

THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 5577/Mum/2017 (Assessment Year 2012-13)

Maharashtra State Road Transport Corporation 2, Maharashtra Vahatuk Bhavan, D. Anandrao Nair Marg, Mumbai Central Mumba-400 008.  PAN : AAACM4699J (Appellant)	Vs.	ACIT (Exemption)-2(1) Room No. 507 5 <sup>th</sup> Floor Piramal Chambers Lalbaug, Parel Mumbai-400 012.  (Respondent)
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Assessee by	Shri Girish Dave & Shri Tenzil Padvekar
Department by	Shri Sanjay Singh
Date of Hearing	15.5.2019
Date of Pronouncement	08.8.2019

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 21.6.2017 and pertains to A.Y. 2012-13.

2. Grounds of appeal read as under :-

On the facts and in the circumstances of the case and in law, Learned CIT (Appeals) and Learned Assessing Officer have erred in holding that:

- i. The appellant-Corporation cannot be treated as State within the Article 12 of the Constitution of India;
- ii. The activity of appellant-Corporation are of Commercial nature and can thus be considered as business activity;
- iii. The appellant-Corporation is working with a profit motive;
- iv. The appellant-Corporation has not applied surplus generated towards charitable purpose;

- v. Registration under section 12A of the Act does not, ipso facto, entitle the appellant-Corporation for the benefit of section 11 read with section 12 & 13 of the Act;
  - vi. The appellant-Corporation is involved in activity of rendering service in relation to any trade, commerce or business for a cess or fee and thereby attracting proviso to section 2(15) read with section 13(8) of the Act;
  - vii. Learned CIT (Appeals) and the Learned Assessing Officer have erred in relying upon the decisions in the cases Jammu Dev. Authority (2011) 5250T 153 (Amritsar), Jalandhar Dev. Authority 3550T 15 (Amritsar), Goa Industrial Dev. Corpn., Greater Cochin Authority, Belgaum Urban Dev Authority, Kerala Indl. Dev. Corpn. (2015) 54 taxmann.com 110 (Coch.), which are out of context and reliance thereon is misplaced;
  - viii. Learned CIT (Appeals) has further erred on the facts and in the circumstances of the case and in law, in holding that the rule of consistency is inapplicable in the context of Income Tax assessment proceedings;
  - ix. learned CIT(A) has further erred on the facts and in the circumstances of the case in law, in denying the benefit of set off of carry forward of losses of earlier years and not adjudicating the ground raised before him;
  - x. Learned CIT (Appeals) has further erred on the facts and in the circumstances of the case and in law, in not adjudicating ground in relation to benefit of carry-forward of losses not getting set off during the year;
  - xi. Learned CIT (Appeals) has further erred on the facts and in the circumstances of the case and in law, in not adjudicating the ground in respect of claim of depreciation by holding that the same does not arise from the assessment order and;
  - xii. Learned CIT (Appeals) has further erred in not adjudicating ground raised before him that services include activities towards preservation of environment and ecosystem consideration, thus coming within the ambit of the definition of "charitable purpose" under clause (15) of section 2 of the j Act.
  - xiii. All the above grounds are to the exclusion of each other.
3. The assessee in this case is a Trust registered with DIT(E), Mumbai u/s. 12A. In its return filed on 28.9.2012, the assessee declared total income at nil. However, the Assessing Officer show-caused the assessee proposing denial of

exemption u/s. 11. The assessee made elaborate submission. However, Assessing Officer was not satisfied.

4. First contention of the assessee was that it is the agency of Government of Maharashtra and its income is not taxable. However, the Assessing Officer referred to the decision of Hon'ble Supreme Court in the case of APSRTC (52 ITR 524). He referred to the decision elaborately for the proposition that Hon'ble Andhra Pradesh High Court in that case examined the provision of APSRTC Act vis-à-vis Article 289 of the Constitution of India and held that income of APSRTC cannot be held to be income of State Government as APSRTC has its own identity and is distinguished from the Government. The Assessing Officer was of the opinion that the ratio of this decision is applicable in this case. Thereafter the Assessing Officer also referred to Hon'ble Supreme Court decision in the case of Ramana Dayaram Shetty Vs. The International Airport (1979 AIR 1228), which has considered the issue as to when a corporation can be treated as agent of the state. He noted that when the test laid down by Hon'ble Supreme Court, are applied to the facts of the present case i.e. MSRTC (assessee) cannot be treated as an agent of the Government.

5. The Assessing Officer further held that the assessee is engaged in commercial activity. For this proposition he mentioned various reasons. The Assessing Officer observed that the assessee is engaged in activity of bus service. He noted from the website of the assessee following bifurcation of the buses run by the assessee :-

Total buses	15500
Simple buses	14022
City buses	651
Semi comfortable	544
Mini buses	199
Deluxe buses	48
Air conditioned	26
Midi	10

6. From the above the Assessing Officer observed that the assessee apart from running simple buses is also running luxury buses in large scale. This

according to the Assessing Officer shows that it is engaged in commercial activity.

7. The Assessing Officer further observed that the assessee is also engaged in providing parcel/courier service in large scale from one location to another for fees/charges.

8. The Assessing Officer further observed that from the website it was observed that the assessee was also engaged in carrying out arranging tour and travel packages on commercial basis for fees/charges. He noted following details available on the website :-

Trip No. 1	Shrivardhan-Diveaagar-Harihareshwar
Trip No. 2	Pune Raigad Ropeway
Trip No. 3	Ozar-Lenydri-Malshej Ghat
Trip No. 4	Lonavala, Bhushi Dam via Mulshi
Trip No. 5	Ashtavinayak Darshan
Trip No. 6	Hyderabad, Ramoji Filmcity, Shree Shailyam
Trip No. 7	Mini South India
Trip No. 8	Konkan Darshan

9. On the basis of above the Assessing Officer concluded that the assessee is running passenger transport, other transport, parcel and courier service and tour and travel business on large scale. That the assessee is also charging fees/charges for providing all the services. That in view of the above, these activities carried out in large scale shall be considered as a commercial activity and hence activity of the assessee can be considered as 'business activity'. Thereafter the Assessing Officer proceeded to elaborate upon the meaning of term 'business'.

10. The Assessing Officer also noted the assessee's contention that pricing also is decided through government intervention and is not arbitrary/commercially fixed. In this regard the Assessing Officer contended that the charity is incidental and business is not incidental to the charitable activity. In this regard he referred to following major receipts to the income and expenditure account :-

Advertising	5,21,22,184
Rent	2,07,86,834
Sale of scrap material	27,11,32,498
Miscellaneous receipts	31,07,66,685
License fees	17,14,05,862

11. Assessing Officer also observed that the assessee is having huge surplus invested in fixed deposits to the tune of Rs. 9,64,95,678/-, which according to him shows profit motive on the part of the assessee. The Assessing Officer further noted as per section 11 of the Income Tax Act, surplus should have been applied for charitable purpose year after year. But according to the Assessing Officer, the assessee failed to do so and as such on this account also, the Assessing Officer held that the assessee has failed. Furthermore, the Assessing Officer observed that the assessee has earned Rs. 1,42,13,788/- as interest on investment. This according to the Assessing Officer shows profit motive on the part of the assessee. The Assessing Officer observed that existence of the assessee with a profit motive is not a pre-condition for disqualification of the assessee as a charitable entity w.e.f. 1.4.2009 under amended definition as per section 2(15). Hence, the Assessing Officer opined that contention of the assessee "appears to be devoid of merit". Hence, the Assessing Officer held that the activities of the assessee are commercial in nature. Thereafter the Assessing Officer referred to several case laws in this regard. The Assessing Officer also referred to the provisions of section 2(15) of the I.T. Act. He held that the object of the assessee falls under the category of "advancement of any other object of general public utility". The Assessing Officer noted that the assessee accepts fees for the services provided by the assessee and the total receipts of the assessee are more than Rs. 25 lakhs. Therefore the Assessing Officer held that the assessee is hit by amendment to section 2(15) w.e.f. 1.4.2009. hence, the Assessing Officer held that the assessee-trust is not eligible for any exemption under section 11 of the Act and accordingly taxed entire income of assessee denying benefit of section 11.

12. Upon assessee's appeal, learned CIT(A) reproduced the submissions of the assessee. However, learned CIT(A) was not convinced. He found that the assessee was not entitled to any benefit for the proposition that it being a 'corporation' created by the legislature is not assessable to Income Tax since it is an agent of the State. For this he referred to the Assessing Officer's discussion and Hon'ble Supreme Court decision in the case of APSRTC (52 ITR 524). He distinguished the decision relied upon by the assessee from the ITAT, Mumbai in the case of CIDCO.

13. Learned CIT(A) observed that the assessee stated that its activities are charitable in nature and hence proviso to section 2(15) and provisions of section 13(8) of the Act will not apply. For not agreeing with this, he referred to Assessing Officer's observation about the website information that the assessee was also running air conditioned and comfortable buses in large scale, which is not for common men. That it was also running tour and travel package. That the assessee was having income from 'advertisement'.

14. Learned CIT(A) also referred that the assessee has claimed that it was registered under provisions of section 12A and hence it is liable for exemption u/s. 11. Learned CIT(A) held that the registration under section 12A being not an entitlement, is also not overriding to other provisions like section 11 and 13 of the Act. Learned CIT(A) also agreed to the Assessing Officer that the assessee was falling under proviso to section 2(15). Thereafter referring to several case laws in this regard, learned CIT(A) upheld the order of the Assessing Officer.

15. Against this order, the assessee is in appeal before us.

16. We have heard both the counsel and perused the records.

17. Learned Counsel of the assessee stated that the assessee is a corporation created by an Act of Legislature. He submitted that the shares of corporation are only owned by Government of Maharashtra and Central Government of India. Learned counsel contended that since owners of the corporation are State, the assessee is an agent of the State, therefore not liable to pay income tax. He submitted that it has been established by an Act of Legislature in 1950 as amended thereafter from time to time for development and growth of :

- (i) public, trade and industry of the development of road transport.
- (ii) facilities of road transport in any area and providing an efficient and economical system of road transport service.
- (ii) coordination between any form of road transport and any other form of transport.

18. Learned counsel contended that surplus of receipts over expenses after payment of interest/dividend on the capital as provided by Central/State Government and providing for depreciation and reserves etc. is to be applied for amenities to the passenger, welfare of labour employed, financing the expansion programmes etc, as approved by the Government and remainder, if any, shall be handed over to the State Government for the purpose of road development. In this regard learned counsel placed reliance upon the decision of ITAT, Mumbai in ITA No. 2985/Mum/2012 dated 8.8.2012 in the case of CIDCO for A.Y. 2006-07.

19. Hence, learned counsel submitted that from the above objects of the assessee it is evident that its sole purpose of establishment and operation is to provide relief to the poor, preservation of environment and advancement of coordinated road transport i.e. a public utility for general public in the State of Maharashtra. Learned counsel submitted that the assessee has received approval u/s. 12A of the Act on 4.1.1989 and it is still valid. He submitted that hence the assessee is eligible for exemption u/s. 11 of the Act. He submitted that there is no change in the activities of the assessee since beginning and it

is all along providing road transport facility to general public for a ticket as a token contribution. Learned counsel submitted that prior to introduction of proviso to section 2(15), there was no dispute that the assessee was established for charitable purposes and the assessee has all along been granted relief u/s. 2(15) and exemption u/s. 11 of the Act.

20. Learned counsel submitted that amendment to section 2(15) by the Finance Act, 2008 is not applicable to the assessee. He submitted that the assessee is engaged in the activities for charitable purpose by way of relief of the poor, preservation of environment and advancement of object of general public utility. Learned counsel submitted that the first proviso to section 2(15) does not apply where the services are rendered for fees but it is only subservient to the charitable objects to the corporation and is not in nature of business itself. Hence, he submitted that proviso to section 2(15) is not attracted. He submitted that a token contribution by way of ticketing that the beneficiary paid could not convert charitable activity into trade and commerce or business in the absence of contrary evidence. He submitted that the corporation generally does cater to the lower section of the Society.

21. Learned counsel contended that Hon'ble Karnataka High Court in the case of Karnataka State Road Transport Corporation (KSRTC) (ITA No. 302 of 2015 dated 12.2.2016) on exactly same facts have decided the issue of applicability of proviso to section 2(15) in the case of KSRTC and held that the said proviso is not applicable. Learned counsel further submitted that Hon'ble Andhra Pradesh High Court also in the similar case of APSRTC in RC No. 141 of 2000 in their order dated 16.7.2014 have held that the activities carried out by the corporation are purely charitable in nature. Learned counsel further referred to the decision of Hon'ble Kerala High Court in the case of Info Parks Vs. DCIT (329 ITR 404).

22. Learned counsel further submitted that the Coordinate Bench, Pune in their decision dated 29.2.2016 in the case of Smt. Sapna Sanjay Raisonni VS.

ITO has held that this corporation falls within the definition of 'State' in terms of Article-12 of the Constitution of India. Learned counsel further submitted that Hon'ble Jurisdictional High Court in writ petition in the context of PIL No. 2978 of 2017 vide order dated 20.10.2017 has accepted the 'corporation' to be 'the undertaking public utility services'.

23. Learned counsel further submitted that the Assessing Officer has totally erred in coming to a decision that the assessee is engaged in commercial activity. Learned counsel submitted that the very chart which the Assessing Officer has mentioned in his report showing type of buses run by the assessee show that only a miniscule percent thereof can be said to be buses of higher type. Furthermore, learned counsel submitted that other income used by the Assessing Officer to prove that the assessee is engaged into commercial activity has to be considered in the context of overall receipts of the assessee from provision of passenger transport. He submitted that the same would be very miniscule percentage. He submitted that from the website the Assessing Officer has copied eight tours and considered it large scale activity. He submitted that 8 tours cannot be a representative of 100s and 1000s of transportation activities of the assessee. Learned counsel further relied upon several case laws in this regard.

24. Per contra learned Departmental Representative submitted that learned CIT(A) has passed a very elaborate order. He fully placed reliance thereupon. Further learned Departmental Representative submitted that Hon'ble Supreme Court in the case of APSRTC (159 ITR 1) has on similar facts clearly held that in the context of Article 289 of the Constitution of India the income of APSRTC cannot be held as income of the State Government. Learned Departmental Representative submitted that in fact the assessee (MSRTC) has never claimed nor has been allowed exemption from the tax on the basis that it is an agent of Maharashtra Government. Learned Departmental Representative further relied upon the decision of ITAT in the case of Maharashtra Industrial Development Corporation in ITA No. 6552/Mum/2014 vide order dated

27.3.2015. He further relied upon Hon'ble Bombay High Court decision in the case of MIDC vide order dated 14.8.2018 for the proposition that decision of ITAT in the case of CIDCO is per incurim in as much as Hon'ble Apex Court has already settled the issue in Adityapur Industrial Development Authority Vs. UOI (2006) 5 SCC 100. Thereafter learned Departmental Representative referred to the proviso of section 2(15). He further referred to the amendment in this provision. He referred to the CBDT explanatory note on this issue. Referring to the above, learned Departmental Representative argued that the prescribed limit of receipts from ancillary activity is now only Rs. 25 lakhs. Learned Departmental Representative submitted that many of the Judgements cited by learned Counsel of the assessee are prior to A.Y. 2009-10 before proviso was brought to section 2(15). He further argued that the plank that surplus is ploughed back into the main activity of the Corporation and hence the dominant purpose is served cannot come to the rescue of the assessee. Learned Departmental Representative submitted that though some of the decisions have been rendered after the introduction of second proviso to section 2(15). However, he claimed that in none of those decisions, there is any discussion about the effect of the introduction of the second proviso to section 2(15). Learned Departmental Representative further referred to following decisions :-

1. M/s. Jalandhar Development Authority Vs CIT (35 SOT 15).
2. Goa Industrial Development Corporation vs Commissioner of Income Tax, Panaji.
3. Greater Cochin Development Authority vs. Jt.DIT (OSD)(Exemp.), Range-4, Kochi.
4. The Belgaum Urban Development Authority Vs. The Commissioner of Income Tax, Belgaum.
5. Asst. DIT(Exemption), Trivandrum vs. Kerala Industrial development Corporation [2015] 54 taxmann.com 110 (Cochin - Trib.)

25. Learned Departmental Representative submitted that assessee's case is covered by proviso to section 2(15) and profits exceeding Rs. 25 lakhs from commercial activity. Hence, it is not entitled to exemption u/s. 11 of the Act. Learned Departmental Representative further referred to assessee's income from non-operating activities like rent, advertising, sale of scrap material, license fees and miscellaneous receipts. Hence, he submitted that the orders of the authorities below have to be upheld on this issue.

26. In rejoinder learned Counsel of the assessee submitted that the fact that the activities of the corporation would come within the ambit of advancement of any other object of general public utility is not denied. In this regard he referred to the decision of Hon'ble Bombay High Court in the case of Mr. Jayant Bhagwantrao Satam Vs. State of Maharashtra and Ors. (supra). He further referred to the decision of Hon'ble Apex Court in the case of CIT Vs. Andhra Pradesh Road Transport Corporation (159 ITR 1).

27. Learned Counsel of the assessee submitted that second limb of the proviso to section 2(15) of the Act is not applicable. He submitted that this limb covers the cases involving carrying on of any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration. In this regard learned counsel referred to the decision of Hon'ble Kerala High Court in the case of Info Parks Vs. DCIT (329 ITR 404), wherein this aspect was elaborately expounded. Learned counsel submitted that this view was followed and approved by Hon'ble High Court of Andhra Pradesh in their judgement dated 17.12.2012 in the case of Andhra Pradesh State Seed Certification Agency v/s CCIT & Ors. (28 taxmann.com 288). Learned counsel further submitted that section 22 of the Road Transport Corporation Act, 1950 stipulates that the corporation should be running on commercial principles. Learned counsel submitted that this aspect came for interpretation in CIT Vs. Andhra Pradesh State Road Transport Corporation (159 ITR 1). Hon'ble Apex Court had expounded that undisputedly object of the activity carried on by the corporation was one of the general public utility.

Hon'ble Apex Court has dismissed the plea that such activity was carried on for profit as shown by section 22, under which the corporation enjoys to act on business principles.

28. Learned counsel further reiterated his submissions that the corporation of the State is falls within the Article-12 of the Constitution.

29. We have carefully considered the submissions and perused the records. As noted above the assessee is a State Corporation engaged in the business of public transportation. The objects of the corporation are development and growth of public, trade and industry of the development of road transport, facilities of road transport in any area and providing an efficient economical system of road transport services and coordination between any form and road transport or any other form of road transport. Surplus of receipts over expenses after payment of interest/dividend on capital as provided by Central/State Government and providing for depreciation and reserves etc. is to be applied for amenities to the passenger, welfare of labour employed, financing the expansion programme etc., as approved by the Government and remainder, if any, is to be handed over to the State Government for the purpose of development. It is noted that there is no change in the activity of the assessee since beginning and it is all along providing road transportation facility to the general public for a ticket as a token contribution. Prior to introduction of proviso to section 2(15), there was no dispute that the assessee was established for charitable purpose and assessee has all along been granted relief u/s. 2(15) and exemption under section 11 of the Act. Now the Revenue's plea is that amendment to section 2(15) of the Act shall take assessee's activity subject to denial of exemption u/s. 11 of the Act. In this regard we note that such a plea of the Revenue that introduction of proviso to section 2(15) shall lead to denial of exemption to Karnataka State Road Transport Corporation has been rejected by Hon'ble Karnataka High Court in the case of Karnataka State Road Transport Corporation in ITA No. 302 of 2015 vide order dated 12.2.2015. We further note that import of incorporation

of proviso to section 2(15) was considered by Hon'ble Kerala High Court in the case of Info Parks (supra) and Hon'ble Court have expounded as under :-

"15. Yet another important aspect to be noted in this context is that, after the amendment by incorporating proviso to section 2(15), the 4th limb as to the advancement of "any other object of general public utility" will no longer remain as charitable purpose, if it involves carrying on of :-

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

The first limb of exclusion from charitable purpose under clause (a) will be attracted, if the activity pursued by the institution involves any trade, commerce or business. **But the situation contemplated under the second Limb [clause (b)] stands entirely on a different pedestal, with regard to the service in relation to the trade, commerce or business mentioned therein. To out it more clear, when the matter comes to the service in relation to the trade, commerce or business, it has to be examined whether the words "any trade, commerce or business" as they appear in the second limb of clause (b) are in connection with the service referred to the trade, commerce or business pursued by the institutions to which the service is given by the assessee. If the said words are actually in respect of the trade, commerce or business of the assessee itself, the said clause (second limb of the stipulation under clause (b) is rather otiose. Since the activity of the assessee involving any trade, commerce or business, is already excluded from the charitable purpose by virtue of the first limb [clause (a) itself, there is no necessity to stipulate further, by way of clause (b), adding the words 'or any activity of rendering any service in relation to any trade, commerce or business...'. As it stands so, giving a purposive interpretation to the statute, it may have to be read and understood that the second limb of exclusion under clause (b) in relation to the service rendered by the assessee the terms "any trade, commerce or business" refer to the trade, commerce or business pursued by the recipient to whom the service is rendered (as there may be a situation involving letting out the premise? for purposes other than involving trade, commerce or business as well). Since the petitioners have not chosen to implead the Union Government in the party array, to consider and finalise the scope and amendment in this regard, this Court is not in a position to lay down the law on this aspect for the time being and hence it is left open. "[Emphasis Supplied.]"**

30. This view of Hon'ble Kerala High Court was endorsed by Hon'ble Andhra Pradesh High Court in the Judgment dated 17.12.2012 in the case of Andhra Pradesh State Seed Certification Agency (28 Taxman.com 218). From the above

decision it is amply clear that adverse view taken by the authorities below that the assessee should be denied exemption u/s. 11 simply because of amendment to section 2(15) is not sustainable.

31. In this regard, we also note that this Tribunal in the case of National Institute of Bank Management Vs. ACIT in ITA No. 2913 & Others vide order dated 25.1.2018 has elaborately considered the significance of the provision of section 2(15) in similar case of denial of exemption by invoking provision of section 2(15) of the Act. We may gainfully refer to the Tribunal's adjudication in this case as under :-

8. We have carefully considered the rival submissions. Sec. 2(15) of the Act defines the expression 'charitable purpose'. So far as it is relevant for our purpose, the expression 'charitable purpose' seeks to include 'education'. The case of the assessee is that its activities fall within the scope of the expression 'education' and, therefore, it is covered within the meaning of 'charitable purpose' contained in Sec. 2(15) of the Act. The stand of the Revenue is to the contrary as, according to it, the activities of the assessee are merely to carry out training, seminars, post-graduate training and, that too, against collection of fees and, therefore, cannot be considered as 'education'. Further, the expression 'charitable purpose' also includes the activity of 'advancement of any other object of general public utility'. According to the Revenue, even if the activities are to be considered as falling within the scope of Sec. 2(15) of the Act, it fits into the said expression 'advancement of any other object of general public utility'. The proviso to Sec. 2(15) of the Act was added w.e.f. 01.04.2009, which 9 National Institute of Bank Management ITA Nos. 2913 to 2915/M/16, 2506/M/14 & CO 182/M/15 prescribes that the activity of 'advancement of any other object of general public utility' shall not be construed to be for '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 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. By relying on such proviso, the Revenue contends that since assessee is carrying out its programme of training, etc. against charging of fee, therefore, its activities lose the character of being for 'charitable purpose'.

9. The first and the foremost point that is required to be addressed is whether the assessee is an institution involved in education or not? In order to address this controversy, we may briefly touch upon the objects of the assessee as appearing in the Memorandum of Association and also the activities that are being carried out by the assessee over the years. The main objects of the assessee have been reproduced by us in the earlier part of this order and a perusal thereof clearly shows that the main object of the assessee is to promote and provide training in operation and management of banking and financial

institutions, besides organising and facilitating seminars, study courses, lectures and similar other activities for the said purpose. Considering the stated objects, we are not inclined to accept the plea of the Revenue that the main objects of the assessee is not 'education'. Besides the stated objects, the written submissions which have been filed by the assessee before the lower authorities also give an insight to the activities being actually pursued by the assessee. It emerges that the assessee is recognised by the University of Pune as an approved centre for post-graduate research and also by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India. It is pointed out that assessee is conducting post-graduate Diploma courses and many Ph.D students are also registered with it for their Doctorial dissertation under the supervision of assessee's faculty members. It has also been pointed out that assessee has thirty full-time faculty of academicians from a wide range of disciplines, viz., Economics, Finance, Commerce, Business Management, Computer Science, Agricultural Science, etc. At the time of hearing, the learned representative has also emphasised that assessee has class rooms to conduct regular classes and the library in the educational campus has more than 60,000 books. It was also pointed out that assessee offers programmes in collaboration with Kellogg School of Management, Northwestern University USA, The London School of Economics and Political (LSC), UK and CME Group, Chicago, etc. All these assertions of the assessee have not found any negation by the assessing authority or even by the Revenue before us.

10. Before us, it was argued by the Id. DR that fee is being charged and subscriptions are received from the member-banks which generates surplus in the course of activities, and thus, the activities are not for education. It is well understood that educational institutions are also required to generate funds for carrying out its activities, and the fact that assessee is collecting fees, by itself, will not make it a non-educational activity so as to go out of the definition of 'education' contained in Sec. 2(15) of the Act. In this context, we may refer to the judgment of the Hon'ble Supreme Court in the case of [T.M.A. Pai Foundation vs State of Karnataka](#), (2002) 8 SCC 481, wherein the Hon'ble Supreme Court has also recognised the necessity for the educational institution to generate funds for its betterment and growth. In the case of [American Hotel & Lodging Association](#), 301 ITR 86 (SC), the Hon'ble Supreme Court was dealing with an entity engaged in providing world-recognised curriculum for all hospitality education programs in India by making them available through text, course material and other software programmes in India. Apart from accepting this activity to be in the realm of education, the Hon'ble Court also observed that merely because some profit was arising from such activity, it would not distract from holding that such an entity was existing solely for education purposes. The Hon'ble Court also explained that in order to ascertain whether an entity is being run with the object of making profit or not, the existence of profit is not paramount, but what is of importance is whether or not the resultant income is being applied wholly and exclusively for the objects for which the entity has been set-up. In the context of the assessee before us, there is no repudiation to the fact-situation that the surplus, if any, is being applied only in furtherance of its stated objects.

11. The learned representative before us referred to the judgment of the Hon'ble Supreme Court in the case of text books was also held to be an activity falling within the scope of 'education'. Similarly, the judgment of the Hon'ble Gujarat High Court in the case of [Gujarat State Co-operative Union vs CIT](#), 195 ITR 279 (Guj.) has also been relied upon. In the case of Gujarat State Co-operative Union (supra), assessee was engaged in conducting courses for Higher Diploma in Co-operation, Diploma in Land Development Banking, Certificate Course in Co-operative Credit and Banking and Specialised Short-term Courses/Orientation Courses. The assessee therein was also conducting seminars and running training centres for employees of Urban Co-operative Banks, District Co-operative Banks, etc. The Hon'ble Gujarat High Court understood such activities to be falling within the expression 'education'. In coming to such a conclusion, the Hon'ble Court referred to the judgment of the Hon'ble Supreme Court in the case of [Sole Trustee, Loka Shikshana Trust vs. CIT](#), 101 ITR 234 (SC) to contend that the word 'education' should not be confined only to scholastic instructions, but other forms of education are also included in the expression 'education'. Though the decision of the Hon'ble Gujarat High Court is in the context of Sec. 10(22) of the Act, yet, it is of relevance for us since it has explained the meaning of the expression 'education' which, in our view, is germane to decide the controversy before us. The assessee before us is indisputably engaged in conducting higher education training, coaching and research in the field of banking and finance, and the ratio of the judgment of the Hon'ble Gujarat High Court certainly goes to show that its activities are in the field of 'education' for the purposes of Sec. 2(15) of the Act.

12. Similarly, the decision of the Mumbai Bench of the Tribunal in the case of [Indian Institute of Bankers vs DCIT \(Exemption\)](#), (2002) 74 TTJ 523 (Mum) was also relied upon. The assessee before the Mumbai Bench of the Tribunal, i.e. Indian Institute of Bankers, was engaged in the activity of promoting the study of theory of banking and, for that purpose, it was conducting exams, lectures, etc. Notably, the activities of the assessee before us are also on the same lines and the Tribunal in the case of Indian Institute of Bankers (supra) accepted those activities to be in the nature of 'education'.

13. In view of our aforesaid discussion, we do not find any merit in the stand of the Assessing Officer that the activities of the assessee are not in the field of 'education'. What has been emphasised by the Assessing Officer is that the assessee is conducting coaching classes in the field of banking and finance and, therefore, following the decision of the Hon'ble Patna High Court in the case of [Bihar Institute of Mining & Mine Surveying vs CIT](#), 208 ITR 608 (Pat), it could not be said that the assessee was carrying out any 'education' activity. In this context, we may refer to the judgment of the Hon'ble Gujarat High Court in the case of [DIT\(E\) vs Ahmedabad Management Association](#), [2014] 47 taxmann.com 162 (Gujarat), wherein the association undertook multifaceted activity, viz. conducting continuing education, Diploma & Certificate programme, Management Development programmes, public talks, seminars, workshops, etc. Such like activities were also held to be in the nature of 'education' eligible for the benefit of [Sections 11 & 12](#) of the Act. In fact, the Hon'ble Delhi High Court in the case of [Council for the Indian School Certificate Examinations vs DGIT\(E\)](#), 362 ITR 436 (Delhi) was considering the

activities of an assessee who was neither conducting any classes and nor was directly engaged in teaching students, but was only affiliating schools, prescribing syllabus and conducting examinations. The institution carrying out such activities was also understood by the Hon'ble Court to be an educational institution.

14. When we apply the aforesaid principles to the admitted nature of activities in the present case, we have no hesitation in holding that assessee is an educational institution and, therefore, it falls within the scope of the expression 'charitable purpose' contained in Sec. 2(15) of the Act.

15. Now, we may deal with the reference to proviso to Sec. 2(15) of the Act made by the Assessing Officer. Pertinently, the proviso to Sec. 2(15) of the Act is relevant qua the activity of 'advancement of any other object of general public utility' contained in Sec. 2(15) of the Act and not in relation to other limbs of activities contained therein. While in the earlier paras we have already held that the assessee is engaged in 'education', therefore, on this basis, it will be in the fitness of things to deduce that assessee is not ousted from Sec. 2(15) of the Act because the proviso is not applicable to it. In any case, if one is to examine the applicability of the proviso on merit, even then we find that the same does not come into operation in the present case. Firstly, the CBDT in its Circular no. 11/2008 dated 19.12.2008 clarified that the proviso would apply only in situations where there is a profit motive in the activities undertaken. Secondly, the phraseology of the proviso itself lends credence to a premise that it comes into operation only in situations where profit is the motive in the activities undertaken. Pertinently, the proviso applies in a situation "if it involves carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any services in relation to any trade, commerce or business.....". Ostensibly, the three expressions used therein, i.e., 'trade', 'commerce' or 'business' are to be understood as activities which are undertaken with a motive of earning profits. Therefore, the moot question to be examined is as to whether or not the activities of the assessee can be construed to be intended for a profit motive or for a commercial intent, as sought to be made out by the Assessing Officer. In order to address the said point, we may touch upon the manner and purport for which assessee has been set-up. As noted by us briefly in the earlier part of this order, assessee has been 15 National Institute of Bank Management ITA Nos. 2913 to 2915/M/16, 2506/M/14 & CO 182/M/15 established by the Government of India through the Reserve Bank of India. In the Paper Book filed before us, apart from other things, a report of a Committee appointed by the RBI on "The Training and Development of Higher Banking Personnel" of 1969 has been placed. In 1969, nationalisation of banks undertaken by the Government of India brought in the policy of social control over banking which intended to provide a new direction to the banking industry in India. Since banking was made a more effective instrument of national development, it was recognised that appropriate personnel policies had to be evolved in order to encourage the right attitudes to development of management skills, capabilities and also to impart new technological skills. The Committee appointed by the RBI in this direction made a major recommendation for establishment of the National Institute of Bank Management. This was a precursor to the establishment of the assessee by the

RBI in consultation with the Government of India in 1969 as an autonomous non-profit institution in the area of banking and finance. The Committee on Training and Development of Higher Banking Personnel carved out the role of assessee as being an entity to "translate national policies relating to the banking sector into meaningful training programmes at the level of individual bank and help the implementation of those policies by creating a climate of intellectual appreciation and emotional dedication". Therefore, looking at the background of the formation of the assessee and its stated objects, which we have reproduced in the earlier part of this order, the assessee-institute was to act as a catalyst for the new banking policy of the Government of India towards evolving appropriate guidelines for banks in the areas of management capabilities and improving the technical expertise of banking and awareness of national priorities in the banking profession. The stated objects clearly bring out that the activities of the assessee are exclusively in the field of education and research in the field of banking and finance. Not elaborating further on this aspect, as we have already inferred earlier that assessee is in the field of education, at this stage it would suffice for us to note that there is no commercial intent behind setting-up of the assessee. In fact, the Assessing Officer has sought to draw a parallel with the case before the Hon'ble Patna High Court in Bihar Institute of Mining & Mine Surveying (supra) which, in our view, is wholly inappropriate. The Hon'ble Patna High Court was dealing with the claim of an entity for registration u/s [12A of the Act](#) on the ground that its activity of coaching of students for particular examinations was to be viewed as imparting education. The Hon'ble Court noted that "the running of a private coaching institute for the purpose of training the students to appear at some specified examinations upon taking specified sum from the trainees would not bring the petitioner within the provisions of [section 2\(15\)](#) of the Act." The aforesaid observation of the Hon'ble Court clearly bring out the distinction between the entity before us and that was before the Hon'ble Patna High Court, which was a case of a private coaching institute whereas, as we have seen earlier, the complexion of the entity before us is on a completely different footing; the entity before us has been established by the Government of India through RBI as a means to further the national policy relating to banking sector consequent to nationalisation of banks in 1969. In our considered opinion, the objectives for which the assessee is set-up and the manner in which it is managed, i.e., through a Governing Board consisting, inter-alia, of nominees of the Government and member- nationalised banks, it can hardly be said that there is any profit motive in carrying out its activities. No doubt, there may remain some surplus in the course of carrying on activities since assessee is undertaking programmes by charging fee and/or subscription from its member nationalised banks, etc., but that by itself will not mean that the motive is to earn profit. In fact, the Hon'ble Supreme Court in the case of American Hotel & Lodging Association (supra) noted that it may not be possible to carry on activities in such a way that the expenditure exactly matches the income and there is no resultant profit. As per the Hon'ble Supreme Court, such an objective is not only difficult to achieve for practical considerations, but also reflects unsound principles of management. To reiterate what we have noted earlier, in such a situation, the test to examine the existence or otherwise of profit motive is to find out the purpose for which the resultant surplus is being applied for. Factually speaking, in the present case, there is no

allegation, much less any evidence, brought out by the Revenue to say that any amount has been applied by the assessee for purposes other than its stated objects, which ostensibly is in the field of education. Pertinently, upto Assessment Year 2008-09, assessee was accepted to be an entity engaged in education and in even in the captioned years there is no charge against the assessee that any of its activities have undergone any change. Therefore, merely because of insertion of the proviso, the nature of activities do not undergo a change unless it can be made out that profit motive is dominant all-pervading in the activities, an aspect which is absolutely absent in the present case. Therefore, even if we were to go along with the stand of the Assessing Officer that the activities of assessee fall within the expression 'advancement of any other object of general public utility' contained in Sec. 2(15) of the Act, even then, from Assessment Year 2009-10 onwards, the insertion of proviso does not take away the benefits of [Sections 11 & 12](#) of the Act from the assessee inasmuch as the proviso does not disentitle the assessee's activities from being considered as for charitable purpose because of the above discussion. Thus, on this aspect also, we uphold the stand of the assessee.

The above precedent and case law are fully applicable in the present case. Upto A.Y. 2011-12, there was no dispute that the assessee was entitled to exemption u/s. 11 of the Act. The dispute has only arisen pursuant to introduction of proviso to section 2(15) of the Act. Considering the objects for which the assessee is set up and manner in which it is managed and the manner in which funds generated are utilized, there is no doubt that there is no profit motive in carrying out the activity of the assessee. No doubt there may remain some surplus but that by itself does not mean that the motive is to earn profit. Hon'ble Apex Court in the case of American Hotel and Lodging Association (supra) has expounded that it may not be possible to carrying on activities in such a way that expenditure exactly matches income and there is no resultant profit. There is no case made out by the Revenue that the surplus is not applied for the purpose of company stated objects. When the assessee was accepted to be entitled to exemption upto preceding assessment year there is no case that the activities of the assessee have undergone a change which warrant denial of exemption. Hence, to quote from the aforesaid precedent even if we were to go along with the stand of the Assessing Officer that the activities of the assessee falls within the expression "advancement of any other object of general public utility" contained in section 2(15) then introduction of proviso does not disentitle the assessee's activities from being considered as for

charitable purposes because the aforesaid discussion. Accordingly, in our considered opinion there is no merit in the orders of the authorities below denying the assessee's exemption on the plank that the assessee is not entitled to exemption in view of introduction of the proviso to section 2(15).

32. Yet another limb of Revenue's adverse inference in this case is that the assessee is engaged in commercial activity and that also in large scale. This so called large scale has been observed from the data of buses operated by the assessee. Out of 15500 buses, from the website data gathered by the Assessing Officer himself this includes Deluxe buses-48, air conditioned buses-46 and midi-10. From the above how can the Assessing Officer make a deduction that the assessee is running luxury buses in large scale defers all sense of proportionality. To state the obvious assumption of the Assessing Officer is absurd.

33. Another limb of Assessing Officer's inference that assessee is engaging into profit oriented activities is that the assessee is arranging tour and travel packages on commercial basis for fees/charges. For this he has noted eight trips from the website. How will these eight trips stand against thousands of trips undertaken by the assessee for transporting ordinary passengers is beyond comprehension. The Assessing Officer's inference is totally unjustified. Details of other income which has been considered by the Revenue to be of a large scale pale into absolute insignificance when the same is considered as percentage to the non-operative revenue to operating revenue, which bring them to be lesser than 1% to the operating revenue. The same is emanating from the following chart submitted by learned Counsel of the assessee.

Sr. No	Particulars	Amount in Rs.**	Percentage to Non-operating Revenue to Operating Revenue*
1.	Advertising	52122184	0.095%
2.	Rent	20786834	0.05%
3.	Interest	14213788	0.025%
4.	Publication	3986	
5.	Excess Receipt	3958812	0.007%
6.	Licence Fees	171405862	0.031%
7.	Miscellaneous Receipt	310766685	0.57%
8.	Work done for outside parties	810320	0.0014%
9.	Total Non-Operating revenue	574068471	1.05%

34. Hence figures quoted by the Assessing Officer for inferring that the assessee is engaged in profit motive activity in large scale is totally absurd in light of the above said figures. Hence, in our considered opinion the finding given by the Assessing Officer that assessee is engaged commercial and profit motive activity is totally unsustainable.

35. It may not be out of place to mention here that to remove/prevent the mischief which can be caused to the assessee such as the present large State, the present proviso No. (ii) to section 2(15) provides that if the aggregate receipt from such activity or activities during the previous year do not exceed 25% of the total receipts of the entity, the exclusion provision will not apply.

36. In the background of the aforesaid precedent, we set aside the orders of the authorities below in which the assessee's exemption u/s. 11 has been denied. Since, we have already decided the issue in favour of the assessee, other limb of the challenge by learned Counsel of the assessee is not being gone into as the same is only of academic significance.

37. In the result, assessee's appeal stands allowed.

Order has been pronounced in the Court on 8.8.2019.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 8/8/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS