Income Tax, Chandigarh and another

.....Respondents

(2) Income Tax Appeal No.147 of 2016 (O&M)

The Commissioner of Income Tax (Exemption), Chandigarh.

....Appellant

versus

M/s Improvement Trust, Moga

.....Respondent

**CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL, JUDGE.**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate for the appellant IN
ITA No. 62 of 2015.

Mr. Denesh Goyal, Advocate for the respondents in
ITA No. 62 of 2015 and for the appellant in
ITA No. 147 of 2016.

Mrs. Radhika Suri, Senior Advocate with
Ms. Rinku Dahiya, Advocate, for the respondent in
ITA No. 147 of 2016.

..

S.J. VAZIFDAR, CHIEF JUSTICE:

After we reserved judgment in ITA No.62 of 2015, Mrs. Radhika Suri, the learned senior counsel requested us to hear ITA No.147 of 2016 stating that similar questions arise therein. We acceded to the request and decided to dispose of

the appeals by a common judgment for two reasons. Firstly, the provisions of the Income Tax Act, 1961, that fall for consideration and the judgments relied upon by the assesseees in both the appeals are the same. Secondly, the contrasting facts in both appeals, which have led to different results, illustrate the working of the provisions of the Act.

2. We will first deal with ITA No.62 of 2015 which was heard first.

3. This is an appeal against the order of the Income Tax Appellate Tribunal dated 26.11.2014 setting aside the order of the Commissioner of Income Tax (Appeals) and restoring that of the Assessing Officer. The matter pertains to the Assessment Year 2009-10.

4. According to the appellant, the following substantial questions of law arise in this case:-

"i) Whether in fact and circumstances of the case the purpose/objects of the appellant are charitable in nature despite the 2008 Amendment particularly when there is no change in the functions/nature of operation of the Trust?

ii) Whether the reliance placed by the Ld Tribunal on the judgment in the case of Sole Trustee Loka Shikshana Trust v/s CIT (1975) 101 ITR 234 is good in law?

iii) Whether in fact and circumstances of the case the respondents could dispute the nature of the appellant trust despite the

same having been settled by the Privy Council and the exemptions granted by the CBDT continuously since 1984-85 till date?

- iv) Whether in fact and circumstances of the case, the action of the authorities below, the impugned orders Annexure A-5 and A-7 are legally sustainable in the eyes of law?"

These questions of law are of considerable general importance. The answer to these questions would affect the working of trusts in general and the effect therefore goes beyond the trusts and the assesses concerned in a given case. They call for the interpretation of section 2(15) which requires a comparison of the section as it stood from time to time and the judgments of the Supreme Court at the relevant time. It also requires a consideration as to whether the judgments apply to the amended provision and if so to what effect. The appeal is accordingly admitted. The issue, however, really is one and the questions are, therefore, dealt with together.

5. This appeal essentially involves the interpretation of section 2(15) of the Act and, in particular, the proviso thereto. It will, however, be necessary to set out the section as it was amended from time to time for the nature of the amendment has a bearing upon the interpretation of the section as it stood at the relevant time. The corresponding provision in the Income Tax Act, 1922, was section 4(3).

Section 4(3) of the 1922 Act in so far as it is relevant and the corresponding section 2(15) of the 1961 Act, as amended from time to time, read as under:-

(A) **Section 4(3) of the 1922 Act**

"4. Application of Act.-

.....

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

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

(ii) to (viii)"

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

(B) **Section 2(15) of the 1961 Act**

i) "(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."

From 1984 to 2009

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

From 2009 to 2014

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

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for

a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;"

6. On 23.09.2009, the appellant filed its return of income declaring a loss of about Rs.38.75 crores after claiming an exemption under section 10(23C)(iv) of the Act amounting to about Rs.198 crores. The return was processed under section 143(1). The appellant filed a revised return on 10.09.2010 declaring the same loss. The case was selected for scrutiny. A notice under Section 143(2) was issued, as was a questionnaire. We will return to the assessment order after setting out a few facts.

7. One Sirdar Dyal Singh Majithia died leaving behind a Will dated 15.06.1895. The will created three separate trusts to be administered by three independent committees of trustees. Two of the trusts were for the establishment and maintenance of an Arts College and a public library. This appeal concerns the third trust. The relevant provisions of the will creating this trust read as under:-

"XX.-- That my property in the stock and goodwill of the Tribune Press and newspaper in Anarkali, Lahore, shall vest permanently in a Committee of Trustees consisting of the following members, viz:-

1. Babu Jogendra Chandra Bose, M.A., B.L., Pleader, Chief Court Lahore
2. Mr. Charles Golak Nath, B.A., LL.B., Barrister-at-Law, Lahore
3. Mr. Harkishen Lal, B.A., Barrister-at-Law, Lahore.

XXI. -- That it shall be the duty of the said Committee of Trustees to maintain the said Press and newspaper in an efficient condition, keeping up the liberal policy of the said newspaper and devoting the surplus income of the said Press and newspaper, after defraying all current expenses, in improving the said newspaper and placing it on a footing of permanency.

XXII. -- That in the event of any of the Trustee or Trustees of any of the aforesaid Committees of Trustees dying or resigning or declining or becoming incapable to act in the respective Trusts aforesaid, the remaining Trustees shall forthwith appoint new Trustee or Trustees to fill up the vacancy or vacancies so caused, bearing in mind, first, that the appointment made may be fully conducive to the attainment of the objects of the respective trusts, and secondly that on the College Committee of Trustees none may be appointed who are members of the "Arya Samaj" or persons interested in a rival institution or who hold views and opinions antagonistic to the Brahma faith.

XXIII. That the members of the aforesaid Committee of Trustees shall be answerable only for their own respective wilful defaults and not for those of other or others of them shall be protected for everything done by them in furtherance of the objects of the respective Trusts hereinbefore set forth and the aforesaid Committee of Trustees shall be competent to pay all costs incurred in or in relation to their respective Trusts out of the estates respectively vesting in them and to reimburse themselves for any costs they may have incurred in or in relation thereto out of the said estates."

Litigation ensued in respect of the Trust which was settled by a Deed of Compromise dated 01.12.1906 which provided that "in case the Tribune newspaper should cease to exist or be impossible to exist" the property belonging to the Tribune Press should become the property of the Arts College trust.

We will be referring in some detail to the judgment of the Privy Council in the assessee's case-*Trustees of Tribune Press vs. Commissioner of Income Tax, Punjab Lahore* dated 13.06.1939, (1938-39) Vol.LXVI Indian Appeals 241 (PC). The relevant facts as stated in the judgment are as follows:

Sardar Dyal Singh died in 1898. The Trust in respect of the Tribune Press has been carried out and the newspaper by the name 'The Tribune' continued to be published and continues

to be published. The profits of the press and the newspaper have been assessed to income tax since 1918. The claim for exemption was first made by the appellant in the year 1932-33. On 31.01.1933, the Income Tax Officer, Lahore, for the Assessment Year 1932-33 assessed the appellant's income tax upon an income of Rs.61,629/-. The proceedings in respect thereof ended with the judgment of the Privy Council. The claim was made before the Assistant Commissioner. The Commissioner on the appellant's application referred the following questions to the High Court:-

"(1) Is the income of the Tribune Trust liable to be assessed in the hands of the Trustees under the provisions of the Income-tax Act?

(2) If so, is it not exempt under Section 4(3) (i) of the Act?"

Only the second question was dealt with by the Privy Council. As the learned Judges of the Division Bench of the High Court were of different opinions, the question was referred to a Full Bench. The majority held that the income was not exempt. Against this judgment, the appellant filed an appeal before the Privy Council. Upon the directions of the Privy Council, a supplementary statement was made furnishing additional facts, *inter alia*, showing the nature and purpose of the Trust. It must be noted that the Privy Council held that the Will created three separate Trusts administered by three separate committees. The Privy Council held that the property was not held for the purpose of education. It was, however, held that the property was held under Trust wholly for the advancement of an object of general public utility. The Privy Council held:-

(at page 252)

"In the High Court stress was laid by the learned Chief Justice and by Addison J. on the fact that the Tribune newspaper charges its readers and advertisers at ordinary commercial rates for the advantages which it affords. As against this the evidence or findings do not disclose that any profit was made by the newspaper or Press before 1918, and it is at least certain that neither was founded for private profit, whether to the testator or any other person. By the terms of the trust it is not to be carried on for profit to any individual. It cannot, in their Lordships opinion, be regarded as an element necessarily present in any purpose of general public utility that it should provide something for nothing, or for less than it costs, or for less than the ordinary price. An eleemosynary element is not essential even in the strict English view of charitable uses: *Commissioners for Special Purposes v. University College of North Wales*. (3) There seems to be no solid distinction to be taken under the phrase "general public utility" between a school founded by a testator, but charging fees to its pupils, and a paper founded by a testator and sold to its readers. The purpose of providing the poor or the community in general with some useful thing without price, or at a low price, may doubtless be in itself a purpose of general public utility. But, if another object be independently in itself of general public utility, the circumstance that the testator's bounty was only in respect of the initial capital assets, or had only to meet a working loss temporarily and not permanently, will not, necessarily at least, alter the character of the object."

(at page 255)

".... In the original letter of reference it was not suggested by the Commissioner that the newspaper was intended by its founder to be a mere vehicle of political propaganda, and in the case of Sardar Dayal Singh it seems unreasonable to doubt that his object was to benefit the people of Upper India by providing them with an English newspaper-the dissemination of news and the ventilation of opinion upon all matters of public interest."

(at page 256)

"They think that the object of the paper 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 to be an object of general public utility. Having regard to the particular circumstances of the time, the directions of the testator and the evidence as to the contents of the paper before 1898, their Lordships think that the present case is nearer on

its facts to *In re Scowcroft* [1898] 2 Ch. 638 than it is to the case of the *Bonar Law Memorial Trust* 17 Tax Cas. 508, or to the case put by Russell J. in *In re Tetley* [1923] 1 Ch. 258 of a newspaper subsidized for the promotion of particular political or fiscal opinions. They do not think that in these circumstances the case can be regarded as outside the ambit of the exemption clause of the Indian Act."

It is not necessary to consider what the position would be if the trust declared by the will were for any reason to fail in the future.

For the reasons given, their Lordships are of opinion that this appeal should be allowed, and that the second of the two questions referred to the Court by the Commissioner's letter of reference, dated January 26, 1934, should be answered in the affirmative."

8. Till 1961-62, there had been no assessment on the Trust. The appellant intervened in the case of *The Sole Trustee, Loka Shikshana Trust vs. CIT* (1976) 1 SCC 254, which was decided in favour of the Revenue. However, this judgment was overruled by the judgment of the Supreme Court in *CIT (Addl) vs. Surat Art Silk Cloth Mfrs Assn*, (1980) 2 SCC 31. The appellant was exempted from tax on the basis of assessment under section 11 from the years 1979-80 to 1983-84. With effect from 01.04.1984, the appellant was exempted by the CBDT under section 10(23C)(iv). The exemption was renewed from time to time, the last of which was granted on 28.02.2007, applicable for the Assessment Year 2007-08 onwards. The appellant accordingly has been claiming exemption from paying income-tax.

9. The Assessing Officer construed section 2(15) as it stood at the relevant time. He observed that under section 2(15), if any Trust advances any other object of general public utility which involves carrying on of any activities in the nature of trade, commerce or business, etc. for which any

consideration is charged, irrespective of that application, such object cannot be termed as a charitable object. He relied upon Circular No.11/2008 dated 19.12.2008 issued by the CBDT. It was observed that the amendment to the section created a distinction between charitable object and non-charitable object and in view thereof and in view of the appellant having revised its return without claiming an exemption under section 10(23C)(iv), it cannot be treated as a Trust carrying on activities covered under section 2(15). The income was assessed under the head "Income from business and profession" treating the appellant as a normal business entity. Intimation was sent to the CBDT for final decision regarding eligibility for exemption under section 10(23C)(iv).

10. Before dealing with the main issue, it is necessary at this stage to consider the Assessing Officer's rejection of the appellant's case in view of its revised return. Mr. Goyal, the learned counsel appearing on behalf of the respondent/Revenue, also contended that in view of the revised return and in view of the computation furnished by the appellant itself, the appellant ought to be deemed to have admitted that it does not fall within the ambit of section 2(15).

11. The contention is not well founded. The appellant had revised its return on 10.09.2010 for the assessment year 2009-10. However, the same was subject to the following note:-

"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 1984-985, 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 assessee, to err on the side 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."

12. The appellant understandably filed the revised return out of abundant caution. It did so subject to the note which we quoted earlier. The note itself expressly states that the revised return was filed only "to err on the side of caution". It is understandable for an assessee to protect itself by erring on the side of caution for if the contention is ultimately not accepted, it is liable to pay the arrears with interest at 18% per annum and penalty. On the other hand, a refund carries only 6 per cent interest. It is understandable for an assessee to opt to receive a lower rate of interest by protecting itself against the possible claim for a higher rate of interest and penalty.

13. The observation that if the assessee was clear in its mind that it is entitled for exemption under section 10(23C)(iv), there was no need for it to treat itself as an employer and file a return under the FBT provisions is also not justified. An assessee or any litigant may be confident about the correctness of its case and, at the same time, make

an allowance for another point of view. There are innumerable instances of judgments being overruled including of the Supreme Court itself by larger Benches of that Court. An illustration preceded this observation. We referred earlier to the judgment of the Constitution Bench of the Supreme Court in *CIT (Addl.) v. Surat Art Silk Cloth Mfrs Assn*, (1980) 2 SCC 31, overruled its earlier decision in *The Sole Trustee, Loka Shikshana Trust vs. CIT* (1976) 1 SCC 254.

14. The contention that the assessee is not entitled to support its case as falling within the ambit of section 2(15) in view of the revised return is, therefore, rejected.

15. The CIT (Appeals) allowed the appellant's appeal partly. He held that the appellant having been granted approval for exemption under section 10(23C)(iv) was entitled to continue to enjoy the exemption till it was withdrawn and irrespective of the amendment to section 2(15).

16. This brings us to the impugned order passed by the Tribunal. The Tribunal noted that the appellant was engaged in only one activity, namely, printing and publishing the newspaper. It was not necessary for the Tribunal to have dealt with the issue as to why the assessee cannot be held to be engaged in the activity of education for that is not even the appellant's case. The Tribunal placed strong reliance upon the judgment of the Supreme Court in *The Sole Trustee, Loka Shikshana Trust vs. CIT (supra)*. The Tribunal quoted from this judgment extensively and dealt with it exhaustively. As we noted earlier, this judgment was overruled by the judgment of the Constitution Bench in *CIT (Addl) vs. Surat Art Silk's case*

(*supra*). After quoting the judgment, the Tribunal abruptly held that the judgment of the Privy Council was no longer good law in view of the judgment in *The Sole Trustee, Loka Shikshana Trust vs. CIT (supra)*.

17. The Tribunal noted that the appellant had collected a sum of only Rs.17.49 crores through the sale of newspapers, Rs.3.07 crores from the subscription of dailies and Rs.2.39 crores from sale of clippings and that against this the assessee had earned an amount of about Rs.125 crores from advertisements. This, the Tribunal held, showed that the assessee was earning profits. The balance in the corpus account is also about Rs.121 crores. The assessee had received interest of more than Rs.11.38 crores on its fixed deposits which was held by the Tribunal to indicate the appellant having earned profits.

18. As we noted earlier, the proviso to section 2(15) took effect from 01.04.2009 and accordingly applies in relation to the assessment years 2009-10 onwards till the subsequent amendments. The Note on Clauses-Memorandum explaining the clause read as under:-

"RATIONALISATION AND SIMPLIFICATION MEASURES
Streamlining the definition of "charitable purpose"

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

commercial lines, is contrary to the intention of the provision.

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

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

This amendment will take effect from the 1st day of April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years."

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

"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."

19. Mr. Bhan, the learned senior counsel appearing on behalf of the assessee/appellant contended that the respondents' grant of exemption to the appellant under section 11 from the assessment years 1979-80 to 1983-84 amounted to an admission that the appellant was squarely covered within the definition of charitable purpose even when the words "*not involving the carrying on of any activity for profit*" were a part of section 2(15). Post 1984, the appellant was granted

exemption under section 10(23C)(iv) of the Act. Thus according to him, the department itself was of the view that the appellant was carrying out the "advancement of any other object of general public utility" not involving any activity for profit.

He further contended as follows: The proviso to section 2(15) introduced by the amendment must be interpreted on the same lines as the section stood in the 1961 Act, the concluding words whereof were: "*not involving the carrying on of any activity for profit*". In view thereof, the case stands covered in favour of the appellant in view of the judgment of the Supreme Court in *Additional Commissioner of Income Tax Gujarat v. Surat Arts Silk Cloth Manufacturers Association* 1980(2) SCC 31. The Supreme Court had held that the words "*not involving the carrying on of any activity for profit*" do not imply that the charitable trust or institution whose purpose is promotion of an object of general public utility cannot carry on any activity for profit at all. The object of general public utility must not involve the carrying on of any activity for profit and not its advancement or attainment. In view of this judgment, the appellant was granted exemption from 1979 to 1984. This indicated that the department was satisfied that the object of general public utility being advanced by the appellant did not involve any activity for profit. The object of general public utility being served by the trust remains the same to date. It does not involve any activity for profit. Accordingly, nor is it in the nature of trade, commerce or business. The appellant could not be excluded from the definition of a charitable trust on account of the proviso introduced by the amendment of 2008. The

predominant motive of the appellant ought to be seen. Where the primary and dominant purpose of the trust is charitable, another object which by itself may not be charitable but which is ancillary or incidental to the primary or dominant purpose, cannot disentitle the trust or the institution from being considered as existing for charitable purpose. In support of these submissions, Mr. Bhan also relied upon other judgments which we will refer to.

20. Mr. Goel, the learned counsel appearing on behalf of the respondents on the other hand emphasized that the words in the proviso are "*carrying on of any activity in the nature of trade, commerce or business*" and not "*carrying on of trade, commerce or business*". Therefore, according to him the nature of the activity is to be determined. According to him, the activities need be only akin to trade, commerce or business. The performance of an act or steps taken towards the object in physical form are to be identified and when such steps or acts are in an organized manner, akin to any trade, commerce, business etc., then that activity should be considered as falling within the proviso. It is important to note that in the written submission he contended that the concept of profit motive is required when the institution is engaged in trade or commerce.

21. The ambit of the proviso to Section 2(15) of the Act must be interpreted with the assistance of the normal rules of interpretation as well as the provisions as they stood from time to time and the judgments relating thereto. The two important questions that arise are whether the activities of the assessee's case be said to be "advancement of an object of

general public utility" and, if so, whether the same involves the carrying on of any activity for profit.

22. The answer to the first question must be in the affirmative in view of the judgment of the Judicial Committee of the Privy Council in the assessee's own case - *Trustees of the Tribune Press Lahore v. Commissioner of Income Tax, Punjab, Lahore, (1939) 7 ITR 415*. We quoted the relevant observations earlier. Section 4(3) of the 1922 Act, which was applicable at that time, in so far as it is relevant, read as under:-

"Section 4. Application of Act-

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

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

It is sufficient to quote again only the following observations:-

(at page 256)

"They think that the object of the paper 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 to be an object of general public utility."

The Privy Council while holding that the property was held under trust wholly for the advancement of an object of general public utility also observed in the passage we quoted earlier that it cannot be regarded as an element necessarily present in any purpose of general public utility that it should provide something for nothing "or for less than it costs" or for less than the ordinary price". It was also observed that an eleemosynary element is not essential.

23. We are bound by the judgment of the Privy Council. It is not open to us to consider Mr. Goel's submission that the judgment does not interpret the ambit of the section correctly.

24. Faced with this Mr. Goyal reiterated the following observations in paragraph 23 of the order of the Tribunal reads as under:-

"23. The decision by the Privy (*sic*) 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 media like face book are free of cost and whole of revenue is collected through advertisements."

25. We are unable to agree. The activities of the appellant have been held by the Privy Council as constituting the advancement of an object of general public utility. The mere fact that there is greater competition today and thousands of newspapers are being published makes no difference. It is still an advancement of an object of general

public utility. The activities do not cease to be for the advancement of an object of general public utility merely because other newspapers are also in circulation in the same area and other means of information are also available. The introduction of a newspaper where there is none is activity for the advancement of an object of general public utility. The introduction of a newspaper where there already are newspapers can equally be so for it exposes the public to a variety of views, perceptions and perspectives to the same news. Newspapers do not necessarily report dry facts. They project views on the same incidents and topics differently. The content may also vary each newspaper emphasizing an item or issues differently. A choice of an additional newspaper possibly sub serves an object of general public utility better than a single newspaper.

26. If we may be permitted to take judicial notice, 'The Tribune' has been for several decades one of the most respected and highly regarded publications. It is a household name in this region. It is considered by many to be an institution. Such a newspaper is bound to be a value addition to the several other publications in the nature of its contents and the projection of its views.

27. The findings of the Privy Council in 1938 that the assessee's activities constitute the advancement of an object of general public utility assume greater force today-almost a century later.

28. The appellants' activities, therefore, constitute the advancement of an object of general public utility.

29. That is, however, not sufficient for the appellants activities to fall within the definition of 'charitable purpose' in Section 2(15). The next question is whether the exclusionary words in Section 2(15) "not involving the carrying on of any activity for profit" apply to the assessee's case.

30. This brings us to the second question which involves the interpretation of section 2(15) of the Act as amended with effect from 01.04.2009. The answer to this question, however, lies in the interpretation of section 2(15) as it stood on the commencement of the 1961 Act and the applicability of this interpretation to the section as amended in 2009.

31. The Supreme Court in *Additional Commissioner of Income Tax, Gujarat, Ahmedabad v. Surat Art Silk Cloth Manufacturers' Association, Surat* (1980) 2 Supreme Court Cases 31, dealt with Section 2(15) which at the commencement of the 1961 Act read as under:-

"(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."

32. It is important firstly to interpret Section 2(15) as it originally stood when the 1961 Act was enacted. We need go no further than the judgment in *Surat Art Silk's case* (*supra*), where the Supreme Court held:-

"10. With these prefatory observations, we may now turn to examine the crucial words "not involving the carrying on of any activity for profit". One question of semantics that was posed before us was – and that is a question which we must first resolve before we can arrive at the true meaning and effect of these words – whether these words qualify "advancement" or "object of general public utility".

What is it that must not involve the carrying on of any activity for profit in order to satisfy the requirement of the definition; "advancement" or "object of general public utility?" The Revenue contended that it was the former and urged that whatever be the object of general public utility, its "advancement" or achievement must not involve the carrying on of any activity for profit, or in other words, no activity for profit must be carried on for the purpose of achieving or attaining the object of general public utility. The argument was that if the means to achieve or carry out the object of general public utility involve the carrying on of any activity for profit, the purpose of the trust or institution, though falling within the description "any other object of general public utility" would not be a charitable purpose and the income from business would not be exempt from tax. Now, if this argument is right it would not be possible for a charitable trust or institution whose purpose is promotion of an object of general public utility to carry on any activity for profit at all. Not only would it be precluded from carrying on a business in the course of the actual carrying out of the primary purpose of the trust or institution, but it would also be unable to carry on any business even though the business is held under trust or legal obligation to apply its income wholly to the charitable purpose or is carried on by the trust or institution by way of investment of its monies for the purpose of earning profit which, under the terms of its constitution, is applicable solely for feeding the charitable purpose. The consequence would be that even if a business is carried on by a trust or institution for the purpose of accomplishing or carrying out an object of general public utility and the income from such business is applicable only for achieving that object, the purpose of the trust or institution would cease to be charitable and not only income from such business but also income derived from other sources would lose the exemption. This would indeed be a far reaching consequence but we do not think that such a consequence was intended to be brought about by the legislature when it introduced the words "not involving the carrying on of any activity for profit" in Section 2 clause (15). Our reasons for saying so are as follows:

10a. It is clear on a plain natural construction of the language used by the legislature that the ten crucial words "not involving the carrying on of any activity for profit" go with "object of general public utility" and not with "advancement". It is the object of general public utility which must not involve the carrying on of any activity for profit and not its advancement or attainment. What is inhibited by these

last ten words is the linking of activity for profit with the object of general public utility and not its linking with the accomplishment or carrying out of the object. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the newly added words. What these words require is that the object should not involve the carrying on of any activity for profit. The emphasis is on the object of general public utility and not on its accomplishment or attainment. The decisions of the Kerala and Andhra Pradesh High Courts in CIT v. Cochin Chamber of Commerce and Industry[(1973) 87 ITR 83 : (Ker) [Ed : This case was reversed in (1976) 1 SCC 324 : 1976 SCC (Tax) 41], supra note 15] and A.P. State Road Transport Corporation v. CIT[(1975) 100 ITR 392 (AC)], in our opinion lay down the correct interpretation of the last ten words in Section 2 clause(15). The true meaning of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit.

11. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision where such meaning is plain and unambiguous, but they can certainly help to fix its meaning in case of doubt or ambiguity. Let us examine what would be the consequence of the construction contended for on behalf of the Revenue. If the construction put forward on behalf of the Revenue were accepted, then, as already pointed out above, no trust or institution whose purpose is promotion of an object of general public utility, would be able to carry on any business, even though such business is held under trust or legal obligation to apply its income wholly to the charitable purpose or is carried on by the trust or institution for the purpose of earning profit to be utilised exclusively for feeding the charitable purpose. If any such business is carried on, the purpose of the trust or institution would cease to be charitable and not only the income from such business but the entire income of the trust or institution from whatever source derived, would lose the tax exemption. The result would be that no trust or institution established for promotion of an object of general public utility would be able to engage in business for fear that it might lose the tax exemption altogether and a major source of income for promoting objects of general public utility would be dried up. It is difficult to believe that the legislature could have intended to bring about a

result so drastic in its consequence. If the intention of the legislature were to prohibit a trust or institution established for promotion of an object of general public utility from carrying on any activity for profit, it would have provided in the clearest terms that no such trust or institution shall carry on any activity for profit, instead of using involved and obscure language giving rise to linguistic problems and promoting interpretative litigation. The legislature would have used language leaving no doubt as to what was intended and not left its intention to be gathered by doubtful implication from an amendment made in the definition clause and that too in language far from clear."

(emphasis supplied)

Thus the concluding words "*not involving the carrying on of any activity for profit*" go with the "*object of general public utility*" and not with the "*advancement*".

33. The Supreme Court then dealt with the meaning of the expression "activity for profit". In construing Section 2(15), the Supreme Court referred to the provision as it stood under the 1922 Act [Section 4(3)], the speech made by the Finance Minister while introducing the amended provisions and the *Tribune* case. The Supreme Court held:-

"17. The next question that arises is as to what is the meaning of the expression "activity for profit". Every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity. The activity must, however, be for profit in order to attract the exclusionary clause and the question therefore is when can an activity be said to be one for profit? The answer to the question obviously depends on the correct connotation of the preposition "for". This preposition has many shades of meaning but when used with the active participle of a verb it means "for the purpose of" and connotes the end with reference to which something is done. It is not therefore enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. Profit-making must be the end to which the activity must be directed or in other words, the predominant object of the activity must be making a profit. Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it

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

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

It is obvious that the exclusionary clause was added with a view to overcoming the decision of the Privy Council in the *Tribune* case [AIR 1939 PC 208 : *In Re the Trustees of the Tribune*, (1939) 7 ITR 415] where it was held that the object of supplying the community with an organ of educated public opinion by publication of a newspaper was an object of general public utility and hence charitable in character, even though the activity of publication of the newspaper was carried on commercial lines with the object of earning profit. The publication of the newspaper was an activity engaged in by the trust for the purpose of carrying out its charitable purpose

and on the facts it was clearly an activity which had profit making as its predominant object, but even so it was held by the Judicial Committee that since the purpose served was an object of general public utility, it was a charitable purpose. It is clear from the speech of the Finance Minister that it was with a view to setting at naught this decision that the exclusionary clause was added in the definition of "charitable purpose". The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg, J., when he said in Sole Trustee, Loka Shikshana Trust case [(1976) 1 SCC 254 : 1976 SCC (Tax) 14 : (1975) 101 ITR 234] that "if the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity". The learned Judge also added that the restrictive condition "that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit making is not the real object" (emphasis supplied). We wholly endorse these observations."

34. The Supreme Court held that the concluding words "*not involving the carrying on of any activity for profit*" go with the "*object of general public utility*" and not with the "advancement". However, this ratio must be read with the findings regarding the assessee's activities in paragraph-17

of the judgment. The Supreme Court held that the publication of the newspaper was carried on on commercial lines "*with the object of earning profit*" and that the publication of the newspaper was an activity which had profit making as its predominant object.

35. It must be remembered that section 4(3) did not have the concluding words in section 2(15) of the 1961 Act "*not involving the carrying on of any activity for profit*". It is important to note two things from paragraph-17 of the judgment. Firstly, although the appellant was carrying out a charitable purpose, its activity had profit making "as its predominant object". The Privy Council, however, held it to be a charitable purpose obviously because the words "*not involving the carrying on of any activity for profit*" were absent in Section 4(3) of the 1922 Act which fell for its consideration. Secondly the Supreme Court held that it was with a view to setting at naught the decision of the Privy Council in the *Tribune* case that the exclusionary clause was added in the definition of 'charitable purpose' in Section 2(15) introduced in the 1961 Act. It was not the appellant's case that the nature of its activities had changed over the years. Infact it is contended that it has not.

36. Thus on the terms of the judgment of the Supreme Court in *Surat Art Silk's case (supra)*, the activities of the appellants could not be held to be a charitable purpose within the meaning of Section 2(15) even as it stood between 1961 and 1984. As we will now demonstrate this situation has not improved for the appellant with the amendment of 2009.

37. The legislature, however, amended Section 2(15) in 1984 by excluding the concluding exclusionary words "not involving the carrying on of any activity for profit". The Section between 1984 to 2009 read as follows:-

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

Thus between 1984 to 2009, the definition of charitable purpose in Section 2(15) was identical to the concluding words of Section 4(3) of the 1922 Act. During this period, therefore, the appellant would have had the benefit of the judgment of the Privy Council in its own case.

38. The question in this appeal which pertains to the assessment year 2009-10 is the effect of the amendment to section 2(15) introduced on 19.12.2008 which came into force with effect from the financial year 01.04.2009.

39. It is necessary to compare section 2(15) as it stood under the 1961 Act and as interpreted by the Supreme Court in *Surat Art Silk's case (supra)*, on the one hand and Section 2(15) as it was amended with effect from 01.04.2009 on the other. As we observed earlier the Supreme Court held that the concluding ten crucial words "*not involving the carrying on of any activity for profit*" go with the words "object of public utility" and not with "advancement". In our view the proviso introduced by the 2009 amendment does not change this position. The opening words of the proviso "*Provided that the advancement of any other object of general public utility*" were also a part of section 2(15) as it originally stood. The words that follow in the proviso "shall not be a charitable purpose, if it involves the carrying of any activity in the

nature of trade, commerce or business.....etc." replaced the words in the original Section 2(15) "not involving the carrying on of any activity for profit". On a parity of the reasoning in *Surat Art Silk* case, the words in the proviso that follow the opening words "*Provided that the advancement of any other object of general public utility*" equally apply to the "*object of general public utility*" and not to the word "advancement".

The plain language of the proviso does not convey an intention to the contrary. Infact, the legislature could have continued the opening part of the amended section 2(15) with the words "not involving" instead of the words " provided that the advancement of any other object of general public utility shall not be a charitable purpose if it involves" in the proviso. Either way the amendment would have been the same. In that event there could have been no doubt whatsoever that the legislature did not seek to set at naught the effect of the judgment of the Supreme Court in this regard in *Surat Art Silk's case (supra)*. The introduction of the proviso does not indicate such an intention either.

40. If the legislature intended the latter part of the proviso to apply to the word "advancement" as well and not merely to the words "object of general public utility", it would have worded the amendment entirely differently. The proviso would have expressly been made applicable to the advancement as well as to the object of general public utility. That the legislature did not do so is an indication that it accepted the interpretation of the Supreme Court of Section 2(15) as it originally stood and retained the effect

of the section in that regard in the 2009 amendment. The ratio of the judgment in *Surat Art Silk's case (supra)*, in this regard, therefore, remains the same.

41. Further, the amendment also indicates that the legislature accepted the observations in *Surat Art Silk's case (supra)*, to the effect that the purpose of the enacting section 2(15) in 1961 was to overcome the decision of the Privy Council in the *Tribune's case*. While the legislature in the 1984 amendment which continued upto the year 2009 altered this position by deleting the words "not involving the carrying on of any activity for profit", it reintroduced an exclusionary clause albeit in different and wider terms in the 2009 amendment. The exclusionary clause related to the object of general public utility and not the advancement thereof.

42. It is necessary now to determine the meaning of the following words in the proviso to Section 2(15) as amended in 2009:-

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"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".

This essentially requires a determination of the terms "trade", "commerce" and "business" as used therein.

43. Mr. Bhan, relied upon the judgment of this Court in *The Commissioner of Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust, ITA No. 75 of 2004* decided on 26.07.2012. In that case the assessee had shown the income from printing and publishing the newspapers and from other sources. The Division Bench dealt with the issue as to whether the assessee

falls within the expression 'advancement of any other object of general public utility'. The Division Bench held:-

"21. Wherever, the terms of the trust permit its operation 'for profit' they become, prima facie, evidence of a purpose falling outside the ambit of 'charity'. Ordinarily, profit motive is a normal incident of business activity and if the activity of a trust results in yielding profit, it could be concluded that the object of the trust involves the carrying on of an activity for profit. Wherever predominant object of the trust is charitable purpose and ancillary business activity results in profit, the profit earned is required to be utilized for the purposes of charity and if it is shown that the 'profits of the business' as per term of the trust are utilized for the purposes of the trust, the factum of activities yielding profit would not alter the charitable character of the trust."

44. The second sentence is important while considering the meaning of the words "trade, commerce or business" used in the proviso to Section 2(15) as amended in 2009. The second sentence states that ordinarily, profit motive is a normal incident of business activity and if the activity of a trust results in yielding profit, it could be concluded that the object of the trust involves the carrying on of an activity for profit. We will restrict our reliance upon paragraph-21 insofar as it is observed that ordinarily, profit motive is a normal incidence of business activity. We see no reason to take a different view as regards the words "trade" and "commerce".

45. The normal incidence of trade and commerce is also profit. Considering the nature of the legislation, we are inclined to accept Mr. Bhan's contention that each of these three words indicates the element of profit. A wider meaning ought not to be given to these words especially in a taxing statute. Section 2(15) defines charitable purpose. As in the

case of any other definition, it is to assist the construction of the main provisions in which the terms defined are used. The main provisions such as Sections 11, 12 and 13 use the words "charitable purpose" in the context of granting the assessee's the relief against taxation partly or fully often subject to certain conditions. If a trade or business or commercial activity does not result in profit, it would not be necessary to deal with the same in the Income Tax Act. The relief from taxation partly or fully predicates taxability and taxability predicates income and income predicates profit. This is the normal sense of these terms. There is nothing in the Act which persuades us that the words are used in Section 2(15) with a different intention. There is nothing in the Act and in particular section 2(15) thereof that indicates that the legislature contemplated a trade or a business or a commercial activity other than for profit. It is obviously for this reason that the legislature did not add to the words "trade, commerce or business" (used twice in the proviso) the words "*carried on for profit*".

46. Our view is supported by several judgments of the Delhi High Court which have dealt with this issue exhaustively. The extensive references in the judgments are sufficient to support this view and we do not find it necessary to add to the same.

47. This view is supported firstly by the judgment of the Delhi High Court in *Bureau of Indian Standards v. Director General of Income Tax (Exemptions)* [2013] 358 ITR 78 (Delhi). In that case the petitioner challenged the withdrawal of the exemption granted to it by the respondents under Section

10(23C) (iv) of the 1961 Act. Paragraphs 10, 11 and 12 of the judgment read as under:-

"10. This view is based on settled law; [Ref. Addl CIT v. Surat Art Silk Cloth Mfrs. Association[1980] 121 ITR 1; CIT v. Ahmedabad Rana Caste Association, (1983) 140 ITR 1 (SC) Commissioner of Sales Tax v. Sai Publication Fund, (2002) 4 SCC 57]. Here, the expressions in the proviso are "trade, business or commerce". The activities that are undertaken by the assessee/entity should be in the nature of trade, commerce or business or an activity of rendering any service in relation to any trade, commerce or business. The three terms "trade", "commerce" or "business" have been interpreted by the Supreme Court and other courts in various decisions. The expression "trade" was discussed in Khoday Distilleries Ltd. v. State of Karnataka(1995) 1 SCC 574 where the Supreme Court held that:

"68. There is no doubt that the word business is more comprehensive than the word trade since it will include manufacture which the word trade may not ordinarily include. The primary meaning of the word trade is the exchange of goods for goods or goods for money."

11. In State of Andhra Pradesh v. H. Abdul Bakhi and Bros.(1964) 15 STC 664, the Supreme Court dealt with the expression "business" and stated that it is an expression of indefinite import. In the taxing statutes it is used in the sense of an occupation or profession which occupies time, attention or labour of a person and normally associated with the object of making profit. It was held as under:

"4. 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. But to be a dealer a person need not follow the activity of buying selling and supplying the same commodity. Mere buying for personal consumption i.e. without a profit motive will not make a person, dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer."

12. CIT v. Lahore Electric Supply Company Limited(1966) 60 ITR 1 (SC) held that "business", under the Act contemplates activities capable of

producing profit which can be brought to tax. In the judgment reported as *Institute of Chartered Accountants in England and Wales v. Customs and Excise Commissioners* (1999) 1 W.L.R. 701, the House of Lords examined the question whether the institute was liable to pay value added tax for supply of goods and services as it was issuing licenses and certificates under three enactments for a fee. The issue which arose was whether the Institute was carrying on "economic activity" for the purposes of Value Added Tax Act, 1994. The definition of "economic activity" was wide. The expression "business" was examined with reference to the statutory mandate imposed on the institute and whether the statutory activities can be classified as a business, and the judgment observed as under:

"Although differences between them may arise, it seems to me that the Appellants were right in their case to accept that "The expression business, it is accepted, represents economic activity". It is not necessarily sufficient (though it may often be sufficient in different contexts) that money is paid and a benefit obtained, performing on behalf of the state this licensing function is not the carrying on of a business.

In relation to the Directive, the tribunal said: "Any regulatory activity carried out under a statutory power for the purpose of protecting the public by supervising and maintaining the standard of practitioners in, for example, the Financial Services field fall on the other side of the line from economic activities.

In the present case, I agree that is entirely right and the same goes for "business" in the context of these three Statutes."

The reference to the judgments by the Delhi High Court is apposite. They apply equally to the meaning of the words "trade", "business" and "commerce" to Section 2(15).

48. This issue among others was dealt with in considerable detail by the Delhi High Court in *The Institute of Chartered Accountants of India and another v. The Director General of Income Tax (Exemptions), Delhi and others*, [2013]

358 ITR 91. The petitioner in that case challenged the orders of the respondents refusing to grant exemption under section 10(23C)(iv) of the 1961 Act. The petitioner was incorporated under section 3 of the Institute of Chartered Accountants Act, 1949 as a body corporate which is constituted by all members whose names are entered in the register of members. The exemption was denied on the ground that the petitioner was holding coaching classes at a fee for preparing students for the examinations conducted by it. The Assessing Officer considered the petitioner to be carrying on business and held that the income from the same was business income. The petitioner did not maintain separate books of accounts with respect to the activity of coaching students and was, therefore, denied the benefit of section 11. It was also held that the petitioner had violated the provisions of Section 13(1)(d) of the Act. The Division Bench held that the central issue was whether the petitioner is an institution established for charitable purpose having regard to its objectives. The course of chartered accountancy is a distance education programme for which study material was provided by the petitioner institute to the students undergoing the pre-qualification course. To facilitate further learning, the petitioner institute also organized coaching classes for its students. The classes are held by the institute faculty. The petitioner contended that these classes were conducted without any commercial motive and were part of its object of imparting education to the students registered with it. The Division Bench noted in considerable detail the nature of the petitioners' activities and referred to certain judgments

already noted in *Bureau of Indian Standards vs. DGIT (supra)*.

The Division Bench held as follows:-

"56. In the case of *Institute of Chartered Accountants in England & Wales v. Customs and Excise Commissioners*: (1999) 1 W.L.R. 701, the House of Lords also examined the expression 'business' with reference to the question whether the Institute of Chartered Accountants in England & Wales was carrying on "economic activity" for the purpose of the Value Added Tax, 1994 and held as under:-

"Although differences between them may arise, it seems to me that the Appellants were right in their case to accept that "The expression business, it is accepted, represents economic activity". It is not necessarily sufficient (though it may often be sufficient in different contexts) that money is paid and a benefit obtained, performing on behalf of the state this licensing function is not the carrying on of a business.

In relation to the Directive, the tribunal said: "Any regulatory activity carried out under a statutory power for the purpose of protecting the public by supervising and maintaining the standard of practitioners in, for example, the Financial Services field fall on the other side of the line from economic activities.

In the present case, I agree that that is entirely right and the same goes for "business" in the context of these three Statutes."

57. After discussing various decisions with regard to the scope of the words trade, commerce & business, this court in *The Institute of Chartered Accountant of India v. Director General of Income-tax (Exemption) (supra)* [(2012) 347 ITR 86 (Delhi)] held that while construing the term business for the purpose of Section 2(15) of the Act the object and purpose of the Section must be kept in mind and a broad and extended definition of business would not be applicable for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act. The relevant extract of the said judgment is as under:-

"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 prescribed in Raipur Manufacturing Company [1967] 19 STC 1 (SC) and Sai Publication Fund [2002] 258 ITR 70 (SC); [2002] 126 STC 288 (SC) can be applied. The six indicia stipulated in Lord Fisher [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts."

58. In the case of Commissioner of Sales Tax v. Sai Publication Fund: [2002] 258 ITR 70 (SC), the Supreme Court while interpreting the word "business" in the context of Section 2(5A) of the Bombay Sales Tax Act, 1959 held that the inclusion of incidental or ancillary activity in the definition of business presupposes the existence of trade, commerce and business. Thus, if the dominant activity of the assessee was not business then any incidental or ancillary activity would also not fall within the definition of business. In that case, the Supreme Court was examining the issue whether the activity of the trust in bringing out and selling a publication to spread the message of Sai Baba would make the assessee trust a dealer. The Supreme Court also referred to various other decisions wherein it was held that if the principal object or purpose of an assessee was not business then an incidental activity would also not be exigible to sales tax and constitute the assessee as a dealer. In the case of State of Gujarat v. Raipur Manufacturing Co. Ltd.: (1967) 19 STC 1 (SC), the Supreme Court held that in order for any activity to be considered as business, there must be a course of dealings either actually continued or contemplated to be continued with the motive to earn profit and not for sport or pleasure.

59. This court while remanding the matter quoted the relevant passages from the decisions of the Supreme Court in the case of Raipur Manufacturing Co. (supra) and Sai Publication Fund (supra) and held that the test as prescribed in the said decisions can be applied to determine whether the petitioner institute was carrying on any business, trade or commerce. The DGIT(E) has completely ignored the said observations of this court and has proceeded to mechanically hold that the activities of the petitioner institute amounted to carrying on business. This, in our view, is completely erroneous.

60. The petitioner institute has been constituted under the ICAI Act with the object to regulate the profession of Chartered Accountants in India and to ensure that the standards of professional knowledge and skill are met and maintained. The activities being undertaken by the petitioner substantially involve imparting education in the field of accountancy in order to ensure that the standards or profession of accountancy are maintained. The petitioner institute is the sole body empowered to conduct or approve a course in the field of accountancy. No other person can conduct any course or award any degree or certificate which indicates a level of proficiency or competence in the field of accountancy similar to that as of a chartered accountant. The activity of petitioner in conducting coaching classes is integral to the activity of the petitioner institute in conducting the courses in accountancy.

61. The coaching classes being conducted by the petitioner cannot be equated with private coaching classes being conducted by organisations on commercial basis for preparing students to undertake entrance or other examinations in various professional courses. The coaching carried on by private organisations are not integral to the courses being conducted by them but for preparing students for examinations being conducted by other institutes and universities. In the case of the petitioner institute, the coaching classes are integral to the curriculum of the programme being conducted by the petitioner institute.

67. The expressions "trade", "commerce" and "business" as occurring in the first proviso to section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first

proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose". The purpose of introducing the proviso to Section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill 2008. The relevant extract to the Speech is as under:-

"....."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 incomes have sought to claim that their purposes would also fall under "charitable purpose". Obviously, this was 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."

The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce".

71. Although, it is not essential that an activity be carried on for profit motive in order to be considered as business, but existence of profit motive would be a vital indicator in determining whether an organisation is carrying on business or not. In the present case, the petitioner has submitted figures to indicate that expenditure on salaries and depreciation exceeds the surplus as generated from holding coaching classes. In addition, the petitioner institute provides study material and other academic support such as facilities of a library without any material additional costs. The Supreme Court in the case of State of Andhra Pradesh v. H. Abdul Bakhi and Bros. (supra) held as under:

"The expression "business" though extensively used 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." (Underlining added)"

49. Our view is also supported by the judgment of the Delhi High Court in *India Trade Promotion Organization v. Director General of Income Tax (Exemptions) and others [2015] 371 ITR 333 (Delhi)* cited by Mrs. Suri, the learned senior counsel appearing on behalf of the assessee in the other appeal No.ITA-147 of 2016. It was held as under:-

"44. It is an admitted position that had the proviso not been introduced by virtue of the Finance Act, 2008 with effect from 01.04.2009, the petitioner would have been recognized as a charity and would have been recognized as an institution established for the charitable purpose of advancement of an object of general public utility. The difficulty that has arisen for the petitioner is because of the introduction of the proviso to Section 2(15). The said proviso has two parts. The first part has reference to the carrying on of any activity in the nature of trade, commerce or business. The second part has reference to any activity of rendering any service in relation to any trade, commerce or business. Both these parts are further subject to the condition that the activities so carried out are for a cess or fee or any other consideration, irrespective of the nature or use or application or retention of the income from such activities. In other words, if, by virtue of a cess or fee or any other consideration, income is generated by any of the two sets of activities referred to above, the nature of use of such income or application or retention of such income is irrelevant for the purposes of construing the activities as charitable or not.

45. To be clear, if an activity in the nature of trade, commerce or business is carried on and it generates income, the fact that such income is applied for charitable purposes, would not make any difference and the activity would nonetheless not be regarded as being carried on for a charitable purpose. We have seen that by virtue of Section 25 of the Companies Act, the petitioner is enjoined to

plough back its income in furtherance of its object and the declaration of dividends is prohibited. If a literal interpretation is to be given to the proviso, then it may be concluded that this fact would have no bearing on determining the nature of the activity carried on by the petitioner. But, we feel that in deciding whether any activity is in the nature of trade, commerce or business, it has to be examined whether there is an element of profit making or not. Similarly, while considering whether any activity is one of rendering any service in relation to any trade, commerce or business, the element of profit making is also very important.

46. At this juncture, we may point out that we are in agreement with the argument advanced by Mr Syali that the proviso to Section 2(15) does not make any distinction between entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business on the one hand and genuine charitable organizations on the other. It must be remembered that we are construing the expression "charitable purpose" not in a vacuum, but in the specific context of Section 10(23C)(iv) of the said Act. As pointed out above, Section 10 deals with the incomes not included in total income. And, Section 10(23C)(iv) specifically deals with the income received by any person on behalf of, inter alia, an institution established for charitable purposes. We have to, therefore, examine the meaning of the expression "charitable purposes" in the context of Section 10(23C)(iv). Looking at the said expression from this stand point, it becomes clear that it has a reference to income. Because, it is only when such an institution has an income that the question of not including that income in its total income would arise. Therefore, merely because an institution, which otherwise is established for a charitable purpose, receives income would not make it any less a charitable institution. Whether that institution, which is established for charitable purposes, will get the exemption under Section 10(23C)(iv) would have to be determined by the prescribed authority having regard to the objects of the institution and its importance throughout India or throughout any State or States. There is no denying that having regard to the objects of the petitioner and its importance throughout India in the field of advancement or promotion of trade and commerce, the petitioner would be entitled to be regarded as an institution which would qualify for that exemption. The only thing that we have to examine is - whether the petitioner had been established for charitable purposes? The fact that it derives income does not, in any way, detract from the position that it is an institution established for

charitable purposes. Therefore, in our view, merely because the petitioner derives rental income, income out of sale of tickets and sale of publications or income out of leasing out food and beverages outlets in the exhibition grounds, does not, in any way, affect the nature of the petitioner as a charitable institution if it otherwise qualifies for such a character.

47. We have already noted that prior to the amendment being introduced with effect from 01.04.2009, the petitioner had been recognized as an institution established for charitable purpose and this had been done having regard to the objects of the institution and its importance throughout India. It is only because of this that the petitioner had been granted the exemption by the respondent for the period prior to assessment year 2009-10. Therefore, insofar as the receiving of income is concerned, that cannot be taken as an instance to deny the petitioner its status as an institution established for charitable purposes. Because, if that were to be so, then there would be no necessity to take recourse to Section 10(23C)(iv) for the benefit of an exemption. To put it plainly, if an institution established for charitable purposes did not receive an income at all, then what would be the need for taking any benefit under Section 10(23C)(iv) of the said Act. Therefore, if a meaning is given to the expression "charitable purpose" so as to suggest that in case an institution, having an objective of advancement of general public utility, derives an income, it would be falling within the exception carved out in the first proviso to Section 2(15) of the said Act, then there would be no institution whatsoever which would qualify for the exemption under Section 10(23C)(iv) of the said Act. And, the said provision would be rendered redundant. This is so, because, if the institution had no income, recourse to Section 10(23C)(iv) would not be necessary. And, if such an institution had an income, it would not, on the interpretation sought to be given by the revenue, be qualified for being considered as an institution established for charitable purposes. So, either way, the provisions of Section 10(23C)(iv) would not be available, either because it is not necessary or because it is blocked. The intention behind introducing the proviso to Section 2(15) of the said Act could certainly not have been to render the provisions of Section 10(23C)(iv) redundant.

48. With this in mind, it is to be seen as to what is meant by the expressions "trade", "commerce" or "business". The word "trade" was considered by the Supreme Court in its decision in the case of *Khoday Distilleries Ltd and Others v. State of Karnataka and*

Others: 1995 (1) SCC 574, whereby the Supreme Court held that "the primary meaning of the word 'trade' is the exchange of goods for goods or goods for money". Furthermore, in State of Andhra Pradesh v. H. Abdul Bakhi and Bros: 1964 (5) STC 644 (SC), the Supreme Court held that the word "business" was of indefinite import and in a taxing statute, it is used in the sense of an occupation, or profession which occupies time, attention or labour of a person, and is clearly associated with the object of making profit". This court, in ICAI (I) (supra) held that, while construing the term "business" as appearing in the proviso to Section 2(15), the object and purpose of the Section has to be kept in mind. It was observed therein that a very broad and extended definition of the term "business" was not intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act so as to include any transaction for a cess, fee or consideration. The Court specifically held that:-

-An activity would be considered 'business' if it is undertaken with a profit motive, but in some cases, this may not be determinative. Normally, the profit motive test should be satisfied, but in a given case activity may be regarded as a business even when profit motive cannot be established / proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business.

58. In conclusion, we may say that the expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running foul of the principle of equality enshrined in Article 14 of the Constitution 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."

50. The judgment in Bureau of Indian Standard's 358 ITR 78 (Delhi) cited supra was followed by a judgment of another Division Bench of Delhi High Court in *GS1 India v. Director General of Income Tax (Exemption) and another* [2014] 360 ITR 138 (Delhi). The Division Bench held:-

"Scope of "Trade, Commerce or Business"

16. The key words, namely; trade, commerce and business were enumerated and elucidated in *Institute of Chartered Accountants of India v. Director General of Income Tax (Exemptions)* Delhi [2012] 347 ITR 99 (Delhi) as under:-

"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. Johnson 18 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."

17. 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(Del), Barendra Prasad Ray v. Income Tax Officer (1981) 129 ITR 295 (SC), State of Andhra Pradesh v. H. Abdul Bakhi and Bros. (1964) 15 STC 664, State of Gujarat v. Raipur Manufacturing Company (1967) 19 STC 1(SC), Director of Supplies and Disposal v. Member, Board of Revenue (1967) 20 STC 398(SC) and Sarojini Rajah v. CIT (1969) 71 ITR 504 (Mad) to explain the terms "trade, commerce or business".

18. Referring to the concept and principle of "economic activity" that has gained some acceptability in European Union and England it was explained that the said principle is applicable to Sales Tax, Value added tax, Excise duty etc. because these are not taxes on income but the taxable event occurs because of the "economic activity" involved. Even if a person/organization is carrying on trading/business on "no loss no profit" principle, it may be liable to pay taxes or comply with the statute when the charge, or incident of tax, is on the "economic activity". The words trade, commerce and business are etymological chameleon and suit their meanings to the context in which they are found. Five tests propounded in Customs and Excise Commissioner v. Lord Fisher (1981) S.T.C. 238 and decision in Commissioner Of Sales Tax v. Sai Publication Fund, (2002) 4 SCC 57 was quoted.

19. 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 v. Director General of Income Tax (Exemptions) Delhi (supra) in the following words:

"33. 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 infect 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."

51. We are in respectful agreement with the judgments of Delhi High Court in [2013] 358 ITR 78 (Delhi), [2013] 358 ITR 91, [2014] 360 ITR 138 (Delhi) and 2015] 371 ITR 333 (Delhi).

52. A Division Bench of the Bombay High Court in Director of Income Tax v. Women's India Trust [2015] 379 ITR 506 (Bombay) came to a finding of fact that the motive of the assessee was not the generation of profit but to provide training to the needy women in order to equip or train them in these fields and make them self reliant. Thus the Bombay High Court has also proceeded on the basis that the trade, commerce

or business referred to in the proviso are those carried on with a view to make profit.

53. The judgments relied upon by Mr. Goel do not suggest the contrary.

54. Mr. Goel relied upon the judgment of the Andhra Pradesh High Court in *Andhra Pradesh State Seed Certification Agency v. Chief Commissioner of Income Tax and others [2013] 356 ITR 360 (AP)*. The Division Bench held that the petitioner's activities fell within "advancement of any other object of general public utility". The Division Bench observed that the petitioner collected fees for providing certification which involves technical and scientific evaluation of the seeds although the fee collected by it would be enough to enable it to sustain its activities and may not result in much profit. Despite that the Division Bench held that in view of the fact that the certification of the seeds by the petitioner facilitate trade, commerce or business in the certified seeds by the client of the petitioner, the proviso to the said section 2(15) would come into operation. The petitioner's contention was that it did not itself engage in any activity in the nature of trade, commerce or business and therefore, it was an agency whose activities are for "charitable purpose" and therefore entitled to the benefit of section 10(23C)(iv). The Division Bench rejected this contention holding that if accepted it would render the words "any activity of rendering any service in relation to any trade, commerce or business" redundant.

The judgment is of no assistance in the case before us. The issue as to whether the assessee's clients derived any

benefit from the assessee's activities was not raised before the authorities.

55. Thus the appellant's activity falls within the ambit of the words "advancement of any other object of general public utility". The decision of the Privy Council in the Tribune's case in this regard still holds good. Further the words trade, commerce or business in the proviso to Section 2(15) refers to those activities carried on for profit. So long as it is carried on for profit, it is irrelevant whether the profit is actually made or not. In view of the judgment of the Supreme Court in *Surat Art Silk's case (supra)*, it must be held that the activities of the assessee are carried on with the predominant motive of making a profit.

56. Even otherwise on facts we agree with Mr. Goel that profit is the predominant motive, purpose and object of the assessee. The assessee has over the years accumulated huge profits which today aggregate to several crores of rupees.

57. The Tribunal referred to the income and expenditure account which shows that out of the total revenue of about ₹ 161 crores, a sum of ₹ 124.87 crores was received from the advertisements and ₹ 11.38 crores from the interest of F.D.Rs. only. Thus about 85% of the revenue was from advertisements and interest only. ₹ 17.49 crores was from the sale of newspapers and ₹ 3.07 crores was from subscriptions of the dailies. Moreover the balance in the corpus account was ₹ 121 crores.

The respondents have not suggested that these profits have been used for any purpose contrary to the trust created in the Will. Nor is it suggested that the appellants

will do so. It did occur to us at one stage that this fact would save the assessee from being excluded from the provisions of section 2(15) but on further reflection it does not. A person does not make profit for the sake of making profits. He does so with a purpose. The purpose is obviously within his special knowledge. He must, therefore, disclose it and the Assessing Officer must then test the case and analyse it. If that were not so it would enable an assessee to circumvent the provisions of the Act meant for the benefit of the persons engaged in activities for charitable purposes. They would accumulate huge profits for several years. The assessment in respect of these years would attain finality after about 8 years and cannot, thereafter, be reopened. After this period the assessee could utilize the profits for any purpose- charitable or otherwise. We hasten to add that the assessee before us has not done so and there is nothing to indicate that it will do so. It is, as we mentioned earlier, a highly reputed and respectable publication and is not likely to adopt such a course. That, however, is not the point. What is relevant is that in such a case any assessee would by this simple expedient circumvent the provisions of the Act. Thus the accumulation of a huge profit without any explanation for the same or without any indication that it is for the advancement of the object of general public utility would take the assessee out of the definition in Section 2(15) of 'charitable purpose'. There is nothing in this case to show that the surplus accumulated over the years has been ploughed back for the charitable purposes.

58. This now leaves for consideration the question as to when can it be said that the predominant purpose of the trust

or institution is for profit and when can it be said that it is for the charitable purpose.

In *Assistant Commissioner of Income Tax, Madras and others v. Thanthi Trust and others* 2001(2) SCC 707, one S.K.Adityan founded a daily newspaper called 'Dina Thanthi' in 1942 and on 1.3.1954 he created a trust called "Thanthi Trust'. He settled upon the trust the business of the said newspaper as a going concern. The objects of the trust were to establish a newspaper as an organ of educated public opinion for the Tamil-reading public and to disseminate news. The trust was subsequently declared to be irrevocable. A supplementary deed of trust was also executed directing that the surplus income should be devoted to certain persons such as establishing and running a school or college for the teaching of journalism, arts and science; establishing and/or running or helping to run hostels for students and orphanages. Paragraph-25 of the judgment was relied upon by Mr. Goel which reads as under:-

"25. The substituted sub-section (4-A) states that the income derived from a business held under trust wholly for charitable or religious purposes shall not be included in the total income of the previous year of the trust or institution if "the business is incidental to the attainment of the objective of the trust or, as the case may be, institution" and separate books of accounts are maintained in respect of such business. Clearly, the scope of sub-section (4-A) is more beneficial to a trust or institution than was the scope of sub-section (4-A) as originally enacted. In fact, it seems to us that the substituted sub-section (4-A) gives a trust or institution a greater benefit than was given by Section 13(1)(bb). If the object of Parliament was to give trusts and institutions no more benefit than that given by Section 13(1)(bb), the language of Section 13(1)(bb) would have been employed in the substituted sub-section (4-A). As it stands, all that it requires for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of the objectives of the trust or

institution. A business whose income is utilised by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust. In any event, if there be any ambiguity in the language employed, the provision must be construed in a manner that benefits the assessee. The Trust, therefore, is entitled to the benefit of Section 11 for Assessment Year 1992-93 and thereafter. It is, we should add, not in dispute that the income of its newspaper business has been employed to achieve its objectives of education and relief to the poor and that it has maintained separate books of accounts in respect thereof."

59. The question, therefore, in each case is whether the business income of the trust or the institution is ancillary or incidental to the attainment of the objects of the trust or the institution or whether it is the predominant motive or activity of the trust. The test laid down in the judgment of the Supreme Court in *Surat Art Silk's* case especially in paragraph-17 thereof would apply to cases after the 2009 amendment. Further, where the business income is utilized by the trust for the purposes of achieving the objects of the trust, the business would be incidental to the attainment of the objective of the trust.

60. As we have already observed, in *Surat Art Silk's* case (*supra*), the Supreme Court held that the activity of publication of the newspaper in the *Tribune's* case was carried on on commercial lines with the object of the earning profit. That was its predominant activity. The Supreme Court further held that that activity had profit making as its predominant object. The above observation of the Supreme Court in *Thanthi Trust's* case would, therefore, be against the appellant.

61. Mr. Goel, relied upon a judgment of the Kerala High Court in *Ideal Publications Trust v. Commissioner of Income Tax [2008] 305 ITR 143 (Kerala)*. Paragraph-8 of the judgment reads as under:-

"8. So far as the position after the amendment of sub-section 4A of Section 11 is concerned also, we are of the view that the appellant is not entitled to exemption, because exemption is available in respect of the income only if the business carried on by the Trust is incidental to the attainment of the objects of the Trust. Admittedly, the appellant Trust has not utilised or set apart any part of the income for any of the charitable purposes referred to in the objects clause, viz. education, medical relief or relief of the poor. The appellant is only engaged in publication of the newspaper which is run on commercial lines including charging of commercial tariff for advertisements and charging of price for the newspaper at rates comparable to other newspapers run for profit. However, the appellant's case is that the business of printing and publication of newspaper itself is an object of general public utility and so much so the income therefrom is exempt - from tax. We are unable to accept this proposition because we are of the view that in order to qualify for exemption in respect of income from profits and gains of business, the business, after the amendment of sub-section (4A) of Section 11, should be carried on as an incidental activity to the attainment of the objects of the Trust and not as an object in itself. In other words, the business itself should not be the object of the trust, even though the business may advance the object of general public utility. In fact, if a contrary meaning is assigned to the section, any business income involving advancement of object of general public utility will be exempt from tax. In fact, every business to some extent advances object of general public utility. However, what is intended in sub-section (4 A) of Section 11 is that the object of the Trust should be for charitable purpose which includes advancement of object of general public utility and income from any business carried should be incidental to the objectives of the Trust Since the appellant has no other activity other than the business of printing and publication of newspaper on commercial line, we are of the view that the business itself cannot be said to be an object of general public utility entitling the appellant for exemption as a charitable institution. The Supreme Court in the *Thanthi Trust's case [2001] 247 ITR 785* referred to above held that publication of newspaper is not education and therefore unless the business of publication of newspaper falls under Clause (4A), exemption cannot be granted."

The High Court applied the ratio in paragraph-8 to the facts of that case. In that case, the object clause of the trust refers to education, medical relief or relief to the poor. The appellant before us was only engaged in the publication of newspapers which was running on commercial lines as held in Surat Art Silk case (supra). The last but one sentence of paragraph-9 "since the appellant has no other activity other than the business" must be read in context. It is not held that where a trust carries on only one activity, it cannot fall within the ambit of Section 2(15). This observation was made in the context of the facts of that case. Although there were several other objects, the appellant's only activity was the business of printing and that activity was found to have been carried on on commercial lines. If, therefore, the predominant activity of the trust is charitable purpose and the profit resulting from its ancillary or incidental business activity, is for the charitable purpose only of the advancement of an object of general public utility, it is sufficient. It is not necessary that such income must also be for the advancement or the purpose of another charitable purpose as well.

62. The question of law in ITA No. 62 of 2015 are, therefore, answered in favour of the Revenue.

63. This brings us to ITA No. 147 of 2016 *The Commissioner of Income Tax (Exemption), Chandigarh v. M/s Improvement Trust, Moga* which pertains to the assessment year 2011-12. The appeal is admitted on the following substantial questions of law:-

- i) Whether benefit of Section 11 should be granted to the assessee in view of the proviso to Section 2(15) of the Income Tax Act, 1961?

64. Mrs. Suri, learned Senior counsel appearing for the assessee in ITA No.147 of 2016 relied upon a judgment of the Income Tax Appellate Tribunal dated 16.09.2015 in case *The Improvement Trust, Moga Opp. Geeta Theatre, G.T. Road, Moga v. The Commissioner of Income Tax-III, Ludhiana* ITA No. 365/Asr)/2013. In that case the registration granted to the assessee under section 12AA was cancelled with effect from the assessment year 2009-10 in view of the decision of the Amritsar Bench of the Tribunal in the case of "*Jammu Development Authority v. Commissioner of Income Tax, Jammu*" ITA No. 30(Asr)/2011, dated 14.06.2012. The assessee filed an appeal before the Tribunal which was dismissed for default but was later restored to file and by an order dated 16.09.2015 was decided in the assessee's favour. The registration of the certificate under section 12AA was thus restored.

65. Other similar trusts constituted under the PTI Act had earlier filed appeals one of which was *M/s Amritsar Improvement Trust v. Commissioner of Income Tax-II, Amritsar*, ITA No. 100 of 2014, which were disposed of by a judgment dated 06.08.2014. The Division Bench observed that two questions arose, namely, whether the trust is an institution which carries on charitable activities within the meaning of Section 2(15) and secondly in case the trust is engaged in the activity of advancement of any other object of general public utility; whether it falls within the exclusion in the

proviso to Section 2(15) of the Act. The Division Bench observed that the matter was required to be remitted to the Tribunal to adjudicate the issue regarding the nature of the activities of the trust in respect of the assessment years in question and to pass fresh orders. The assessee before us 'Moga Improvement Trust' was not one of the appellants and its appeal was pending before the Tribunal. The Tribunal by the impugned order disposed of the appeal of the assessee before us as well as the appeals of the other similar trusts which were remanded as per the judgment dated 06.08.2014.

66. The appeal is filed by the revenue against the order of the Income Tax Appellate Tribunal reversing the order of the CIT(Appeals) which dismissed the respondent's/assessee's appeal against the order of the Assessment Officer. The matter pertains to the assessment year 2011-12. Section 2(15), as it stood in respect of the earlier appeal, applies to this case as well. The assessee filed its return declaring the net income 'nil'. The return was processed under section 143(1) but was selected for scrutiny. Notices under sections 142(1) and 143(2) alongwith a questionnaire were issued.

67. Before referring to the orders of the authorities it is necessary to notice a few facts regarding the assessee. The assessee is a body corporate incorporated under section 3 of the Punjab Town Improvement Act, 1922. It is a body corporate liable to sue and be sued in its name. The assessee and similarly incorporated trusts are referred to in the Act as 'the trust'. Section 4 provides for the constitution of the trust. It consists of a Chairman and nine other trustees. Six of them are the officers of the State Government and

statutory authorities such as the Municipal Committees or the Corporations and of statutory organisations such as public works and the Buildings and Roads Branch. Of the three others not more than one shall be a Servant of the Government. They are appointed by the State Government by a notification or are members of the Municipal Committee or the Corporation as the case may be. The provisions that follow indicate not merely a deep and perverse but a total control of the trust by the State and/or its instrumentalities. The relevant provisions of the Punjab Town Improvement Act, 1922 (hereinafter referred to as 'the PTI Act') and the Punjab Town Improvement Trust Rules, 1939 (hereinafter referred to as 'the Trust Rules') read as under:-

PUNJAB TOWN IMPROVEMENT ACT, 1922

"3. Creation and incorporation of trust.— The duty of carrying out the provisions of this Act in any local area shall subject to the conditions and limitations hereinafter contained, be vested in a board to be called "The (name of town) Improvement Trust" hereinafter referred to as "the trust", and every such board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

22. Matters to be provided for by general improvement scheme or rebuilding scheme:— (1)

Whenever it appears to the trust that—

(a) any buildings which are used or are intended or likely to be used as dwelling places within its local area are unfit for human habitation, or

(b) danger is caused or likely to be caused to the health of the inhabitants of such local area or part thereof by reason of—

(i) the congested condition of streets or buildings or groups of buildings in such local area or part, or

(ii) the want of light, air, ventilation or proper conveniences in such local area, or part, or

(iii) any other sanitary defects in such local area or part, the Trust may pass a resolution to the effect that such local area or part is in an in sanitary locality and that "a general improvement scheme" ought to be framed in respect of such locality and may then proceed to

frame such a scheme.

(2) Whenever the Trust declares any local area or part thereof to be an in sanitary locality within the meaning of this section, and is of opinion that having regard to the comparative value of the buildings in such local areas or part and the sites on which they are erected it is undesirable to frame a general improvement scheme and the most satisfactory method of dealing with the local area or any part thereof is "a rebuilding scheme," it may proceed to frame such a scheme, which may provide for the reservation of streets and the enlargement of existing streets; the relaying out of the sites of the local area or part thereof upon the streets so reserved or enlarged; the demolition of existing buildings and their appurtenances upon such sites; and the erection of buildings in accordance with the scheme.

23. Street schemes and deferred street schemes.-

(1) Whenever it appears to the Trust that for the purpose of-

(i) providing building sites, or
 (ii) remedying defective ventilation, or
 (iii) creating new or improving existing means of communication and facilities for traffic, or
 (iv) affording better facilities for conservancy, within its local area or part thereof it is expedient to lay out new streets, thoroughfares and open spaces, or alter existing streets, the Trust may pass a resolution to that effect, and shall then proceed to frame "a street scheme" which shall prescribe improved alignments for streets, thoroughfares and open spaces for such local area or part as the Trust may deem fit.

(2) Whenever it appears to such Trust that for any of the purposes mentioned in sub-section (1) within its local areas or part thereof it is expedient to provide for the ultimate widening of any existing street by altering the existing alignments to improved alignments to be prescribed by the Trust, but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments, the Trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and forthwith proceed to frame a "deferred street scheme" prescribing an alignment on each side of such street.

24. Development and expansion schemes.- (1) The Trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare "a development scheme", and

(2) Such Trust may, if it is of opinion that it is expedient and for the public advantage to promote

and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto, within the local area of such Trust prepare "an expansion scheme".

(3) "A development scheme" or "an expansion scheme" may provide for the lay-out of the locality to be developed, the purposes for which particular portions of such locality are to be utilised, the prescribed street alignment and the building line on each side of the streets proposed in such locality, the drainage of in sanitary localities and such other details as may appear desirable.

25. **Housing accommodation scheme.**— If the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within its local area such Trust may frame "a housing accommodation scheme" for the purpose aforesaid: Provided that if the Government are satisfied that within the Trust area it is necessary to provide housing accommodation for industrial labour, the [Government] may by order require the Trust to frame a scheme under this section and to do all things necessary under the Act for executing the scheme so made; and if the Trust fail within such time as may be prescribed to frame a scheme to the satisfaction of the Government and to execute it, the Government may either by order require the municipal committee to frame and execute a scheme, or themselves frame a scheme and take such steps as are necessary to execute it. All expenses incurred by the Government or by the municipal committee in the exercise of the powers conferred upon them by this section shall in the first instance, be paid out of provincial revenues, but the amount so spent shall be recoverable from the Trust as if it were a Government, and the Government may attach the rents and other income of the Trust. The provisions of section 72 shall also apply to all moneys so paid.

26. **Rehousing Scheme.**— Whenever the Trust deems it necessary that accommodation should be provided for persons who are displaced by the execution of any scheme under this Act, or are likely to be displaced by the execution of any scheme, which it is intended to submit to the Government for sanction under this Act it may frame "a rehousing scheme" for the construction, maintenance and management of such and so many dwellings and shops as ought, in the opinion of the Trust, to be provided for such persons.

27. **Rehousing of displaced resident house-owners.**— Any resident house-owner who is likely to be displaced by the execution of any scheme under this Act, may apply to the Trust to be re-housed,

and no such scheme shall be put into execution until a rehousing scheme as provided for in section 26 for the re-housing of such resident house owners as may apply under this section has been completed.

Explanation— The demolition of a portion of a dwelling house which renders the remaining portion uninhabitable shall be deemed to be a displacement of the person or persons residing in the said dwelling house.

28. Combination of schemes and matters which may be provided for in scheme.— (1) A scheme under this Act may combine one or more types of schemes or any special features thereof.

(2) A scheme under this Act may provide for all or any of the following matters:—

(i) the acquisition under the Land Acquisition Act, 1894, as modified by this Act, or the abandonment of such acquisition under sections 56 and 57 of this Act, of any land or any interest in land necessary for or affected by the execution of the scheme, or adjoining any street, thoroughfare, open space to be improved or formed under the scheme;

(ii) the acquisition by purchase, lease, exchange or otherwise of such land or interest in land;

(iii) the retention, letting on hire, lease, sale, exchange or disposal otherwise of any land vested in or acquired by the Trust;

(iv) the demolition of buildings or portions of buildings that are unfit for the purpose for which they are intended and that obstruct light or air or project beyond the building line;

(v) the relaying out of any land comprised in the scheme and the redistribution of sites belonging to owners of property comprised in the scheme;

(vi) the laying out and alteration of streets;

(vii) the provision of open spaces in the interests of the residents of any locality comprised in the scheme or any adjoining locality and the enlargement or alteration of existing open spaces;

(viii) the raising, lowering or reclamation of any land vested in or to be acquired by the Trust for the purposes of the scheme and the reclamation or reservation of land for the production of fruit, vegetables, fuel, fodder and the like for the residents of the local area;

(ix) the draining, water-supply and lighting of streets altered or constructed;

(x) the provision of a system of drains and sewers for the improvement of ill-drained and insanitary localities; (xi) the doing of all acts intended to promote the health of residents of the area comprised in the scheme, including the conservation and preservation from injury or pollution of rivers and other sources and means of water-supply;

(xii) the demolition of existing buildings and the erection and re-erection of buildings by the Trust or by the owners or by the Trust in default of the owners; (xiii) the advance to the owners of land comprised within the scheme upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme of the whole or part or the capital requisite for the erection of buildings in accordance with the scheme;

(xiv) the provision of facilities for communication;

(xv) all other matters which the Government may deem necessary to promote the general efficiency of a scheme or to improve the locality comprised in such scheme. [40] [(3) While undertaking a scheme under this section a provision of plot for the construction of mosque shall be made where necessary].

55. Vesting in committee of streets laid out or altered, and open spaces provided by the Trust under a scheme.— (1) Whenever the municipal committee is satisfied—

(a) that any street laid out or altered by the Trust has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the plans sanctioned by the Government under this Act, and

(b) that such lamps, lamp-posts, and other apparatus as the municipal committee deem necessary for the lighting of such street and as ought to be provided by the Trust have been so provided, and

(c) that water and other sanitary conveniences ordinarily provided in a municipality have been duly provided in such street,

the municipal committee after obtaining the assent of the Trust, or failing such assent, the assent of the Government under subsection (3), shall by notice affix in some conspicuous position in such street declare the street to be a public street, and the street shall thereupon vest in and shall thenceforth be maintained, kept in repair, lighted and cleaned by the municipal committee.

(2) When any open space for purposes of ventilation or recreation has been provided by the Trust in executing any scheme under this Act, it shall, on completion, be transferred to the municipal committee by resolution of the Trust and shall thereupon, vest in and shall thenceforth be maintained, kept in repair, lighted and cleaned by the municipal committee:

Provided that the municipal committee may require the Trust, before any such open space is so transferred, to enclose, level, turf, drain

and lay out such space and provide footpaths therein and, if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Trust and the municipal committee in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Government, whose decision shall be final.

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3. Moneys pertaining to the Trust fund, with exception of authorized advances, shall not be kept apart from the general balance at the credit of the Trust but shall at once be credited to the appropriate head of account.

4. All sums paid into the treasury on account of the Trust, and all payments made on cheques shall be entered in a passbook, which shall be periodically sent to be written up at the treasury. At the close of each month the entries on each side of the passbook shall be totalled and a balance struck under the signature of the Treasury Officer. In no circumstances shall any entries be made in the pass book, except by the treasury clerk make any entries in the passbook, except.

Payment of money

5. Sums for amounts fixed by the Trust which not exceed Rs.20 in any single instance, shall be paid in cash from the permanent advance."

68. The assessee declared the income to be nil after claiming exemption under section 12A of the Act amounting to about ₹ 1.46 crores being surplus shown in income and expenditure account. The Assessing Officer noted the assessee's following contentions: Registration under section 12AA had been approved by the ITAT, Amritsar Branch, Amritsar in ITA Nos. 194 and 195 (Asr) 2006 and in ITA No. 489 of 2007 decided on 31.10.2008. Section 12AA lays down the procedure for registration in relation to the condition for applicability of section 11 and 12 as provided in Section 12A

and that, therefore, once the procedure is complete, as provided in Section 12AA(1) and a certificate is issued granting registration to the trust or institution the same evidences satisfaction about the genuineness of the activities of the trust or institution and about the objects of the trust or institution. Section 12A stipulates that the provisions of sections 11 and 12 shall not apply in relation to the income of a trust unless the conditions stipulated therein are fulfilled and that, therefore, granting of registration under section 12AA denotes that the conditions in Section 12A stand fulfilled. There was no material brought on record by the revenue which suggests that it was conducting its affairs on commercial lines with the motive to earn profit or that the assessee has deviated from its object. It was not engaged in any activities in the nature of trade, commerce or business; that it was engaged in providing services for improvement and expansion of civic facilities and enhancement of quality of life and profit has never been its motive; that its activities have been held to be the charitable activities by the Tribunal and the order was confirmed by this Court in ITA No. 489 of 2007 *The Commissioner of Income Tax-III, Ludhiana v. Improvement Trust, Moga*.

69. The Assessing Officer, however, rejected the assessee's contention on the basis of the following facts: The assessee derives its income from constructing and selling residential apartments, commercial flats and booths etc. It received amounts during the relevant assessment years towards rent, interest, fees, sale of premises etc. The Audit report indicates that the assessee inter-alia purchases the land at

nominal cost, develops it, cuts it into small plots and sell them at much higher prices earning huge profits. Auction notices were issued by the assessee inviting bids in the usual manner with a view to obtain the maximum price. The properties would thus be sold to the highest bidder. The Assessing Officer held that the auction and the conditions imposed on the bidder clearly indicate that the activities of the assessee were more in the nature of a big private builder/colonizer rather than the institution constituted for 'charitable purpose' of the advancement of any other object of general public utility. By an advertisement the Executive Officer of the assessee admitted that to earn the profit the assessee auctioned the parking space of the commercial complex which indicated that the activities of the trust are not in the nature of charity but in the nature of business. The Assessee's various housing projects are completed in 3 to 4 years many of which are undertaken simultaneously. The assessee would, therefore, have a regular income for a number of years. The same constituted the assessee's activities as a part of its business being regular.

The Assessing Officer held that the income from these receipts cannot be considered to be in relation to activities in the nature of advancement of any other object of general public utility and is infact income similar to that derived from a private builder or colonizer.

The Assessing Officer then dealt with the assessee's contention that it is engaged in providing civic facilities/services and the enhancement of the quality of life and therefore, no profit motive has ever been found in the activities of the assessee. With regard to this

contention, the Assessing Officer observed as follows: The facilities originate out of a desire to earn more profit from the sale of premises for they constitute a 'value addition' to the properties sold by the assessee. Builders and colonizers also provided such facilities and if the assessee's contention is accepted even they would claim similar benefits. The expenses incurred on the said facilities were about ₹ 1.61 crores and the profit earned was about ₹ 1.46 crores out of the total receipt of about ₹ 3.07 crores. The net profit was, therefore, about 47.49%. The assessee's main object was, therefore, only to earn more profit.

The Assessing Officer found that the profits in the assessment years 2008-09, 2009-10 and 2011-12 were about 49%, 52% and 48% respectively and the profit for the assessment year 2010-11 was about 87%. He, therefore, inferred that the objects/activities of the assessee were commercial in nature and not charitable.

The income of ₹ 1.46 crores treated by the appellant as exempt income was added to the assessee's income for the assessment year 2011-12. The penalty notice under section 271(1)(c) was issued separately.

70. It is important to note the following findings of the Assessing Officer:-

"I do not agree with the argument of the assessee because a charitable institution provides services for charitable purposes free of cost or for symbolic/nominal costs and not for gain".

This observation is contrary to the observation of the Privy Council in the Tribunal Case at page 252 which we set out earlier.

71. The Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer without adding anything thereto.

The Tribunal by the impugned order held that the stand of the authorities was unsustainable as even assuming that all the allegations of the Assessing Officer with respect to the profit motive in the activities of the assessee are correct, the same were carried out with the larger and predominant objective of general public utility. Relying upon the CBDT circular the Tribunal observed that it is only when the Assessing Officer finds that "the income is from any other business which is not incidental to the attainment of the objectives of the trust or institution", that such an income will "not be exempt from tax". The Tribunal noted that there is no finding to that effect by any of the authorities and that it is not even the case of the revenue that the activities of the trusts do not serve the objects of the general public utility. The Tribunal held that the activities of the trust fall within the category "*objects of general public utility*". It was also held that separate books of accounts for the business activities were maintained. This was not challenged before us. It is not necessary in these appeals to decide the effect of the amendment to Section 2(15) introduced with effect from 01.04.2016.

The Tribunal then dealt with the main contention of the revenue that the assessee was involved in the

activities of developing and selling the residential and commercial units with the sole aim of making profits. The conclusions of the Tribunal in this regard are as follows; the profit on sale does not necessarily imply profit motive in the activities of the assessee. What is important is the motive or the predominant object of the activities. The bids are invited by the assessee who allots the plots to the highest bidders. This, however, is because it is not desirable for the State to subsidise its businesses. A bidding process ensures transparency in the functioning of the trusts and therefore, it does not make the bidding process a commercial venture. Further the bids are invited only in the context of commercial units. Under the Rules there is a formula on the basis of which the price is worked out. The revenue did not deny the same but alleged that the profit motive is embedded in this formula as shown by the adjustments for various charges.

72. The Tribunal rightly rejected the contention that to fall within the ambit of the words "*advancement of any other object of general public utility*" the trust must necessarily be involved only in implementing poverty alleviation programs or doing other acts of charity. It is sufficient if it does precisely what the last category in Section 2(15) states namely being involved in activities for the advancement of an object of general public utility. They include a proper systematic development of certain areas. These activities are by virtue of the PTI Act undertaken by this assessee.

73. The Tribunal also rightly held that an object of general public utility does not necessarily require the

activities to be funded or subsidized by the State. So long as the objects fall within the ambit of the words "object of general public utility", it is sufficient. The achievements of those objects do not have to be as a result of State funding or State subsidy. The Tribunal accordingly rightly held that the authorities were not justified in denying the benefit of section 11 and holding that the assessee was not covered by the words "*advancement of any other object of general public utility*" in Section 2(15). The Tribunal, therefore, rightly directed the Assessing Officer to delete disallowance of exemption.

74. It cannot possibly be suggested that the Government of Punjab formed the trusts under the Punjab Town Improvement Act, 1922 because it wanted to carry on the business as colonizers or developers under the mask of the category "*objects of general public utility*".

75. Section 28(2)(iii) of the Punjab Town Improvement Act, 1922 permits a scheme under this Act to provide inter-alia for the disposal of the land vested in or acquired by the trust including by lease, sale and exchange thereof. This, however, is not the predominant activity or responsibility of the trust. Nor for this assessee is making profits from this activity its predominant motive.

76. The power of the assessee to dispose of land conferred by Section 28(2)(iii) is not an absolute or independent power. It is conferred upon the assessee in the discharge of its statutory duties imposed on it by the PTI Act of framing schemes. Sub section (1) of Section 28 entitles the assessee to combine the various schemes referred to in Chapter-IV. Sub section (2) stipulates that the scheme

under the Act may provide for a variety of things including the disposal of land belonging to the assessee. This power is, therefore, in furtherance of, connected with and in relation to a scheme in Chapter-IV. It is not an absolute power independent of and unconnected with the assessee's statutory functions under the PTI Act.

77. The predominant activity of and the purpose for the establishment of the assessee is summed up in two words "town improvement" in the title "Punjab Town Improvement Act, 1922". The preamble is titled "An Act for the improvement of Certain Areas". The preamble states "whereas it is expedient to make provision for the improvement and expansion of towns in Punjab". The Act in general and Chapter-IV thereof in particular indicates the reason for and the basis of the establishment of the trust. Almost every section in the Chapter indicates clearly that the trust is established for the purpose of "advancement of the object of general public utility". This is the predominant purpose of the trust.

78. The language of the provisions of the Act are self explanatory in this regard. The trust must deal with the buildings unfit for human habitation, the danger caused or likely to be caused to the health of the inhabitants of the area on account of the congested conditions of streets or buildings or want of light, air, ventilation or proper conveniences in an area and sanitary defects. The trust is required to frame the street schemes to lay out new streets, thoroughfares and open spaces or alter existing streets whenever it appears to the trust that it is necessary to do so for the purpose of providing building sites or remedying

defective ventilation or creating new or improving existing means of communication and facilities for traffic.

79. The trust must also prepare development schemes. This duty contained in Section 24 is not akin to that of a private developer or a colonizer as wrongly suggested by the Assessing Officer and confirmed by the CIT(A). The development scheme under section 24 is prepared for the purpose of development of a locality. Sub section (2) of Section 24 provides that the trust may if it is of the opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto within the local area of such trust prepare "an expansion scheme". The development scheme, therefore, is for the public purpose of development of any locality and an expansion scheme is also prepared when it is expedient and for the public advantage as opposed to a mere personal advantage as in the case of private developers or the colonizers. The two cannot possibly be compared. These schemes do not contemplate mere development of the plots and the construction of the premises for sale. The Trust must under the Act adopt a holistic approach for the betterment and advantage of the entire area within its jurisdiction.

80. Section 25 which provides for a housing accommodation scheme to be framed is similar. The trust is required to frame such a scheme if it is of the opinion that it is expedient and for the public advantage to provide housing accommodation for any class of inhabitants within its local area. The trust is, therefore, to be motivated not by personal but by public benefit. Such activities clearly fall

within the last category of cases in the proviso to Section 2(15) as it stood at the relevant time, namely, "*advancement of an object of general public utility*".

81. It can hardly be suggested that the Government of Punjab established the assessee's trust and conferred upon it public responsibilities and duties of the nature specified in the PTI Act as a camouflage for its commercial, trade and business ventures. The creation and incorporation of the trust under section 3 is for a public purpose. We have no doubt whatsoever that the activities of the trust fall within the meaning of the words "charitable purpose" in Section 2(15).

82. Whether the mandate of the Act is followed by such a trust is a different matter. The facts in that regard are relevant in examining whether the activities of the trust of a given year entitled it to the benefit of the Income Tax Act. Mere profit making on account of certain incidental or ancillary activities of the trust do not disentitle it to the exemptions. The Trust constituted under the PTI Act is likely to make profit on account of its commercial or business activities such as when it acts pursuant to the power under section 28(2)(iii) by disposing off its lands. That, however, does not take it out of the definition of 'charitable purpose' in Section 2(15). As we held earlier, trade, commerce and business in Section 2(15) must be such as to involve an element of profit. Profit, however, is not the predominant motive of such trusts. In our view considering the nature of the Act, selling of plots and premises by the trust is only incidental and ancillary to its main purpose which at the cost of repetition is "town improvement" in

almost every respect. Even where the plots are developed and premises are constructed and sold at the market price, the activity is not commercial or business venture *per se* but one necessitated on account of the implementation of the provisions of the trust through statutory schemes. The main purpose of such schemes is driven by public requirements and not as a commercial venture *per se*. They are incidental to the main object of the trust.

83. In the present case, the Assessing Officer has not indicated any facts which indicate that the assessee deviated from this principle. He has merely referred the extent of profit making activities without correlating the same to the other activities of the trust. In our view, therefore, the order of the Tribunal must be upheld.

84. Mr. Goel relied upon the judgment of the High Court of Jammu & Kashmir in *Jammu Development Authority v. Union of India and another* ITA No. 164 of 2012. The Division Bench dismissed the appeal with the following order:-

"1. The instant appeal under section 260-A of the Income Tax Act, 1961 (for brevity, the Act) is directed against order dated 14.06.2012 passed by the Income Tax Appellate Tribunal, Amritsar, upholding the order withdrawing the status of Charitable Institution given to the appellant-assessee under Section 12AA(1)(b)(i) of the Act. The Tribunal has reached a categorical conclusion that the assessee-Jammu Development Authority cannot be regarded as an institution or trust which may have been set up to achieve the objects enumerated under Section 2 of the Act particularly in view of the addition of first and second proviso made by the Finance Act, 2008 w.e.f. 01.04.2009 to Section 12AA of the Act. There are findings of fact that the assessee-appellant has not been acting to advance any of the object concerning general public utility. Even otherwise the proviso which has been added by the Finance Act, 2008 w.e.f. 01.04.2009 stipulates that the advancement of any other object of the general public utility shall not be a charitable purpose, if it involves 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 or a cess or fee of any other consideration.

2. We find that no question of law much less a substantial question of law would emerge from the impugned order of the Income Tax Appellate Tribunal warranting admission of the appeal. The appeal is wholly without merit and is thus liable to be dismissed.

3. For the reasons aforementioned, this appeal fails and same is dismissed alongwith connected application(s)."

The judgment is of no assistance to the appellant for the Division Bench observed that there were findings of fact that the assessee/appellant had in that case not been acting to advance any object concerning general public utility. The judgment was, therefore, based on the facts of this case. It is obviously for this reason that the Division Bench held that no question of law much less a substantial question of law emerged from the order of the Tribunal. It is difficult to understand how this order can possibly be relied upon as laying down any law when Court itself records that the order impugned therein is based on the facts of that case. The dismissal of the Special Leave Petition filed against that order is, therefore, of no assistance to the Revenue either.

85. Mr. Goel then relied upon section 10(20A) of the Income Tax Act, 1961 which was omitted by the Finance Act, 2002 with effect from 01.04.2003. Prior to its omission Section 10(20A) of the Act read as under:-

"Incomes not included in total income.

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

(20A) : any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, town and villages, or for both,"

86. The assessee, namely, Moga Improvement Trust is undoubtedly an authority constituted in India. It is also constituted by or under a law, namely, the Punjab Town Improvement Act, 1922. Further, it is engaged for the purpose of dealing with and satisfying the need for housing accommodation. It is also constituted for the purpose of planning, development of improvement of cities, towns and villages or for both as is evident from Sections 22 to 28 of the PTI Act quoted above. The appellants, would, therefore, undoubtedly have been entitled to the benefit of Section 10(20A). The assessee would not have been entitled to the benefit of Section 10(20A) upon its omission by the Finance Act, 2002 with effect from 01.04.2003. Section 10(20A) of the Act did not contain any other requirement. It was wider than Section 2(15).

However, Section 2(15) and the corresponding sections including Sections 11, 12, 12A and 12AA are independent of Section 10(20A) of the Act. Upon the omission of Section 10(20A), the provisions of the other sections were not affected. They remained intact. An assessee could have been entitled to the provisions of Section 10(20A) and the other provisions simultaneously. The omission of one, however, does not affect the validity or the existence of the others. The two provisions are distinct and independent of each other. Thus the omission of Section 10(20A) did not affect the rights of the parties claiming the benefit of Sections 2(15), 11, 12, 12A and 12AA of the Act.

87. In the circumstances, the questions of law raised in ITA No.62 of 2015 are answered in favour of the Revenue and against the Assessee and the question of law raised in ITA No. 147 of 2016 is answered in favour of the assessee.

88. Both the appeal are accordingly dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

23.12.2016
Ravinder/Parkash

(DEEPAK SIBAL)
JUDGE

NOTE:

Whether speaking/non-speaking: Speaking✓

Whether reportable: Yes✓

सत्यमेव जयते