

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 884/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

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| Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H', Ground<br>Floor, Badra(East), Mumbai-<br>400051 | <b>बनाम/</b><br>v. | The Director of Income-<br>tax(Exemptions), Ward<br>1(1), Piramal Chambers,<br>6 <sup>th</sup> Floor, Lalbaug, Parel,<br>Mumbai-400 012 |
| स्थायी लेखा सं./PAN : AAACB2358R  |                    |   |
| (अपीलार्थी / <b>Appellant</b> )   | ..                 | (प्रत्यर्थी / <b>Respondent</b> )   |

आयकर अपील सं./I.T.A. No. 2789/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2005-06)

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| Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H', Ground<br>Floor, Badra(East), Mumbai-<br>400051 | <b>बनाम/</b><br>v. | The Additional<br>Commissioner of Income-<br>tax(Exemptions), Range-1<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 |
| स्थायी लेखा सं./PAN : AAACB2358R  |                    |   |
| (अपीलार्थी / <b>Appellant</b> )   | ..                 | (प्रत्यर्थी / <b>Respondent</b> )   |

आयकर अपील सं./I.T.A. No. 4437/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2005-06)

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| The Income Tax Officer<br>(Exemptions), 1(1)<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 | <b>बनाम/</b><br>v. | Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H',<br>Ground Floor,<br>Badra(East), Mumbai-<br>400051 |
| स्थायी लेखा सं./PAN : AAACB2358R   |                    |  |
| (अपीलार्थी / <b>Appellant</b> )  | ..                 | (प्रत्यर्थी / <b>Respondent</b> )  |

आयकर अपील सं./I.T.A. No. 2790/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2006-07)

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| Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H', Ground<br>Floor, Badra(East), Mumbai-<br>400051 | <b>बनाम/<br/>v.</b> | The Additional<br>Commissioner of Income-<br>tax(Exemptions), Range-1<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 |
| स्थायी लेखा सं./PAN : AAACB2358R  |                     |   |
| (अपीलार्थी / <b>Appellant</b> )   | ..                  | (प्रत्यर्थी / <b>Respondent</b> )   |

आयकर अपील सं./I.T.A. No. 4852/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2007-08)

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| The Income Tax Officer<br>(Exemptions), 1(1)<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 | <b>बनाम/<br/>v.</b> | Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H',<br>Ground Floor,<br>Badra(East), Mumbai-<br>400051 |
| स्थायी लेखा सं./PAN : AAACB2358R   |                     |  |
| (अपीलार्थी / <b>Appellant</b> )  | ..                  | (प्रत्यर्थी / <b>Respondent</b> )  |

आयकर अपील सं./I.T.A. No. 2791/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2007-08)

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| Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H', Ground<br>Floor, Badra(East), Mumbai-<br>400051 | <b>बनाम/<br/>v.</b> | The Income Tax Officer<br>(Exemptions), 1(1)<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 |
| स्थायी लेखा सं./PAN : AAACB2358R  |                     |  |
| (अपीलार्थी / <b>Appellant</b> )   | ..                  | (प्रत्यर्थी / <b>Respondent</b> )  |

आयकर अपील सं./I.T.A. No. 6591/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2008-09)

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| Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H', Ground<br>Floor, Badra(East), Mumbai-<br>400051 | <b>बनाम/<br/>v.</b> | The Income Tax Officer<br>(Exemptions), 1(1)<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 |
| स्थायी लेखा सं./PAN : AAACB2358R  |                     |  |
| (अपीलार्थी / <b>Appellant</b> )   | ..                  | (प्रत्यर्थी / <b>Respondent</b> )  |

3      **ITA 884/M/2012 , 2789/M/2011  
4437/M/2011, 2790/M/2011  
4852/M/2011, 2791/M/2011  
6591/M/2011, 3004/M/2013  
3127/M/2015**

आयकर अपील सं./I.T.A. No. 3004/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

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| Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H', Ground<br>Floor, Badra(East), Mumbai-<br>400051 | <b>बनाम/</b><br>v. | The Income Tax Officer<br>(Exemptions), 1(1)<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 |
| स्थायी लेखा सं./PAN : AAACB2358R  |                    |  |
| (अपीलार्थी / <b>Appellant</b> )   | ..                 | (प्रत्यर्थी / <b>Respondent</b> )  |

आयकर अपील सं./I.T.A. No. 3127/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2010-11)

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| Bharat Diamond Bourse<br>G Block, Bandra Kurla<br>Complex, Tower 'H', Ground<br>Floor, Badra(East), Mumbai-<br>400051 | <b>बनाम/</b><br>v. | The Income Tax Officer<br>(Exemptions), 1(1)<br>5 <sup>th</sup> Floor,, Piramal<br>Chambers, Lalbaug, Parel,<br>Mumbai-400 012 |
| स्थायी लेखा सं./PAN : AAACB2358R  |                    |  |
| (अपीलार्थी / <b>Appellant</b> )   | ..                 | (प्रत्यर्थी / <b>Respondent</b> )  |

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|---------------|--|
| Assessee by : | Sh. R K Sinha, AR                          |
| Revenue by :  | Shri N P Singh, CIT- DR and<br>Suman Kumar |
|               |  |

सुनवाई की तारीख /**Date of Hearing** : 29-03-2017

घोषणा की तारीख /**Date of Pronouncement** : 30-03-2017

आदेश / ORDER

### **PER Bench**

These are bunch of nine appeals which are filed by the assessee as well Revenue for different assessment years . These appeals were heard together and are disposed of by this common order.

2. First we shall take up appeal bearing ITA no. 884/Mum/2012 which is filed by the assessee for assessment year 2009-10 challenging order dated

27.12.2011 passed by learned Director of Income-tax (Exemption) (hereinafter called 'DIT(E)') u/s 12AA(3) of Income-tax Act, 1961 cancelling Registration of the assessee and holding that the assessee is a non charitable trust/institution. The DIT(E) cancelled the registration of the assessee as charitable trust/institution keeping in view proviso to Section 2(15) of 1961 Act which was being added thereto w.e.f. 01.04.2009 by Finance Act, 2008 and Finance Act, 2010 , which reads as under :

“Section 2(15)

[ (15) “charitable purpose” includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

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

**[Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;]”

The learned DIT(E) issued SCN dated 31.10.2011 asking assessee to explain as to why its registration should not be withdrawn by invoking provisions of Section 12AA(3) of 1961 Act on the grounds that the activities of the assessee were in the nature of trade , commerce , business during the relevant previous year to impugned assessment year 2009-10. The assessee stated before learned DIT(E) in reply to SCN that it's main objects are :

- (a) To establish a Bourse for the promotion of exports of Gem & Jewellery from India and to provide for this purpose infrastructure

and other facilities in India for Indian and overseas buyers and sellers of Gem and Jewellery.

- (b) To establish and promote effective liaison between the Gem and Jewellery trade and industry in India and abroad.
- (c) To promote , advance , protect and develop trade, commerce and industry in India relating to Gem & Jewellery including cutting, polishing and processing.
- (d) To develop India as modern and sophisticated Gem & Jewellery market in the world by establishing and maintain an international trading centre in India all those engaged as manufacturers , traders, exporters,importers, brokers and commission agents in the Gem & Jewellery trade and Industry.

The assessee also submitted that the major activity carried on by the assessee is to provide infrastructure facilities including handling, storage and clearance of import and export cargo of diamonds, precious , semi-precious stones etc. . The assessee submitted that it entered into an agreement with MMTC by which it was agreed by MMTC to function as custodian at the office of the assessee where infrastructure facilities including handling, storage and transportation of import and export cargo of Diamonds, Precious and Semi-precious stones are provided to Gem and Jewellery traders and members of the assessee. The services rendered by the assessee , thus, as contended by the assessee were as under:

- (1) Provision of rent free accommodation for housing and customs clearance centre as well as the custodian's office.
- (2) Maintenance of strong room at the DPCCC as well as at the Sahar International Air-cargo complex.
- (3) Provision of security and to and fro transportation of export and import parcels between DPCCC and Sahar International Air Cargo complex on every working day.
- (4) Depositing of Airways Bills with respective Airline Offices.
- (5) Collection and distribution of EP copies of shipping bills.

(6) Providing Export/Import statistics on website of the assessee on regular basis.

It was stated that the above arrangement was on cost recovery basis. These services were rendered by assessee to gem and jewellery traders only. Thus, it was contended that the basic motive of the assessee is to provide services to the members and not to make profits or carry out any commercial activity with profit motive. The assessee also contended that the activities of the assessee are not non genuine and also there is no allegation that the activities of the assessee are not carried out in accordance with the objects of the assessee and prayed that the registration granted u/s 12A of 1961 Act be not withdrawn or cancelled.

The learned DIT(E) invoked amended provisions of Section 2(15) of 1961 Act which were amended w.e.f. 01-04-2009 by Finance Act , 2008 and Finance Act, 2010 . The ld. DIT(E) observed that assessee has shown income of Rs. 4,35,12,773/- on account of reimbursement of handling, carting and custom expenses as recovered from its members , against which payment of Rs. 69,87,555/- was made to MMTC which act as custodian and to the custom authorities of Rs. 1,74,13,599/-. It was observed by ld. DIT(E) that the assessee makes payment to MMTC which has acted as clearing and forwarding agent on behalf of members. It was held by ld. DIT(E) that the activities of the assessee are in the nature of business which is being carried on by the assessee and there is no concept of mutuality as contended by assessee. Thus, ld DIT(E) held that activities of the assessee are in the nature of business and receipts of the assessee exceeded the monetary limit specified by second proviso to Section 2(15) of 1961 Act which has come into effect from assessment year 2009-10. Thus, the assessee has lost its charitable character. Thus, the trust becomes non genuine for the purposes of Section

11 of 1961 Act as it loses its charitable status and hence provisions of Section 12AA(3) of 1961 Act gets attracted, was the observation of ld. DIT(E). The learned DIT(E) thus cancelled/withdrew the registration as allowed to the assessee in earlier years u/s 12AA of 1961 Act w.e.f. assessment year 2009-10 and the assessee was held to be non-charitable trust/institution by ld. DIT(E), vide orders dated 27.12.2011 passed u/s 12AA(3) of 1961 Act.

3. Aggrieved by the orders dated 27.12.2011 passed by learned DIT(E) u/s 12AA(3) of 1961 Act cancelling / withdrawing the registration as allowed to the assessee in earlier years u/s 12AA of 1961 Act w.e.f. assessment year 2009-10, the assessee filed first appeal before the tribunal.

4. The assessee has reiterated its submissions as were made before learned DIT(E) which are not repeated for sake of brevity. The assessee also contended that the activities of the assessee were held to be charitable by Hon'ble Apex Court in the assessee's own case in DIT v. Bharat Diamond Bourse (2003) 259 ITR 280(SC) vide orders dated 16.12.2002. wherein Lordships held as under:

*"Section 2(15) of the Act defines "Charitable purpose" as including relief of the poor, education, medical relief, and the advancement of any other object of general public utility.*

*In order to decide the first question, the circumstances under which the appellant-assessee came into existence are required to be noticed. The diamond exporters in India had formed a Diamond Exporters Association for facilitating export of diamonds. There was need for setting up a diamond bourse in Bombay with customs clearance facilities which would facilitate the export of diamonds and make the trade more competitive in the international market. In 1984 the Central Government accepted the proposal made by the said association to set up a diamond bourse in Bombay. The Minerals and Metals Trading Corporation of India Ltd. (a Central Government Undertaking) agreed to co-ordinate the*

*administrative steps and the bourse was to be named as suggested by the Ministry of Commerce as 'Bharat Diamond Bourse'. A decision to set up the same was taken up by the Government of India in the Ministries of Finance and Commerce with the object of encouraging and increasing the export of polished diamonds from India.*

*The city of Bombay had been traditionally the headquarters of diamond trade and exports, though the main business centre was located in a congested locality. The International Airport in Bombay is situated in Sahar, Andheri, in North Bombay. The long distance between the centre of activity of the diamond trade and the international airport made it highly inconvenient and cumbersome for operations of the diamonds export trade from the point of view of transportation, security and customs clearance. It was, therefore, decided with the concurrence of the Central Government to have a custom clearance facility opened at Diamond Plaza near Opera House as a customs area for the purpose of storage and clearance of diamonds. There was also the question of security since diamonds and gems imported and exported in small packets in large quantities had to be transported over long distances.*

*The Registrar of Companies was moved for a certificate of incorporation of the assessee-company which was done on 18th August, 1984. On 22nd November, 1984 the Collector of Customs, Bombay issued a notice under section 8 of the Customs Act approving the MMTC situated at Diamond Plaza Building near Opera House as a 'Customs Area' for the purposes of storage and clearance of diamonds, gems etc. On the same day, another notification was issued under section 45(1) of the Customs Act approving MMTC as the Custodian of the imported cargo of such goods until their clearance in accordance with the provisions of the Customs Act. It was also notified that MMTC would be the custodian with regard to the export cargo until they are trans-shipped and handed over to the airlines at Sahar International Airport, Bombay. When MMTC was appointed as the custodian, it had incurred expenditure on behalf of Bharat Diamond Bourse to the extent of about Rs. 81 lakhs for setting up of the bourse. On 31st August, 1984 the Managing Committee of the assessee resolved to treat the expenses incurred by MMTC as a loan which was to be returned with interest @ 6% per annum. MMTC had taken certain premises on lease in the Diamond Plaza which was sub-leased to the assessee on the same terms and conditions except for the deposit. The principal object of establishment of the bourse was to facilitate the diamond trade so that maximum revenue could be earned by way of foreign exchange and also to make the diamond trade more competitive at the international level.*

*On 15th December, 1987 an agreement was arrived at between MMTC and the assessee under which it was agreed that, from 1st April, 1988, service charges would be collected by the assessee and not by MMTC, and from that date the bourse would meet its own obligations towards its staff, their expenses etc. and so on. Under the said agreement the operations of the bourse were taken over from the MMTC.*

*The setting up of the Diamond bourse had a great impact on the diamond export trade. The total value of parcels cleared through the bourse increased from Rs. 2,231 crores in 1985-86 to Rs. 11,261 crores in the year 1991-92. These figures indicate that the export turn over of diamonds gradually increased during the relevant period and consequently the country had benefited by increased earning of foreign exchange.*

*On the basis of these facts, the Revenue Authority granted registration to the appellant as an institution established for charitable purposes within the meaning of section 2(15) of the Act. Though the assessee does earn certain income by reason of hiring of locker facilities as incidental to the main custom clearance facilities made available to members as well as non-members, and debits the expenses incurred in respect of customs department, transport charges, security charges and rent for the premises, these earnings must be treated as ancillary to the dominant purpose for which the Diamond Bourse were established.*

*The revenue authorities have concurrently held that, taking an overall view, the dominant objects of the assessee are charitable as the dominant object is one of general public utility and, therefore, the assessee is entitled to be registered as an institution established for charitable purpose within the meaning of section 2(15) of the Act.*

*The learned senior counsel for the revenue, however, relied on the judgments of this court in the case of Delhi Stock Exchange Association Ltd. v. CIT [1997] 225 ITR 235 and the judgment of the Patna High Court in the case of Bihar State Forest Development Corpn. v. CIT [1997] 224 ITR 757 to content that the activities of the assessee bourse fall outside the definition of 'charitable purpose', even though the bourse might have been registered as an institution established for charitable purpose within the meaning of section 2(15) of the Act.*

*The decision of the Constitutional Bench of this Court in Addl. CIT v. Surat Art Silk Cloth Mfrs. Association [1980] 2 SCC 31 really clinches the issue. The assessee in Surat Art Silk Cloth Mfrs. Association's case (supra) was an association established to promote commerce and trade in Art Silk Yarn, Raw Silk, Cotton Yarn, Art Silk Cloth, Silk Cloth and Cotton Cloth. Its objects, as evidenced from the*

*memorandum of association, included, inter alia, carrying on business in Art Silk Yarn, Raw Silk, Cotton Yarn, Art Silk Cloth, Silk Cloth, and Cotton Cloth belonging to and on behalf of its members as well as buying and selling and dealing in all kinds of cloth and yarn belonging to and on behalf of its members. The Constitutional Bench of this Court held that, if there are several objects of the institution, some of which are charitable and some non-charitable, and the trustees or the managers in their discretion may apply the income of the institution of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income would be exempted from tax. Where the main or primary objects are distributive, each and every one of the object must be charitable in order that the trust be held as a valid charity. But, if the primary or dominant purpose of the institution is charitable and another which, by itself, may not be charitable, but is merely ancillary or incidental to the primary or dominant object, it would not prevent the institution from validly being recognized as a charity. The test to be applied is, whether the object which is said to be non-charitable is the main or primary object of the trust or institution or it is ancillary or incidental to the dominant object which is charitable. Reiterating its earlier view in CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722, the Supreme Court said in Surat Art Silk Cloth Mfrs. Association's case (supra) that if the primary purpose is advancement of objects for general public utility, the institution would remain charitable, even if an incidental non-charitable object for achieving that purpose was contemplated. In the case of Andhra Chamber of Commerce (supra) it was held that a Chamber of Commerce did not cease to be charitable merely because the members of the chamber were incidentally benefited in carrying out its main charitable purpose. This Court approvingly followed the ratio in the case of Commissioner of Inland Revenue v. Yorkshire Agricultural Society [1928] 1 KB 611 and Institution of Civil Engineers v. Commissioner of Civil Revenue [1932] 1 KB 149 for reaching the conclusion that merely because some facilities incidentally arose to the members of a society or institution in the course of carrying out its main charitable purpose, that by itself would not prevent the institution from being a charity.*

*All subsequent judgments have noticed and followed the judgment of the Constitutional Bench in Surat Art Silk Cloth Mfrs. Association's case (supra) and the dominant purpose test evolved therein and applied them to the facts before them. Applying this dominant purpose test to the objects of the respondent-assessee it appears to us that there is no escape from the conclusion that it is validly recognized as an institution established for charitable purpose. The assessee's predominant objects are :*

- "(i) To establish common facilities required to promote exports of diamonds from India and to provide for this purpose trading halls and other utilities at a central place for Indian Exporters and Overseas buyer to carry on trade and commerce in diamonds with speed and in secure conditions.*
- (ii) To establish and promote effective liaison between diamond trade and industry in India and abroad with a view to promoting their sales from India in International market.*
- (iii) To promote, advance, protect and develop trade, commerce and industry in India relating to exports and imports of diamonds and*
- (iv) To develop India as Modern and sophisticated diamond market by establishing and maintaining an international trading centre in India for all those engaged as manufacturers, traders, exporters and importers, brokers/commission agents of diamonds."*

*These being the predominant objectives, we agree with the view taken by the Tribunal as well as the High Court that the assessee was rightly registered under section 11 by treating it as an institution established for charitable purpose within the meaning of section 2(15) of the Act."*

It was argued that amendments have been brought in by statute to Section 2(15) of 1961 Act wherein proviso 1 and 2 are inserted by Finance Act, 2008 and Finance Act, 2010 w.e.f. 01-04-2009 , which was further amended by Finance Act, 2011 w.e.f. 01-04-2012 and Finance Act, 2015 w.e.f. 01-04-2016. The learned counsel for the assessee submitted that since last three preceding years prior to impugned assessment year, the activity of the assessee was not considered to be business by the Revenue in scrutiny assessment framed u/s 143(3) of 1961 Act, for assessment years 2006-07 , 2007-08 and 2008-09. It was contended that exemption u/s 11(1)(a) of 1961 Act was allowed to the assessee by AO. The assessment order dated 27-12-2010 for assessment year 2008-09 passed by AO u/s 143(3)(ii) of 1961 Act was placed on record by the assessee which is placed in file , to substantiate that the assessee was treated as charitable institution by Revenue. It was

submitted that learned DIT(E) has held that the assessee is engaged in business and proviso to Section 2(15) of 1961 Act inserted w.e.f. 01-04-2009 are clearly hit and hence registration granted to the assessee u/s 12AA of 1961 Act was cancelled / withdrawn and the assessee was held to be non charitable trust/institution. The assessee also placed reliance on CBDT circular no. 21 dated 27-05-2016 which stipulates that in case of proviso to Section 2(15) of 1961 Act being hit, the registration already granted u/s 12AA of 1961 Act need not be withdrawn/cancelled by DIT(E) but at the assessment stage exemption as granted u/s 11 and 12 of 1961 Act be not allowed and such income from 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, irrespective of the nature of use or application, or retention, of the income from such activity rendered by such trust/institution be held to be business income and brought to tax under normal provisions of the 1961 Act. The said circular No. 21 dated 27-05-2016 issued by CBDT is reproduced hereunder:

**“CIRCULAR NO.21/2016 [F.NO.197/17/2016-ITA-I]**

**SECTION 12AA OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - REGISTRATION PROCEDURE - CLARIFICATION ON CANCELLATION OF REGISTRATION UNDER SECTION 12AA IN CERTAIN CIRCUMSTANCES**

**CIRCULAR NO.21/2016 [F.NO.197/17/2016-ITA-I], DATED 27-5-2016**

*Sections 11 and 12 of the Income-tax Act, 1961 ('Act') exempt income of charitable trusts or institutions, if such income is applied for charitable purpose and such institution is registered under section 12AA of the Act.*

*2. Section 2(15) of the Act provides definition of "charitable purpose". It includes "advancement of any other object of general public utility" provided it does not involve carrying on of any activity in the nature of trade, commerce or business etc. for financial consideration. The 2nd proviso to said section, introduced w.e.f. 1-4-2009 vide Finance Act 2010,*

*provides that in case where the activities of any trust or institution is of the nature of advancement of any other object of general public utility and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from such commercial activities does not exceed Rs. 25,00,000/- in the previous year, the purpose of such trust/institution shall be deemed as "charitable" despite it deriving consideration from such activities. However, if the aggregate value of these receipts exceeds the specified cut-off, the activity would no longer be considered as charitable and the income of the trust/institution would not be eligible for tax exemption in that year. Thus an entity, pursuing advancement of object of general public utility, could be treated as a charitable institution in one year and not a charitable institution in the other year depending on the aggregate value of receipts from commercial activities. The position remains similar when the first and second provisos of section 2(15) get substituted by the new proviso introduced w.e.f. 1-4-2016 vide Finance Act, 2015, changing the cut-off benchmark as 20% of the total receipts instead of the fixed limit of Rs.25,00,000/- as it existed earlier.*

**3.** *The temporary excess of receipts beyond the specified cut-off in one year may not necessarily be the outcome of alteration in the very nature of the activities of the trust or institution requiring cancellation of registration already granted to the trust or institution. Hence, section 13 of the Act has been amended vide Finance Act, 2012 by inserting a new sub-section (8) therein to provide that such organization would not get benefit of tax exemption in the particular year in which its receipts from commercial activities exceed the threshold whether or not the registration granted is cancelled. This amendment has taken effect retrospectively from 1st April, 2009 and accordingly applies in relation to the assessment year 2009-10 onwards.*

**4.** *In view of the aforesaid position, it is clarified that it shall not be mandatory to cancel the registration already granted u/s 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act is exceeded in a particular year without there being any change in the nature of activities of the institution. If in any particular year, the specified cut-off is exceeded, the tax exemption would be denied to the institution in that year and cancellation of registration would not be mandatory unless such cancellation becomes necessary on the ground(s) prescribed under the Act.*

*5. With the introduction of Chapter XII-EB in the Act vide Finance Act, 2016, prescribing special provisions relating to tax on accreted income of certain trusts and institutions, cancellation of registration granted u/s 12AA may lead to a charitable institution getting hit by sub-section (3) of section 115TD and becoming liable to tax on accreted income. The cancellation of registration without justifiable reasons may, therefore, cause additional hardship to an assessee institution due to attraction of tax-liability on accreted income. The field authorities are, therefore, advised not to cancel the registration of a charitable institution granted u/s 12AA just because the proviso to section 2(15) comes into play. The process for cancellation of registration is to be initiated strictly in accordance with section 12AA(3) and 12AA(4) after carefully examining the applicability of these provisions.*

*6. The above may be brought to the notice of all concerned”.*

Thus, it was submitted that in view of CBDT circular no. 21 dated 27-05-2016, the registration of the assessee u/s 12AA of 1961 Act need not be cancelled , while if the assesse's activities are hit by amended provisions of Section 2(15) of 1961 Act, the tax exemption could be denied to the assessee to the extent activities are hit by amended provisions. The learned counsel for the assessee relied upon the decision of Hon'ble Bombay High Court in the case of DIT(E) v. Khar Gymkhana (2016) 137 DTR 249(Bom.).

5. The learned CIT-DR on the other hand relied upon decision of Amritsar-tribunal in the case of Jammu Development Authority v. CIT (2012) 23 taxmann.com 343(Asr.) to contend that learned DIT(E) has rightly cancelled the registration of the assessee u/s 12AA of 1961 Act. It was submitted that Section 2(15) of 1961 Act was amended and proviso were added by Finance Act, 2008 and Finance Act, 2010 w.e.f. 01-04-2009. The assessee's activity are in the nature of trade, business and commerce and/or services in relation to trade, commerce and business carried out by gem , diamond and jewellery

traders and is clearly hit by proviso to Section 2(15) of 1961 Act. It was submitted that activity of the assessee were held to be charitable by Hon'ble Supreme Court in assessee's own case in DIT v. Bharat Diamond Bourse (2003) 259 ITR 280(SC) vide orders dated 16.12.2002 but the said judgment of Hon'ble Apex Court is dated 16.12.2002 which is much prior to amendment brought in by Finance Act, 2008 and Finance Act, 2010 w.e.f. 01-04-2009 and hence ratio of decision of Hon'ble Supreme Court in the aforesaid decision is not applicable keeping in view amended provisions of Section 2(15) of 1961 Act. The assessee did not brought to the notice of learned DIT(E) the aforesaid judgment of Hon'ble Apex Court during proceedings before learned DIT(E) cancellation of registration of the assessee u/s 12AA of 1961 Act ,and hence learned DIT(E) had no occasion to deal with the said judgment of Hon'ble Apex Court. It was submitted that CBDT circular no 21 dated 27-05-2016 was brought in the year 2016 while the order passed by learned DIT(E) is dated 27-12-2011 which is much prior to CBDT circular and it was submitted that in any case, CBDT circular is prospective in nature and there is no occasion to apply the same retrospectively . It was submitted that there is clear finding by learned DIT(E) that the assessee's activity are in the nature of trade, business and commerce and/or services in relation to trade, commerce and business carried out by gem , diamond and jewellery traders and is clearly hit by proviso to Section 2(15) of 1961 Act. It is also submitted that it is not a marginal case where the turnover is close to the cut-off turnover specified in Section 2(15) of 1961 Act rather the turnover of the assessee is significantly higher than minimum turnover stipulated by Section 2(15) of 1961 Act and hence no purpose will be served by retaining the registration by the assessee u/s 12AA of 1961 Act.

6. The learned counsel for the assessee in rejoinder submitted that Hon'ble Bombay High Court in the case of DIT(E) v. Maharashtra Housing and Area

Development Authority (2017) 392 ITR 240(Bom.) has duly considered the decision of Amritsar-tribunal in the case of Jammu Development Authority(supra) and then held that in the absence of any activity demonstrating that the assessee was not a genuine trust and no material indicating that assessee or its affairs are not carried out in accordance with the objects of the trust, registration cannot be cancelled. It was also pointed out by the learned counsel for the assessee that both the decisions of Hon'ble Bombay High Court in the case of Khar Gymkhana(supra) and MHADA(supra) are relating to assessment year 2009-10 and also in the instant appeal the assessment year under consideration by tribunal is assessment year 2009-10.

7. We have considered rival contentions and perused the material on record including case laws relied upon by rival parties. The main objects of the assessee as contended by the assessee are as under:

- (e) To establish a Bourse for the promotion of exports of Gem & Jewellery from India and to provide for this purpose infrastructure and other facilities in India for Indian and overseas buyers and sellers of Gem and Jewellery.
- (f) To establish and promote effective liaison between the Gem and Jewellery trade and industry in India and abroad.
- (g) To promote , advance , protect and develop trade, commerce and industry in India relating to Gem & Jewellery including cutting, polishing and processing.
- (h) To develop India as modern and sophisticated Gem & Jewellery market in the world by establishing and maintain an international trading centre in India all those engaged as manufacturers , traders, exporters,importers, brokers and commission agents in the Gem & Jewellery trade and Industry.

The assessee had also submitted that the major activity carried on by the assessee is to provide infrastructure facilities including handling, storage and clearance of import and export cargo of diamonds, precious , semi-precious

stones etc. . The assessee submitted that it entered into an agreement with MMTC by which it was agreed by MMTC to function as custodian at the office of the assessee where infrastructure facilities including handling, storage and transportation of import and export cargo of Diamonds, Precious and Semi-precious stones are provided to Gem and Jewellery traders and members of the assessee. The services rendered by the assessee , thus, as contended by the assessee were as under:

- (1) Provision of rent free accommodation for housing and customs clearance centre as well as the custodian's office.
- (2) Maintenance of strong room at the DPCCC as well as at the Sahar International Air-cargo complex.
- (3) Provision of security and to and fro transportation of export and import parcels between DPCCC and Sahar International Air Cargo complex on every working day.
- (4) Depositing of Airways Bills with respective Airline Offices.
- (5) Collection and distribution of EP copies of shipping bills.
- (6) Providing Export/Import statistics on website of the assessee on regular basis.

It was stated that the above arrangement was on cost recovery basis. These services were rendered by assessee to gem and jewellery traders only. The services rendered by the assessee were held to be charitable activities by Hon'ble Apex Court in assessee's own case in DIT v. Bharat Diamond Bourse (2003) 259 ITR 280(SC) vide orders dated 16.12.2002 , wherein the Hon'ble Apex Court considered the pre-amended provisions of Section 2(15) of 1961 Act. Section 2(15) of 1961 Act was amended by Finance Act, 2008 and Finance Act, 2010 w.e.f. 01-04-2009. The relevant extracts of provisions of Section 2(15) of 1961 Act are reproduced hereunder :

“Section 2(15)

[ (15) “charitable purpose” includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

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

**[Provided further** *that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;]*”

There were also further amendments in Section 2(15) of 1961 Act by Finance Act, 2011 and Finance Act, 2015. The assessee’s activities are predominantly in the nature of advancement of objects of general public utility which activities appears prima-facie to be connected to trade, commerce or business, or an activity of rendering any service in relation to trade, commerce or business of gem , diamond and jewellery business and also the assessee turnover is exceeding the maximum threshold limit for availing exemption. However, there is a need for AO to evaluate the activities of the assessee in context of amended definition of Section 2(15) of 1961 Act at the stage of framing assessment. So far so good, the provisions of Section 12AA(3) of 1961 Act as it stood now empowers learned Principal Commissioner or Commissioner to cancel the registration u/s 12AA of 1961 Act on either of the two grounds namely the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects

of the trust or institution. Section 12AA(3) of 1961 Act is reproduced hereunder :-

“[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] and subsequently the [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

**Provided** that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]

The Courts have taken a consistent view that learned Principal Commissioner or Commissioner shall have power to cancel the registration only on fulfillment of either of the conditions as stipulated by provisions of Section 12AA(3) of 1961 Act that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution. Thus, the learned Principal Commissioner or Commissioner can cancel the registration on fulfillment of the either of the above two conditions while in the instant case the such conditions are not being shown to have been fulfilled. There is also no change in nature of activities of the assessee as compared to immediately preceding year as Revenue could not brought on record any such findings. The decisions of Hon'ble Bombay High Court in the case of DIT(E) v. Maharashtra Housing and Area Development Authority(supra) and DIT(E) v. Khar Gymkhana(supra)

have taken the similar view and said decision's of jurisdictional high court are binding on us. Both the above decisions pertained to assessment year 2009-10 wherein the amendments to the provisions of Section 2(15) of 1961 Act is brought w.e.f. assessment year 2009-10. In the instant appeal , we are also concerned with assessment year 2009-10 . The learned DIT(E) has cancelled the registration of the assessee u/s 12AA of 1961 Act due to amended provisions of Section 2(15) of 1961 Act which were amended by Finance Act, 2008 and Finance Act, 2010 w.e.f. 01-04-2009 and not on the grounds as specified in Section 12AA(3) of 1961 Act. The Hon'ble Bombay High Court while adjudicating the case of DIT(E) v. Maharashtra Housing and Area Development Authority(supra) has duly taken note of Amritsar-tribunal taking contrarian view on this issue in Jammu Development Authority(supra) case. Thus , in our considered view the registration u/s 12AA of 1961 Act of the assessee cannot be cancelled by learned DIT(E) and the same is hereby restored with effect from the date it was cancelled by learned DIT(E) vide impugned order of learned DIT(E) which is under challenge before us. We would like to clarify that due to amended provisions of Section 2(15) of 1961 Act, the assessee shall not be entitled to claim tax exemptions u/s 11 and 12 of 1961 Act if the activities of the assessee are found by the AO during the assessment proceedings to be hit by the amended provisions of Section 2(15) of 1961 Act . The AO shall during the course of assessment , record finding as to whether the activities of the assessee although being in the nature of activities of advancement of objects of public utility falls within four corner 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 as mandated u/s 2(15) of the Act or not , uninfluenced by our prima-facie finding as recorded earlier in this order . There is a specific provision inserted by Finance Act, 2012 w.e.f. 01-4-2009

vide sub-section 8 to Section 13 of 1961 Act to that effect which is reproduced hereunder:

**“[Section 11 not to apply in certain cases.**

**(1) To (7) \*\*\***

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

The AO shall during the course of assessment verify and determine the activities of the assessee that are hit by amended definition of Section 2(15) of 1961 Act and accordingly tax-exemptions shall be denied on such activities. With the above stated conditions, the registration of the assessee u/s 12AA of 1961 Act is restored. We order accordingly.

8. In the result appeal of the assessee in ITA no. 884/Mum/2012 for assessment year 2009-10 is partly allowed as indicated above.

9. We shall now take appeal in ITA no. 3004/Mum/2013 for assessment year 2009-10 and ITA no. 3127/Mum/2015 for assessment year 2010-11, both being filed by the assessee. It is agreed by both the rival parties that the afore-said appeals are consequential in nature to appeal in ITA no. 884/Mum/2012 for assessment year 2009-10 , as in both the assessment years the tax exemption was denied by the authorities below on the grounds that registration of the assessee u/s 12AA of 1961 Act stood cancelled by learned DIT(E) and hence the assessee was not entitled to tax-exemptions u/s 11 of 1961 Act. But, since we have restored the registration of the assessee

u/s 12AA of 1961 Act while adjudicating the appeal in ITA no. 884/Mum/2012 as specified in the said order, these two appeals become consequential in nature to our order in ITA no 884/Mum/2012 , and the orders of the authorities below are set aside and the issues are restored back to the file of the AO to be adjudicated on merits in the light of our order in ITA no. 884/Mum/2012. We would like to clarify that we have kept question of applicability of mutuality raised by the assessee as an alternate ground open and the same is not adjudicated by us. The assessee is given liberty to raise the said ground of applicability of mutuality to the assessee keeping in view facts and circumstances of the case before the AO. We order accordingly.

10. In the result appeal of the assessee in ITA no. 3004/Mum/2013 for assessment year 2009-10 and assessee's appeal in ITA no. 3127/Mum/2015 for assessment year 2010-11 is allowed for statistical purposes as indicated above.

11. Now we shall take up cross appeals filed by the assessee and Revenue in ITA no. 2789/Mum/2011 and ITA no.4437/Mum/2011 respectively for assessment year 2005-06.

12. The grievance of the assessee in its appeal are two fold. Firstly, the assessee is aggrieved by the additions sustained by learned CIT(A) to the tune of Rs.4,38,34,270/- which was outstanding in the books of the assessee towards IAAI handling charges. Second grievance of the assessee is with respect to the addition sustained by learned CIT(A) towards disallowance of provision for outstanding liability of cost recovery-customs to the tune of Rs.24,58,567/- . While Revenue grievance is with respect to relief given by learned CIT(A) of Rs.3,79,78,729/- towards deletion of addition made towards opening balance of outstanding liability of cost recovery-customs.

13. First we shall deal with issue of disallowance of outstanding liability of IAAI Handling charges to the tune of Rs. 4,38,34,270/-.

14. The brief facts of the case are that it was observed by the AO that assessee has made provision of Rs.4,38,34,270/- under the head 'Outstanding liability of IAAI handling charges' which is payable to International Airport Authority of India (IAAI), while the assessee has not made any payment out of the same till 31-03-2005. The provision for the same was created since 1985-86 which was held to be inflated expenses booked by the assessee since 1985-86. The AO observed that the assessee ought to have written back as income , as the said outstanding liability can no longer exist beyond a reasonable time. The assessee submitted that it is collecting charges of Rs. 300/- per parcel from its members and 10% of the same is kept towards provision. The assessee failed to explain as to the reasons why the aforesaid entire liability is kept pending for last more than 20 years. The AO added the said outstanding liability as on 31-03-2005 amounting to Rs.4,38,34,270/- as income of the assessee for the instant assessment year , vide assessment order dated 30.11.2007 passed u/s 143(3) of 1961 Act.

15. Aggrieved by the assessment order dated 30-11-2007 passed by the AO u/s 143(3) of 1961 Act , the assessee carried the matter in appeal before learned CIT(A).

16. During appellate proceedings before learned CIT(A), the assessee contended that in terms of letter dated 20-4-1989 of IAAI addressed to MMTC, the assessee is liable to pay license fee for allotment of strong room to the assessee/MMTC in the cargo complex of IAAI at Sahar Airport in Mumbai. It

was submitted that the said license fee is payable at a fixed rate per square feet of the area plus additionally calculated @ 10% of the turnover handled, and hence accordingly provisions were made in the books of accounts of the assessee following mercantile system of accounting. The assessee relied upon decision of Hon'ble Supreme Court in the case of Metal Box of India Limited v. Their Workmen (1969) 73 ITR 53(SC) and Bharat Earth Movers v. CIT (2000) 245 ITR 428(SC) to contend that if business liability has definitely arisen in the accounting year, the deduction should be allowed although liability may have to be quantified and discharged at a future date. Thus, it was contended that the liability towards handling charges payable to IAAI subsists which is not denied by the assessee and also it is payable to Central Government body which will also not get time barred. It was submitted that liability for handling charges at Rs. 30 per parcel payable by assessee to IAAI has arisen in terms of arrangement agreed upon in April, 1989. It was submitted that there is no material on record based on which it can be contended that the said liability provided for in books of accounts has ceased or is no longer payable. The assessee relied upon large number of cases which are listed in page 6 of appellate order of learned CIT(A) dated 09-01-2011. The assessee also filed following documents in support of its contentions that license fee is payable to MMTC , as detailed hereunder:

- (i) Copy of agreement dated 15-12-1988 between the assessee and MMTC.
- (ii) Details of License fee paid to Airport Authority of India during financial year 2004-05 and 2005-06.
- (iii) Copies of two invoices for license fees.

The learned CIT(A) observed that the AO has observed that the assessee has not paid outstanding liability since 1985-86. The contention of the assessee is

that it is liable to pay the license fee for allotment of strong room to the assessee to MMTC in the cargo complex of the IAAI at Sahar International Airport in Mumbai . The learned CIT(A) observed that the assessee has submitted letter dated 20.04.1989 of IAAI written by one Sh. D K Grover , Commercial Manager for Airport which reveals that the MMTC occupies the space for strong room in the cargo complex from 26.02.1985 to 25.02.1988 and through the said letter IAAI requested MMTC to submit an application for extension of license for further period of 3 years i.e. 26.02.1988 to 25.02.1991. The said letter also revealed that the assessee is additionally liable to pay license fee equivalent to 10% of total gross turnover . Further, letter dated 16.06.1995 of IAAI addressed to MMTC was submitted which stipulates that MMTC should pay additional royalty @10% of its gross turnover from the business generated in cargo complex. The assessee also submitted letter dated 2.10.1999 of MMTC addressed to IAAI , wherein the MMTC stated as under:

“ Please refer to your letter no AAB/C-462/1.2/pt/5228/9669 dated 31.03.1993 regarding allotment of space admeasuring 37.80 sq. mts. in the Cargo Complex building.We find from our records that we have been paying the license fee as claimed by you all these years and there is no dues outstanding as on dat. However, if there is any other dues are to be paid by us, you are requested to kindly let us know the exact amount payable by us so that the same can be remitted to you.

With regards to additional payment of 10% of the gross turnover claimed by you , we invite your kind attention to our letter dated 27.09.1989, wherein it was clearly intimated to you that MMTC do not have any turnover in the Strong Room operations at Sahar. We have been appointed as Custodians of the valuable cargo by the Customs and our responsibility is to record the import cargo at Sahar strong Room and transfer it to our DPCC Strong Room at Lamington Road and present the same to Customs for examination and eventually deliver to the importers. Similarly export cargo is also received at the Strong Room at Sahar which has been appraised by the Customs at DPCC and Seepz. These parcels are subsequently handed over to the Airlines under the preventive escort. From the above, it is clear that no

sale/purchase transactions take place in the strong room and also MMTC do not have any turnover emanating out of these transactions ; hence the question of payment 10% of the turnover to you does not arise at all.”

From the above facts on record , learned CIT(A) observed that IAAI allotted strong room to MMTC and said MMTC is paying the license fee regularly to IAAI but the additional license fee calculated @10% of the gross turnover was not paid by MMTC to IAAI. The learned CIT(A) observed that the turnover did not belonged to MMTC and hence MMTC is therefore not liable to make the payment. It was observed by learned CIT(A) that there is no liability of the assessee to IAAI as the strong room was not allotted to the assessee but to MMTC. It was observed by learned CIT(A) that the IAAI has not raised any claim on the assessee w.r.t. such outstanding liability. It was observed by learned CIT(A) that except letter dated 20.04.1989 of IAAI , there is no other evidence of claim of such demand per records and this letter was also replied by MMTC denying their liability. Thus, learned CIT(A) held that there exists no liability towards IAAI handling charges as reflected to be payable in books of accounts and that is the reason why assessee did not pay any such amount to IAAI since 1985-86. The learned CIT(A) upheld the additions made by the AO , vide appellate order dated 09.01.2011.

17. Aggrieved by appellate order dated 09.01.2011 passed by ld. CIT(A) , the assessee filed second appeal with the tribunal.

18. The learned counsel for the assessee reiterated its submissions as were made before the authorities below which are not repeated for sake of brevity. It was submitted that strong room was allotted to MMTC by IAAI wherein there was stipulation of payment of license fee based on fixed rate per square feet and also additionally license fee calculated @ 10% on turnover was payable by MMTC to IAAI towards the license fee. It was submitted that there

was an agreement of the assessee with MMTC and the assessee under an agreement with MMTC was liable to pay said license fee based on turnover. It was submitted that the assessee is Section 25 Company incorporated under The Companies Act, 1956 and following mercantile method of accounting. It is submitted that there is no dispute as far as fixed license fee is concerned based on square feet area of strong room allotted by IAAI to MMTC which had been regularly paid to IAAI . The dispute is with respect to license fee payable to be computed based on 10% of turnover. It was submitted that the assessee is providing this liability payable towards IAAI based on 10% of turnover since 1985-86 in its books of accounts albeit no payment has been made since 1985-86 till date . Thus, it was submitted that Rs. 4,38,34,270/- was outstanding to be payable in its books of accounts which was accumulated over the years , wherein entire outstanding liability has been treated as income of the assessee by the authorities below for the instant assessment year under appeal before the tribunal . It was submitted that agreement was between MMTC and IAAI , wherein IAAI allotted strong room to MMTC. On being asked, it was submitted that no tax was deducted at source under the provisions of 1961 Act by the assessee while making provision in its books of account of such liability towards license fee based on 10% of turnover . It was also submitted that said outstanding liability as was appearing in its books of accounts was written back in assessment year 2011-12 as income as the said liability ceased to exist because of new entity namely Mumbai International Airport Limited being created by Government of India to manage and operate Mumbai Airport , wherein IAAI had divested and transferred all its operations to this new entity. It was also submitted that neither IAAI demanded the said amount from assessee nor MMTC demanded this amount from the assessee.

19. The learned DR relied on the orders of authorities below and submitted that the assessee did not raise this issue of dispute existing as to payment of

license fee of Strong Room additionally payable computed @10% of turnover before the AO, as was raised before the learned CIT(A).

20. We have considered rival contentions and perused the material on record before us. The main objects of the assessee as contended by the assessee are :

- (1) To establish a Bourse for the promotion of exports of Gem & Jewellery from India and to provide for this purpose infrastructure and other facilities in India for Indian and overseas buyers and sellers of Gem and Jewellery.
- (2) To establish and promote effective liaison between the Gem and Jewellery trade and industry in India and abroad.
- (3) To promote , advance , protect and develop trade, commerce and industry in India relating to Gem & Jewellery including cutting, polishing and processing.
- (4) To develop India as modern and sophisticated Gem & Jewellery market in the world by establishing and maintain an international trading centre in India all those engaged as manufacturers , traders, exporters, importers, brokers and commission agents in the Gem & Jewellery trade and Industry.

The assessee had also submitted that the major activity carried on by the assessee is to provide infrastructure facilities including handling, storage and clearance of import and export cargo of diamonds, precious , semi-precious stones etc. . The assessee submitted that it entered into an agreement with MMTC by which it was agreed by MMTC to function as custodian at the office of the assessee where infrastructure facilities including handling, storage and transportation of import and export cargo of Diamonds, Precious and Semi-precious stones are provided to Gem and Jewellery traders and members of the assessee. The services rendered by the assessee , thus, as contended by the assessee were as under:

- (1) Provision of rent free accommodation for housing and customs clearance centre as well as the custodian's office.

- (2) Maintenance of strong room at the DPCCC as well as at the Sahar International Air-cargo complex.
- (3) Provision of security and to and fro transportation of export and import parcels between DPCCC and Sahar International Air Cargo complex on every working day.
- (4) Depositing of Airways Bills with respective Airline Offices.
- (5) Collection and distribution of EP copies of shipping bills.
- (6) Providing Export/Import statistics on website of the assessee on regular basis.

It was stated that the above arrangement was on cost recovery basis. It is stated that these services were rendered by assessee to gem and jewellery traders only.

We have observed that Collector of Customs, Mumbai vide notification dated 22.11.1984 appointed MMTC , u/s 45 of the Customs Act, 1962 , as a custodian of imported and export cargo of diamonds, precious and semi-precious stones, pearls etc. . We have observed that strong room was allotted to MMTC by IAAI in Cargo Complex of the Sahar International Airport, Mumbai which was in occupation of MMTC from 26.02.1985 (PB /page 64-65) . The terms of allotment of said strong room provided fixed payments calculated based upon area of strong room and additionally license fee is payable to be computed @ 10% based on turnover. The assessee has placed communication dated 20/21.04.1989 by IAAI to MMTC which is placed on record (pb /page 64-65) which reflect the said terms of allotment of strong room. Thus, IAAI is licensor while MMTC is licensee of strong room at Cargo Complex at Sahar International Airport, Mumbai. The allotment letter issued by IAAI in favour of MMTC or their inter-se license agreement are not placed on record by the assessee. There was back to back arrangement of MMTC

with the assessee dated 29-03-1986 which was later revised vide agreement dated 15-12-1988, wherein the handling charges ( license fee payable by MMTC to IAAI is termed as handling charges by assessee) payable to IAAI by MMTC , were to be paid by the assessee and provided for in the books of accounts of the assessee and the entire responsibility for the said handling charges ( license fee ) payable to IAAI by MMTC shall be of the assessee , without any demur. The said agreement between MMTC and the assessee dated 15-12-1988 is placed on record in paper book/page 29-31, while original agreement dated 29-03-1986 is not placed on record by the assessee. The assessee has not entered into any license/sub-license agreement or tripartite license agreement with IAAI/MMTC so far as allotment of strong room at Cargo Complex, Sahar International Airport, Mumbai is concerned as it emerges from the records before us. There is no dispute so far as liability of the assessee towards this handling charges (license fee) being fixed charges component calculated based on area allotted for strong room to MMTC by IAAI, which has arisen owing to inter-se agreement between MMTC and the assessee as detailed above, which the assessee is regularly paying to IAAI/MMTC over the years. The dispute has arisen with respect to license fee payable by MMTC to IAAI which is to be calculated based on 10% of turnover. The assessee had made provision of this component of license fee ( called as handling charges by assessee) payable by MMTC to IAAI by calculating the same as 10% of its turnover ( being service charges ) as recorded in its books of accounts from strong room from the year 1985-86 till the end of previous year 2004-2005 i.e. 31-03-2005 every year in contemplation that it is the liability of the assessee vide back to back agreement/arrangement with MMTC. While , on the other hand MMTC who is licensee of the said strong room wherein IAAI is licensor , vide old communications of 1990's placed by the assessee on record have pleaded before IAAI that it has no turnover from strong room and hence there is no liability of MMTC to pay the said license

fee computed @10% of turnover as the turnover itself from strong room is zero. There is no latest communication placed on record by the assessee with respect to claim of IAAI/MMTC w.r.t. license fee payable based on 10% of turnover. We have observed that Revenue has also not made any enquiry to find out bonafide and genuineness of the claim of the assessee , nor said amount has been paid by the assessee. The assessee albeit made provisions in its books of accounts but did not pay said amount of handling charges ( license fee) computed @10% of its turnover to either MMTC or IAAI since 1985-86 i.e. for more than last twenty years which is being accumulated in its books of accounts and have now grown to a figure of Rs. 4,38,34,270/- being an outstanding liability till 31-03-2005 . The Revenue is now bringing entire outstanding liability payable by assessee as appearing in its books of accounts to tax on the grounds that the liability can no longer exists beyond a reasonable time as held by AO and ought to have been written back , while learned CIT(A) has held that strong room was allotted to MMTC and hence no liability gets fastened on the assessee because MMTC itself is contending before IAAI that it had no turnover arising from strong room and consequently there is no liability towards license fee calculated based on 10% of gross turnover. Based on said hypothesis , the authorities below have added the entire outstanding liability existing in the books of accounts of the assessee as of 31-03-2005 towards handling charges(license fee) payable to IAAI to the tune of Rs. 4,38,34,270/- as income of the assessee. We have observed that the assessee has placed on record certain old correspondence between MMTC and IAAI of 1990's which is placed in paper book/page 64-69 as well its agreement with MMTC (pb/page 29-31) , while no attempt has been made by Revenue to verify latest fact sheet of liability towards license fee ( termed as handling fee by assessee) payable towards license of strong room granted by IAAI in favour of MMTC who in turn granted it to the assessee vide agreement, as we have detailed above in this order. The MMTC is

continuously denying to IAAI vide old communications of 1990's placed on record that it did not had any turnover in strong room, while IAAI was continuously demanding the details of turnover arising from strong room from MMTC, which it appear from the records before us that MMTC did not furnish to IAAI despite being specifically asked to do so. The evidences were withheld by MMTC which were especially in knowledge of MMTC/assessee despite being repeatedly asked by IAAI, and only contentions were made by MMTC before IAAI unsupported by evidences that it did not had any turnover from strong room. Section 106 of Indian Evidence Act, 1872 is clearly breached as facts were especially within the knowledge of MMTC/assessee. The assessee having entered into an back to back arrangement with MMTC and agreed to bear the license fee payable to IAAI made provision for license fee (called as handling fee payable to IAAI by assessee) based on 10% of its own turnover arising from strong room as per its understanding of word 'turnover' , but did not paid the said amount to IAAI nor evidence as to turnover were submitted to IAAI. The license has been granted by IAAI in favour of MMTC w.r.t. strong room at Cargo Complex at Mumbai Airport and meaning of the word 'turnover' has to be interpreted between the two contracting parties i.e. MMTC and IAAI as to what they understood ad-idem by the word 'turnover' while entering into license agreement for strong room vide their original license agreement/allotment letter between IAAI and MMTC, as the liability will devolve on assessee based on the meaning and interpretation of the word 'turnover' as understood ad-idem by both the contracting parties to the agreement/allotment letter i.e. MMTC and IAAI. The said documents being license agreement/allotment letter are not placed on record by the assessee before the authorities below as well before the tribunal and are again withheld by the assessee which is again in breach of Section 106 of 1872 Act as the facts are especially in knowledge of assessee . The word 'turnover' can have different shades and meaning when used in

different context .In present context, It could mean either turnover of strong room service charges recovered or it could also mean gross turnover of export/import handled through strong room by MMTC or its assignees either directly or for the members of assessee's institution , which can only be assessed after verifying the terms and conditions as contained in license agreements/ allotment letter etc., which incidentally is not placed on record by the assessee and are withheld by assessee. These are matter of fact which can only be un-folded after going through terms and conditions of license agreement / allotment letter between MMTC and IAAI as well other relevant and material evidences .The said allotment letter/license agreement between MMTC and IAAI wherein strong room was allotted to MMTC by IAAI is not brought on record by the assessee nor the current communication / status w.r.t. strong room is brought on record. Similarly, we have observed that very old correspondence of 1990's is brought on record by the assessee. The authorities below have also not made any direct enquiry with MMTC, IAAI or Mumbai International Airport Limited to verify the contention of the assessee and to get relevant and material upto date information/evidences in connection thereto w.r.t. this liability towards license fee based on 10% of turnover. The contention of the assessee that it has written back the outstanding liability towards handling charges payable to IAAI in the financial year 2010-11 i.e. assessment year 2011-12 on the grounds that IAAI has divested and transferred its operations to Mumbai International Airport Limited and hence liability of the assessee ceased , does not inspire confidence unless positive and cogent evidence is brought on record to that effect as normally when the operations are transferred / divested , then adequate provisions are made in agreements to preserve all rights in existing agreements which are either taken over by successor or are retained by transferor but to say that the liability has ceased just because IAAI divested its operations in favour of Mumbai International Airport Limited cannot be

accepted unless positive cogent evidence is brought on record to that effect to prove the said contention. Thus, keeping in view factual matrix of the case , in our considered view this matter need to be set aside to the file of the AO for de-novo determination of the issue on merits after giving opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law and after making such enquiries and verifications as the AO may deem fit. The assessee is directed to produce all relevant and material information/evidences in relation to the said license fee payable to IAAI/MMTC which is computed @10% of turnover. Needless to say that the AO shall grant proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. We order accordingly.

21. The next issue in these cross appeals are with respect to cost recovery-customs . The AO observed that the assessee has made a provision of Rs. 85,09,032/- under the head 'O/s liability of Cost recovery Customs' . The AO observed that this liability is to be paid to Custom Authority. The AO observed that the assessee has paid a sum of Rs. 60,50,465/- to Custom Authority up-till the year end. Thus, it was observed that a liability of Rs. 24,58,567/- remains outstanding as on 31-03-2005. It was observed by the AO that the assessee is claiming every year excess amount vide provisions vis-à-vis amount actually paid to Customs since the financial year 1988-89. Thus, the AO concluded that the assessee has inflated expenses and the entire accumulated amount of liability payable to Customs for the last 17 years aggregating to Rs. 4,04,37,296/- was brought to tax as in the opinion of the AO , the said amount of liability ought to be written back ,vide assessment order dated 30-11-2007 passed u/s 143(3) of 1961 Act.

22 Aggrieved by the assessment order dated 30-11-2007 passed by the AO u/s 143(3) of 1961 Act, the assessee filed first appeal before learned CIT(A) which was partly allowed by learned CIT(A) wherein disallowance of Rs.24,58,567/- w.r.t. additional charges payable to custom for previous year relevant to the impugned assessment year was confirmed by learned CIT(A), while the disallowance of the amount outstanding to be payable to customs for earlier years as on the beginning of the year to the tune of Rs. 3,79,78,729/- was deleted by learned CIT(A). The assessee is in appeal before tribunal for sustaining of afore-stated addition to the tune of Rs. 24,58,567/- by learned CIT(A) , while Revenue is in appeal for deletion of disallowance to the tune of Rs. 3,79,78,729/- by learned CIT(A).

The brief facts important to understand the background of entire dispute had genesis in the year 1983 when the Customs Authorities decided to transfer the jewellery appraisal section (airfreight wing) from Ballard Estate to Sahar International Airport. The diamond industry represented to Government of India regarding grave risks involved in sending and receiving several crores worth of diamond, jewellery , pearls etc every day from Exporters office at Opera House area and represented to GOI that customs examination and clearance should continue in heart of the city near the area where trade is concentrated to minimize risks. The request of the diamond trade was accepted by GOI and the assessee was set up to co-ordinate facilities for the import and export of diamonds , gems and jewellery , precious and semi precious cargo. . The assessee is providing infrastructure facilities including handling, storage and clearance of import and export cargo of diamonds, precious , semi-precious stones etc. . We have observed that Collector of Customs, Mumbai vide notification dated 22.11.1984 appointed MMTC , u/s 45 of the Customs Act, 1962 , as a custodian of imported and export cargo of diamonds, precious and semi-precious stones, pearls etc. . The assessee

entered into an agreement with MMTC by which it was agreed by MMTC to function as custodian at the office of the assessee where infrastructure facilities including handling, storage and transportation of import and export cargo of Diamonds, Precious and Semi-precious stones are provided to Gem and Jewellery traders and members of the assessee. The custom authorities deputed customs officials and staff for doing functions under Customs Act 1962 for which pay and allowance of Customs Plaza Customs Clearance Centre(DPCCC) and Sahar were recovered from assessee through MMTC. The assessee in turn recovered these costs from its members. There were certain additional cost for additional staff deputed by Custom Authorities for the above services and claim for the said additional cost was provided in books of accounts by the assessee , but the same was not paid by the assessee as the same was not yet settle and the assessee was seeking exemption of the same from GOI. The assessee has contested that the same is not foregone or waived by Government of India acting through Chief Accounts Officer, New Custom House , Mumbai. The assessee submitted that the liability is provided in books of accounts keeping in view mercantile method of accounting. It was submitted that since liability has not ceased the same cannot be brought to tax and the AO has not brought any evidence to establish that the said liability has ceased to exist.

The learned CIT(A) observed that the assessee is paying for the working strength of the custom official sanctioned by Government as per request of MMTC since 1985. The learned CIT(A) observed that the assessee contended that the Custom Department has posted extra strength of staff to facilitate themselves without the request made by the assessee or MMTC. It was observed that Custom Authorities are raising the invoice as per the staff posted while the assessee is reimbursing the cost as per the original agreement entered by the assessee with MMTC/custom authorities. The

learned CIT(A) observed that dispute is w.r.t. payment of extra staff deployed by the Custom Authorities without the approval/sanction of the MMTC/assessee. The learned CIT(A) observed that the matter is under dispute and the assessee has requested MMTC to take up this matter with Ministry of Finance to persue with Custom Authorities to withdraw the excessive claim. The learned CIT(A) observed that the assessee is not paying these additional charges and in-fact is contesting for waiver from GOI through MMTC. Thus, the learned CIT(A) observed that the liability of earlier year has not ceased to exist and hence relief was granted to the assessee to the extent of Rs. 3,79,78,729/- w.r.t. outstanding accumulated liability towards customs of earlier years, as the customs authorities were still making the claim of the same. While learned CIT(A) upheld disallowance to the tune of Rs.24,58,567/- towards additional charge towards additional staff deployed by custom department for the current year on the grounds that the assessee itself is denying the liability of said additional charge to Custom Authority, vide appellate order dated 09-01-2011.

23. Aggrieved by appellate order dated 09-01-2011 passed by learned CIT(A), both assessee and revenue are in appeal before tribunal.

24. The learned counsel for the assessee reiterated its submissions as were made before the authorities below which are not repeated for sake of brevity. It was submitted that GOI has not waived this liability and in-fact the same stood recovered by GOI, wherein Bank guarantee was issued on behalf of the assessee by Canara Bank in favour of GOI vide bank guarantee no 018-11 dated 14-01-2011 for Rs. 5,11,50,000/- which stood encashed on 16-05-2011. Thus, it was submitted that the said entire outstanding liability payable for cost recovery-customs stood paid and discharged .

25. The learned DR submitted that the assessee was disputing said liability and hence the assessment order of the AO be affirmed . He relied on the order of the AO.

26. We have considered rival contentions and perused the material on record. The brief facts important to understand the background of entire dispute had genesis in the year 1983 when the Customs Authorities decided to transfer the jewellery appraisal section (airfreight wing) from Ballard Estate to Sahar International Airport. The diamond industry represented to Government of India regarding grave risks involved in sending and receiving several crores worth of diamond, jewellery , pearls etc every day from Exporters office at Opera House area and represented to GOI that customs examination and clearance should continue in heart of the city near the area where trade is concentrated to minimize risks. The request of the diamond trade was accepted by GOI and the assessee was set up to co-ordinate facilities for import and export of diamonds , gems and jewellery , precious and semi precious cargo. . The assessee is providing infrastructure facilities including handling, storage and clearance of import and export cargo of diamonds, precious , semi-precious stones etc. . We have observed that Collector of Customs, Mumbai vide notification dated 22.11.1984 appointed MMTC , u/s 45 of the Customs Act, 1962 , as a custodian of imported and export cargo of diamonds, precious and semi-precious stones, pearls etc. . The assessee entered into an agreement with MMTC by which it was agreed by MMTC to function as custodian at the office of the assessee where infrastructure facilities including handling, storage and transportation of import and export cargo of Diamonds, Precious and Semi-precious stones are provided to Gem and Jewellery traders and members of the assessee. The custom authorities deputed customs officials and staff for doing functions under Customs Act, 1962 for which pay and allowance of Customs Plaza Customs Clearance

Centre(DPCCC) and Sahar were recovered from assessee through MMTC. The assessee in turn recovered these costs from its members. There were certain additional cost for additional staff deputed by Custom Authorities for the above services and claim for the said additional cost was provided in books of accounts by the assessee , but the same was not paid by the assessee as the assessee was contesting that GOI deputed extra customs officials and staff over and above agreed strength. It is undisputed that the assessee requested GOI to continue with custom clearance facilities at heart of city and agreed to pay for pay and allowance of custom staff and officers deputed to handle sovereign function of custom clearances , appraisal and collection of custom duties etc. . The GOI was regularly monitoring the staff and officer strength required to carry out these sovereign functions for assessee and its members of diamond and jewellery trade. Based on the increased volume of trade handled through these premises at Customs Plaza Customs Clearance Centre(DPCCC) and Sahar , GOI was deputing additional staff commensurate with work-load which increased with increase in volume of trade. This fact of deployment of additional strength of custom officials and staff from time to time at these premises due to increase in workload is clearly emanating from the letter dated 04-09-2008 issued by Chief Accounts Officer , New Custom House , Mumbai , which is placed in paper book/page 63. The other correspondence in connection with these cost recovery-customs towards these additional staff and officer is placed in paper book/page 5-61. We are of considered view that GOI acceded to the request of the members of gem, diamond and jewellery trade to continue providing custom related activities stipulated under Customs Act at these premises which are in the heart of city as desired by gem, diamond and jewellery industry. The assessee agreed to bear all pay and allowance of custom officer and staff deployed for this purposes by GOI . The GOI while rendering these functions are performing sovereign function and the staff / officers were increased by GOI keeping in

view increased volume of work at these premises, so that sovereign functions of the State can be properly discharged in accordance with mandate of Customs Act, 1962. In our considered view, the assessee is liable for payment of pay and allowance as agreed for original strength as well increased/additional strength of custom officer/staff deputed from time to time for which bills were raised by GOI. The assessee , in our considered view, having agreed with GOI to deploy their custom staff/officer at these premises and pay for the same will be liable to pay for additional strength of custom officer/staff deployed by GOI in performance of these sovereign functions of State by GOI , unless it is brought on record that decision of GOI in deploying additional staff and officers is unconscionable or is suffering from perversity . The assessee once agreed to bear these costs , thereafter, cannot interfere with GOI in discharging its duties , obligation and responsibilities towards performance of sovereign functions of State under Customs Act,1962 , unless it is brought on record that decision of GOI in deploying additional staff and officers is unconscionable or is suffering from perversity . Nothing of that sort is emanating from records and pleadings before us. These functions under Customs Act ,1962 to be performed by GOI are sovereign functions of State and it is the responsibility of GOI to properly discharge its duties, obligations and responsibilities as mandated under the Customs Act, 1962. Further, it has now come on record that the outstanding amount payable by the assessee to GOI is now recovered by GOI through encashment of bank guarantee , the disallowance made by the AO , thus, cannot be sustained. For limited verification of the claim of the assessee that the entire liability towards customs stood discharged, we are remitting the matter back to the file of AO for limited verification. Thus, the additions sustained by learned CIT(A) is ordered to be deleted , while relief granted by learned CIT(A) is hereby confirmed, subject to limited verification by the AO as indicated above. We order accordingly.

27. In the result appeal of the assessee in ITA no. 2789/Mum/2011 for assessment year 2005-06 is allowed as indicated above and Revenue appeal in ITA no. 4437/Mum/2011 for assessment year 2005-06 is dismissed as indicated above.

28. Now, we shall take up assessee's appeal in ITA no. 2790/Mum/2011 for assessment year 2006-07. The issue in this appeal are identical to the issues in assessee's appeal in ITA no. 2789/Mum/2011 for assessment year 2005-06 and our decision in ITA no. 2789/Mum/2011 for assessment year 2005-06 shall apply mutatis mutandis to issues in appeal in ITA no. 2790/Mum/2011 for assessment year 2006-07. We order accordingly.

29. In the result appeal of the assessee in ITA no. 2790/Mum/2011 for assessment year 2006-07 is allowed as indicated above.

30. Now, we shall take up assessee's appeal in ITA no. 2791/Mum/2011 for assessment year 2007-08. The issue in this appeal are identical to the issues in assessee's appeal in ITA no. 2789/Mum/2011 for assessment year 2005-06 and our decision in ITA no. 2789/Mum/2011 for assessment year 2005-06 shall apply mutatis mutandis to issues in appeal in ITA no. 2791/Mum/2011 for assessment year 2007-08. We order accordingly.

31. In the result appeal of the assessee in ITA no. 2791/Mum/2011 for assessment year 2007-08 is allowed as indicated above.

32. Now, we shall take up assessee's appeal in ITA no. 6591/Mum/2011 for assessment year 2008-09. The issue in this appeal are identical to the issues in assessee's appeal in ITA no. 2789/Mum/2011 for assessment year 2005-

06 and our decision in ITA no. 2789/Mum/2011 for assessment year 2005-06 shall apply mutatis mutandis to issues in appeal in ITA no. 6591/Mum/2011 for assessment year 2008-09. We order accordingly.

33. In the result appeal of the assessee in ITA no. 6591/Mum/2011 for assessment year 2008-09 is allowed as indicated above.

34. Now we shall take up Revenue's appeal in ITA no. 4852/Mum/2011 for assessment year 2007-08. The revenue is aggrieved in this appeal by decision of learned CIT(A) in applying principles of mutuality without any such claim filed by the assessee in return of income filed with revenue as well no such claim was raised by the assessee during assessment stage before the AO. The say of learned DR is that learned CIT(A) has accepted said additional claim of the assessee of principles of mutuality applicable to the assessee which was raised by the assessee for the first time before learned CIT(A) as also wherein additional evidences were submitted by the assessee before learned CIT(A) for the first time, without complying with requirements of Rule 46A(3) of Income-tax Rules, 1962. It was submitted by learned DR that learned CIT(A) did not call for remand report from the AO as to his examination and comments on the claim of mutuality raised by the assessee for the first time before learned CIT(A) and fulfillment of requirements of Rule 46A(3) of 1962 Rules was not complied with. It was submitted by learned DR that Rule 46A(3) of 1962 Rules is not mere formality and in the absence of fulfillment of the same, the appellate order of learned CIT(A) is vitiated and is required to be set aside. The learned counsel for the assessee fairly agreed with the contentions of learned DR and agreed that the matter may be set aside to the file of learned CIT(A), as no remand report was called by learned CIT(A). Thus, both the parties fairly agreed that this matter be restored to the file of learned CIT(A) for fresh adjudication of the issue on merits after giving opportunity to the AO

for necessary examination, enquiry and verification of the additional claim of application of principles of mutuality as well of evaluation of additional evidences filed by the assessee , and thereafter submission of AO's remand report to the learned CIT(A). In view of the undisputed admitted position between both the parties that Rule 46A(3) of Income-tax Rules, 1962 was not followed by learned CIT(A) in the instant appeal , wherein no opportunity was granted to AO to submit his remand report , we are inclined to set aside the issues in appeal to the file of learned CIT(A) for fresh adjudication of issues on merits after granting opportunity to the AO in terms of Rule 46A(3) of Income-tax Rules, 1962 . Thus this appeal of the Revenue is allowed for statistical purposes. We order accordingly.

35. In the result, appeal filed by the Revenue in ITA No. 4852/Mum/2011 for assessment year 2007-08 is allowed for statistical purposes.

36. In the result appeal of the assessee in ITA no. 884/Mum/2012 for assessment year 2009-10 is partly allowed as indicated above , appeal of the assessee in ITA no. 3004/Mum/2013 for assessment year 2009-10 and assessee's appeal in ITA no. 3127/Mum/2015 for assessment year 2010-11 is allowed for statistical purposes as indicated above , appeal of the assessee in ITA no. 2789/Mum/2011 for assessment year 2005-06 is allowed as indicated above and Revenue appeal in ITA no. 4437/Mum/2011 for assessment year 2005-06 is dismissed as indicated above, appeal of the assessee in ITA no. 2790/Mum/2011 for assessment year 2006-07 is allowed as indicated above, appeal of the assessee in ITA no. 2791/Mum/2011 for assessment year 2007-08 is allowed as indicated above , appeal of the assessee in ITA no. 6591/Mum/2011 for assessment year 2008-09 is allowed as indicated above and appeal filed by the Revenue in ITA No.

44      **ITA 884/M/2012 , 2789/M/2011  
4437/M/2011, 2790/M/2011  
4852/M/2011, 2791/M/2011  
6591/M/2011, 3004/M/2013  
3127/M/2015**

4852/Mum/2011 for assessment year 2007-08 is allowed for statistical purposes.

Order pronounced in the open court on 30<sup>th</sup> March, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30-03-2017 को की गई ।

Sd/-  
(JOGINDER SINGH)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai;      दिनांक Dated 30-03-2017

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai H<sup>n</sup> Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai