

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 752/MUM/2017  
Assessment Year: 2012-13  
&  
ITA No. 989/MUM/2019  
Assessment Year: 2013-14**

The Gem & Jewellery Export  
Promotion Council,  
Tower-A, AW-1010, G Block,  
Bharat Diamond Bourse,  
B.K.C., Bandra East,  
Mumbai-400051.

**PAN No. AAATT 3202 H  
Appellant**

ACIT (Exemptions) Range-  
2(1),  
**Vs.** 5<sup>th</sup> floor, Room No. 519,  
Piramal Chambers, Lalbaug,  
Mumbai-400012.

**Respondent**

**ITA No. 2250/MUM/2019  
Assessment Year: 2014-15**

The Gem & Jewellery Export  
Promotion Council,  
Tower-A, AW-1010, G Block,  
Bharat Diamond Bourse,  
B.K.C., Bandra East,  
Mumbai-400051.

**PAN No. AAATT 3202 H  
Appellant**

DCIT (Exemptions) Range-  
2(1),  
**Vs.** 5<sup>th</sup> floor, Piramal Chambers,  
Lalbaug,  
Mumbai-400012.

**Respondent**

**Assessee by** : Mr. P.C. Pardiwala &  
Mr. Nitesh Joshi, &  
Mr. P.P. Bhandari, ARs  
**Revenue by** : Mr. Sanjay Vishwas Rao  
Deshmukh, CIT-DR



Date of Hearing : 19/12/2022  
Date of pronouncement : 31/01/2023

## **ORDER**

### **PER OM PRAKASH KANT, AM**

These three appeals by the assessee are directed against three separate orders dated 11/11/2016 ; 23/01/2019 and 26/02/2019 passed by the Ld. Commissioner of Income-tax (Appeals)-1, Mumbai [in short 'the Ld. CIT(Appeals)'] for assessment year 2012-13, 2013-14 and 2014-15 respectively. As common grounds are involved in these appeals, same were heard together and disposed off by way of this common order for convenience.

2. Firstly, we take up the appeal of the assessee for assessment year 2012-13. The grounds raised by the assessee in its appeal are reproduced as under:

*The Appellant appeals against the impugned order dated 11.11.2016 passed by the Commissioner of Income-tax (Appeals)-1, Mumbai (the CIT(A)) (received by it on 12.12.2016), under section 253 of the Income-tax Act (the Act), on the following amongst other grounds each of which is in the alternative and without prejudice to any others:*

1. *Whether the CIT(A) erred in upholding the action of the learned Assessing Officer (AO) in denying the Appellant's claim for exemption under section 11 of the Act and thereby assessing it on a total income of Rs.21,78,74,270/-.*



2. *Whether the CIT(A) ought to have held that the object of general public utility pursued by the Appellant did not involve 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 and, therefore, proviso to section 2(15) of the Act had no application to its case.*
3. *Whether the CIT(A) ought to have held that activities of the Appellant in the form of organising exhibitions, trade fairs and receipt of membership fees and subscription from its members or grant-in-aid from the Government of India were pursuant to the objects pursued by the Appellant for promotion of the Gems and Jewellery industry and could not be regarded as commercial activities for the purposes of proviso to section 2(15) of the Act.*
4. *Whether the CIT(A) erred in holding that proviso to section 2(15) of the Act was applicable to the Appellant's case as it was allegedly engaged in commercial activities which were pursued with profit motive.*
5. *In the alternative and without prejudice to the above, whether in view of Circular No. 11 of 2008 dated 19.12.2008 issued by the CBDT, the CIT(A) ought to have held that tax under the Act.*
6. *In the alternative and without prejudice to the above, whether the CIT(A) ought to have held that if exemption under section 11 of the Act is denied to the Appellant, then, its income would be chargeable to tax as business income and such income could not be Rs. 21.78.74,270/-,*
7. *Whether the CIT(A) erred in upholding the action of the AO in denying the Appellant's claim for accumulation of income to the extent of 15% of the surplus for the year.*
8. *Whether the CIT(A) erred in upholding the action of the AO in denying the Appellant's claim for deduction in respect of amount of Rs. 13,50,25,483/- spent towards acquisition of fixed assets for pursuing its objects.*



9. *Whether the CIT(A) erred in upholding the denial of carry forward of deficit relating to the earlier years contrary to the binding judgment of the jurisdictional High Court in the Appellant's own case for assessment year 2004-05.*

10. *Whether the CIT(A) ought to have held that the Appellant was entitled to set-off of deficit of the earlier years against its income for the year.*

3. Briefly stated facts of the case are that the assessee is a company registered on 27/04/1966 under section 25 of the Companies Act, 1956 with the main object to support, protect, maintain, increase and promote the export of gems and jewellery etc. For the assessment year under consideration, the assessee filed return of income on 28/09/2012 along with income and expenditure account, balance sheet and audit report in prescribed form No. 10B of Income-tax Rules, 1962 (in short, the 'Rules') declaring deficit of ₹8,97,94,173/-. The return of income filed by the assessee was selected for scrutiny assessment and the statutory notices under the Income-tax Act, 1961 (in short, the 'Act') were issued and complied with. In the scrutiny proceedings, the Assessing Officer observed receipts from membership, subscription fees, grants from Government of India, income from publication, exhibitions, award functions etc. Regarding the activity of conducting exhibitions, the Assessing Officer was of the view that it was a commercial activity, which prima-facie falls in the nature of trade or business, in view of expression "Business" having wide meaning in fiscal statutes. He also inferred profit motive to the



assessee based on the fact that term deposits placed with the banks at the end of the year was of ₹33,20,71,475/- giving rise to interest of ₹6,13,47,543/-. According to the Assessing Officer, the assessee was generating huge profit year after year from its activities. The learned Assessing Officer referred to amendment to the definition of charitable purpose to section 2(15) of Act with effect from 01/04/2009, wherein it is prescribed that advancement of any other object of the General Public Utility (GPU) shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business, irrespective of the nature of use or application of the income from such activity.

3.1 The Assessing Officer after considering submissions of the assessee, held that the assessee has been registered for the charitable purpose of advancement of any other object of general utility for promotion of export of gems and Jewellery, therefore, the activity of conducting exhibitions being in the nature of trade, commerce or business, the assessee is not entitled for exemption under section 11 of the Act in view of section 13(8) of the Act, which prescribe for such denial of benefit of exemption u/s 11 and 12 in case of assessee(s) hit by proviso to section 2(15) of the Act. Accordingly, in the assessment order passed under section 143(3) of the Act on 28/03/2015, the Assessing Officer added the excess of income over expenditure amounting to ₹ 21, 78, 74, 270/-to the



total income of the assessee. The deficit claimed by the assessee was accordingly rejected.

3.2 The assessee preferred further appeal before the Ld. CIT(A) and filed detailed submissions, which have been summarised by the Ld. CIT(A) in the impugned order. After considering the submission of the assessee, the Ld. CIT(A) rejected those submissions and upheld the finding of the Assessing Officer in view of reasonings, **firstly**: revenue from operation of conducting exhibition etc is of ₹109.8 crore, which constitute more than 77% of the total revenue during the year under consideration, which is the reason of surplus as against claim that surplus was on account of membership fee, subscription etc., **secondly** :Provisions of section 11 are applicable to all companies including those registered under section 25 of the Companies Act including the organizations promoted by the Government of India. The Ld. CIT(A) referred to the decision of the coordinate bench of Tribunal in the case of **Indian Machines Tools Manufacturers Association** (supra)to conclude that holding of an exhibition and generation of profit thereof would be regarded as a business activity in the case of a trade association. He further referred to the decision of the Tribunal in the case of **Entertainment Society of Goa Vs CIT (2013) 23 ITR(Trib) 635** . He further held that the registration under section 12A of the Act would not *ipso facto* entitle the assessee for claim of exemption



under section 11 of that unless conditions stipulated therein and other relevant provisions in this behalf are fulfilled by the assessee. The reliance placed by the assessee on the order of first appellate authority and the Tribunal for assessment year 2009-10 and 2010-11 was not found to be relevant by him in view of the proviso to section 2(15) of the Act and rejected the plea of the assessee of application of rule of consistency. The Ld. CIT(A) finally upheld the action of the Assessing Officer for:

- (i) disallowance of benefit under section 11 of the Act in respect of the income including income from exhibition, in view of express provision of section 13(8) of the act.
- (ii) denial of carryforward of deficit by in the year under consideration, holding that facts of the assessment year 2004-05, where the ITAT allowed such carryforward, are different

3.3 Aggrieved with denial of benefit of provisions of section 11 and carryforward of deficit, the assessee is before the Tribunal by way of raising grounds as reproduced above.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record including the paperbook containing pages 1 to 289 filed by the assessee. Before us, both the parties relied on the decision of the Hon'ble Supreme Court in the case of **Ahmedabad Urban development authority in**



**civil appeal No. 21762 of 2017.** According to the ld. counsel of the assessee, **firstly** after the insertion of the proviso to section 2(15) of the Act, in assessment year 2009-10 and 2010-11 the Ld. CIT(A) allowed the benefit of exemption under section 11 and against which no appeal was preferred by the Revenue and thus following the rule of consistency, the Revenue should be prohibited from raising the very same issue in subsequent assessment proceedings. **Secondly**, there is deficit in the activity of conducting exhibitions, thus, there being no profit motive, it was not in the nature of trade, commerce or business or activity of rendering services in relation to trade, commerce or business and thus the proviso to section 2(15) of the Act is not attracted in the case of the assessee. According to learned Departmental Representative (DR), however the case of the assessee being identical to the facts of Apparel Export Promotion Council, (AEPC) before the Hon'ble Supreme Court in the batch of cases decided alongwith the Ahmedabad Urban Development authority (supra), the ratio of the finding of the Hon'ble Supreme Court is squarely applicable over the facts of the instant case.

4.1 The grounds raised by the assessee relate mainly to two issues. The first issue is denial of benefit under section 11 and 12 of the Act. The second issue relates to denial of carryforward of deficit.



5. As far as first issue is concerned, in nutshell the issue is , that the assessee has been denied benefit of section 11 and 12 of the Act by the ld. Assessing Officer and said action of the Assessing Officer has been upheld by the Ld. CIT(A) on the ground that activities of conducting exhibitions and trade fair is in the nature of trade, commerce or business and therefore invoking proviso to section 2(15) of the Act read with section 13(8) of the Act, benefit of application of income (receipt) for the charitable purpose under the provisions of section 11 and 12 of the Act can't be allowed to the assessee. Therefore, the moot question which arises before us is whether the activity of conducting exhibitions & trade fair by the assessee amounts to trade, commerce or business or activity of rendering services in relation to trade, commerce or business.

5.1. In this regard, the ld. consul of the assessee has brought our attention to the historical background leading to establishing of the assessee organisation. Prior to the assessee came into existence, the role of promotion of the export of gems and jewellery products was with the Director General of Foreign Trade (DGFT) i.e. an organisation under the control of Ministry of Commerce and Industry, Government of India. As a part of export promotion, the trade exhibitions used to be conducted by the DGFT and said conducting of exhibitions by DGFT continued till the assessee came into existence in the year 1966.



5.2 Further, the ld. counsel of assessee referred to copy of certificate of incorporation (PB-13), according to which the company i.e. the Gem and Jewellery Export Promotion Council (GJEPC) has been incorporated under section 25 of the Companies Act, 1956 on 27/04/1966 as company limited by guarantee. In the memorandum of association (PB: 15 -22) main objects (clause 3a); ancillary objects (clause 3b) and other objects (clause 3c) have been mentioned. As per clause 3(a) of memorandum of association, main objects of the assessee company include support, protect, maintain, increase and promote the exports of Gem and jewellery including pearls, coloured gemstone, diamonds, synthetic stone, costume(fashion) jewelry, gold and other precious metal jewelry and articles thereof by such methods as may be necessary or expedient. The clause 3b which contains ancillary object include sending out trade missions to foreign countries, to conduct propaganda regularly and continuously for bringing the advantage of trade and commerce with India in gems and jewellery to the notice of the dealers and the public in foreign countries. The clause 3c under the other objects include purchase, hire or otherwise acquire and maintain suitable buildings, apartment, furniture and other fittings in any country for the establishment of showroom, Emporia or the agencies for publicity in regard to gems and jewellery for the purpose of achieving objects of the company; to convene conferences, seminars, workshops or other kinds of meeting at such



place and such time as considered desirable for furtherance of the object of the company and to provide, set up, establish and manage such infrastructural, institutional and administrative framework as may be necessary for achieving the objective the company. Clause 6 of the memorandum of association mandates that the income and property of the assessee shall be applied solely for the promotion of its objects and set forth therein, with a bar on distribution thereof by way of dividends, bonus or otherwise by way of profit. Lastly, clause 7 (seven) of the said memorandum of association mention that upon winding up or dissolution of the assessee, there remains, after the satisfaction of all debts and liabilities, any property whatsoever, the same shall not be distributed amongst its members but shall be transferred to such other company having objects similar to that of the assessee.

5.3 The Ld. Counsel of the assessee, in the light of objects mentioned above brought to our attention that the activity of organising exhibitions and trade fairs is very much a part of the general public utility (GPU) activity of the assessee for which the assessee has been registered as charitable institution. He referred to an annual feature of the EP(G &J) division in the Department of commerce, Ministry of commerce and industry, government of India, which issues calendars for each year, wherein it approves the exhibitions for gems and jewellery product. The Ld. Counsel



referred to copy of such approval for overseas exhibitions and domestic exhibitions placed at paperbook pages 182 to 186 and 187 to 203 respectively. A copy of such approval of international exhibition and domestic exhibition available on pages 185 to 186 and 187 is reproduced as under :

***International Exhibition :***

*“F.No. 12/32/2011-EP(G&J)  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
EP(G&J) Division*

*New Delhi, 13<sup>th</sup> December, 2011.*

To

1. *Shri Ravi Jain  
Chairman,  
Gem & Jewellery Export Promotion Council  
Mumbai*
2. *Chairman-cum-Managing Director  
MMTC Limited,  
New Delhi*
3. *Shri Nirmal Sinha  
Chairman,  
HHEC of India Limited  
NOIDA*

*Subject: Calendar of Overseas Exhibitions for the year 2012.*

*Sir,*

*I am directed to inform that the following Calendar exhibitions in Gem & Jewellery Products has been approved by the Department of Commerce for the calendar year 2012:*



<b>Month</b>	<b>GJEPC</b>	<b>MMTC</b>	<b>HHEC</b>
January	Vicenzaoro First 2012 January 14-19, 2012, Vicenza Italy		
February	49 <sup>th</sup> Bangkok Gems & Jewelry Fair 2012 February 9-13, 2012, Bangkok, Thailand		
	Hong Kong Intl Jewellery Show 2012 February 16-20, 2012, Hong Kong		
March	Basel World 2012 March 8-15, 2012, Basel, Switzerland		
April		April 2012	April 2012 Kuwait
May	Vicenzaoro Chanti 2012 May 19-23, 2012, Vicenza, Italy	Durban/ Johannesburg,  April/ May 2012 Jeddah/ Riyadh, Saudi Arabia	
June	JCK Show Las Vegas 2012 June 1-4, 2012 Las Vegas, USA		
July	JA Show, New York 2012 29-31 July, 2012 New York, USA		
August		August/September	
September	50 <sup>th</sup> Bangkok Gems & Jewelry Show 2012 September, 2012 Bangkok, Thailand	Kuwait/ Bahrain	
	Vicenzaoro Choice 2012 September 8-12, 2012, Vicenza Italy		
	Hong Kong Jewellery & Gem Fair 2012 September 2012 AWE/HKCEC, Hong Kong		
October			October 2012 Singapore/ Malaysia
November/ December	Jewellery Arabia 2012 November, 2012, Manama, Bahrain		
	6 <sup>th</sup> Indo China		



	<i>Diamond Buyer Seller Meet 2012 Nov/Dec 2012 (Tentative), Shenzhen/ Shanghai China</i>		
	<i>Indo China Jewellery buyer Seller Meet 2012 Nov/Dec (Tentative), Beijing/ Shanghai</i>		

2. Further assistance for grant under any scheme of Department of Commerce for participation in the above mentioned events is to be obtained separately as per the guidelines of such scheme.”

**Domestic exhibition :**

“ F.No.12/10/2011-EP(G&J)  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
EP(G&J) Division)

Udyog Bhavan, New Delhi  
Dated;17 March, 2011

To

Director General,

Directorate General of Inspection, Customs and Central Excise,

Delhi

**Subject: India International Jewellery Show (IJS) 2011, Mumbai (4-8 August, 2011)**

Sir,

I am directed to state that Department of Commerce has approved the proposal of Gem & Jewellery Export Promotion Council (GJEPC) for organizing "India Show coinciding with the "India international Jewellery Show (IJS) 2011° from 4-8 August, 2011 at NSE

Complex, Goregaon (East), Mumbai



2. *The Gem & Jewellery exporters from Domestic Tariff Area (DA)/Export Processing Zones/Export Oriented Units (EOUs)/Special Economic Zones (SEZs) shall participate in the Show and display precious metal Jewellery both plain & studded; loose gemstones and diamonds. This is a "Trade Only Show where international exhibitors will be participating alongwith domestic exhibitors.*

3. *It is, therefore, requested that necessary instructions may be issued to the respective Commissioners of Customs in Delhi and Mumbai for allowing foreign exhibitors participating in IJES 2011 for temporary import of gems & jewellery and jewellery making machinery under ATA Carnet Convention/Temporary Import Bond for display at the Show.*

4. *This issues with the approval of Joint Secretary (Gems and Jewellery)."*

5.4. The ld. counsel also referred to the foreign trade policy for the period from 27/08/2009 to 31/03/2014 issued by the Department of Commerce, under the Ministry of Commerce and Industry, Government of India (PB-159 to 181). The Ld. counsel referred to clause 2.43 of chapter 2 (PB-174), wherein the basic objective of export promotion council has been mentioned as to promote and develop Indian exports. He also referred to clause 3.2 (PB-176) of the policy, where under the head market access initiative, the export promotion councils are provided financial assistance for participating in international trade fair. The ld. counsel drawn our attention to clause 4A.4 (PB-177) of the policy wherein the assessee has been nominated as agency for dealing with export/import related procedure of the Trade Policy.

5.5 It has been further submitted that in the past, the assessee has been allowed claim for exemption under section 11 of the Act upto assessment year 2011-12 either by the ld. Assessing Officer or



by the Ld. CIT(A) or by the Tribunal as the case may be. After insertion of the proviso below section 2(15) of the Act, for assessment year 2009-10 and 2010-11 the claim of the exemption was denied by the ld. Assessing Officer, but it has been upheld by the Ld. CIT(A) and no appeal has been preferred by the Revenue to the Tribunal, Therefore, following the rule of consistency, the action of the assessing officer should be deleted. For assessment year 2011-12, the return of income filed by the assessee was not selected for the scrutiny and thus claim of exemption under section has been accepted by the Department.

5.6 We find that in AYs 2009-10 and 2010-11, the Ld CIT(A) allowed the claim of the assessee for exemption u/s 11 of the Act observing as under:

*“4.2 I have carefully considered the facts of the case and submissions made by the appellant. I have also gone through the decisions relied on by the A.R. Respectfully” following the decisions of IT.A.T.; Bombay, in assessee's own case for A.Y. 2004-05 to A.Y. 2008-09 and the order of the Hon'ble High Court in ITA (LOD) 1113 of 2010 dated 15-2-2011, it is held that denying exemption us. 11 of the Act to the appellant is not justified. The AO, is accordingly, directed to allow exemption to the appellant u/s 11 of the Act. This ground of appeal is allowed.”*

5.7 Against the order of the Ld CIT(A) for AY 2009-10 and 2010-11, the Revenue did not prefer appeal before the ITAT on ground of exemption allowed by the ld CIT(A), which is evident from the following grounds of appeal raised by the Revenue for appeal filed



before the ITAT in **ITA no. 5757/Mum/2015 for AY 2009-10 and ITA No. 5756/Mum/2015 for AY 2010-11:**

*“Grounds of appeal before ITAT by revenue in ITA No. 5757/Mum/2015 for AY 2009-10:*

*"Whether on the facts of the case and in law the ldCIT(A) erred in allowing the appeal of the assessee on account of disallowing depreciation on fixed assets of Rs. 53,50,582/- in contravention of the decision of Escorts Ltd. Vs. UOI 199 ITR 43 wherein it was held that since section 11 of the Income Tax Act provides for deduction capital expenditure incurred on assets acquired for the objects of the trust as application and does not specifically & expressly provide for double deduction on account of depreciation on the same very assets acquired from such capital expenditure, no deduction shall be allowed us.32 for the same or any other previous year in respect of that asset as it amounts to claiming a double deduction.*

*2 Whether, on the facts and in the circumstances of the case and in law theldCIT(A)erred in allowing the depreciation, when the Delhi High Court in the case of Charanjiv Charitable Trust and Kerala High Court in the case of Lissie Medical Institutions vs CIT 76 DTR (Ker) 372 has decided the issue in the favour of the department after considering the decision of Hon'ble Supreme Court in the case of Escorts Ltd (199 ITR 43).*

*3. The Appellant prays that, to the extent of above grounds, the order of the Commissioner of Income Tax (Appeal)-7, Mumbai be set aside and that of the Assessing Officer be restored.*

*4. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

5.7.21 Grounds of appeal before ITAT by Revenue in ITA No. 5756/Mum/2015 for AY 2010-11 are reproduced as under:



**“GROUNDS OF APPEAL:**

*1 Whether on the facts of the case and in law the la CITCA) erred in allowing the appeal of the assessee on account of disallowing depreciation on fixed assets of Rs. 45,00,115/- in contravention of the decision of Escorts Led. Vs. WO1 199 ITR 43 wherein it was held that since section 11 of the income Tax Act provides for deduction capital expenditure incurred on assets acquired for the objects of the trust as application and does not specifically & expressly provide for double deduction on account of depreciation on the same very assets acquired from such capital expenditure, no deduction shall be allowed w/s.32 for the same or any other previous year in respect of that asset as it amounts to claiming a double deduction.*

*2 Whether, on the facts and in the circumstances of the case and in law the ld CIT(A)erred in allowing the depreciation, when the Delhi High Court in the case of Charanjiv Charitable Trust and Kerala High Court in the case of Lissie Medical Institutions vs CIT 76 DTR (Ker) 372 has decided the issue in the favour of the department after considering the decision of Hon'ble Supreme Court in the case of Escorts Led (199 ITR 43).*

*3 The Appellant prays that, to the extent of above grounds, the order of the Commissioner of Income Tax (Appeal)-7, Mumbai be set aside and that of the Assessing Officer be restored.*

*4The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

5.8 We note that ld. CIT(A) while adjudicating the issue of benefit u/s 11 of the Act in the appeals for AY 2009-10 and AY 2010-11, relied on the decision of Hon'ble jurisdiction High Court in ITA No. 1113 of 2010. The relevant finding of the Hon'ble High Court is reproduced as under:



*"1.The office objections are overruled. Basically two questions are raised by the revenue in this appeal, which read as under-*

*(1) Whether on the facts and circumstances of the case and in law the Tribunal was right in holding that the assessee has fulfilled" the conditions as laid down -u/s.11(4A) of the IT Act 1961 and is" therefore entitled for exemption us. 11 of the I.T.. Act, 1961?..*

*(2) Whether on the facts and circumstances of the case and in law the Tribunal was right in directing the AO to set off the deficit of earlier years to the surplus of this year and consider such adjustment as application of income for charitable purpose?"*

*2. As regards, the first question raised by the revenue is concerned, the Tribunal has recorded the finding as follows:-*

*"We have heard the rival submissions, perused the orders of the lower authorities and the materials available on record. The assessee is a council approved by the Govt. as "gem and jewellery export promotion council. From the name itself it is seen that the assessee's objects are to promote the export of jewellery for India For this purpose, various exhibitions have been held by the assessee in various countries. For this purpose, necessary approval has been obtained from the Govt. of India." Copy of such approval is placed at Pages 17 to 20 of the paper book. We have also seen the copy of the notes on objects of the council which are placed at pages 1 to 7 and also the extract of export and import policy, copy of which is placed at pages 8 and 9. Minutes of the grant of approval organizing exhibition, etc. is placed at pages 11 to 16 and approval from Govt. of India is placed at Pages 17 to 20. The assessee is also maintaining separate books of account. Copy of annual account is also placed at pages 21 to 25 from which it is clearly seen that there is no surplus funds with the assessee. "*



*Similar facts are involved in the present case as object of the assessee is to promote the export of gem and jewellery for India. We have also considered various decisions and found that they are in favour of assessee's case. In the case of Indian Machine Tools, decided in IT No.585/Mum/2002, the Tribunal following the decision in the case of Indian...Electrical and "Electronic Manufacturers Association (supra) held that the activity of the assessee is incidental to the object of the assessee, therefore, the assessee is entitled to exemption u/s.11. Taking into consideration all the facts and circumstances and the ratio of various decisions of the Tribunal cited supra, we hold that the assessee's activities are incidental to the object of the assessee and thus, 'the assessee is entitled to exemption u/s 11 of the Act. The Ld. CIT(A) has also given his finding in Para-6.2 wherein it is held that assessee's activities are incidental to the main object of the assessee. The Ld. CIT(A) categorically held that the assessee is maintaining cash book, ledger, journal, etc., for the exhibition activity and, accordingly, it was held by him that the assessee is eligible for exemption u/s.11 of the Act, therefore, we see no infirmity in this finding of the Ld. CIT(A). Accordingly, we confirm the order of the Ld. CIT(A) in this respect."*

*3. From the above finding of fact and in the light of the judgment of the Apex Court in the case of Assistant Commissioner of Income. Tax Vis. Thanthi Trust reported in 247 I.T.R. 785, the decision of the Tribunal holding that the assessee has fulfilled all the conditions of Section 11(4A) of the Income Tax Act cannot be faulted. Moreover, the Tribunal has recorded finding of fact that the assessee has maintained separate books of account in respect of exhibition activity. In this view of the matter, the first question raised by the revenue cannot be entertained."*

5.9 We find that the Hon'ble High Court has noted the facts recorded by the ITAT regarding of objects of the assessee and



conducting of exhibition for achieving that object, necessary approval obtained for conducting those exhibitions from Govt. of India in the back ground of import /export policy of Govt. of India. In the light of those facts, the Hon'ble High Court declined the question of law raised challenging eligibility of exemption u/s 11 of the Act.

5.10. In the instant year also, the fact of main object of the assessee of promoting the export of gems and jewellery remained the same. In the year under consideration, the assessee has claimed the organising and participating in exhibitions and trade fair as the core activity of the assessee and *sine que non* for promotion of Indian products of gems, jewellery and diamond etc. to overseas market buyers. The ld. Counsel has also pointed out that in these exhibitions, an exporter can only showcase their products to overseas buyer and prohibited from purchase or sale of products. The exhibitions are meeting point of overseas buyers and Indian exporter and during the period of exhibition, the exporters are also made aware about various policies of Govt. of India for bringing foreign exchange to the country through seminars and conference organized alongwith exhibitions where exporter across the India participate.

5.11 Thus, we find that there is no change in facts and circumstances in the year under consideration as compared to AY



2010-11, therefore following the rule of consistency, the Revenue should have allowed the exemption u/s 11 of the Act to the assessee in the year under consideration as same issue has been conceded by the Revenue in AY 2010-11. But, there is a new development in relation to the appeal for year under consideration is the judgment of Hon'ble Supreme Court in its order dated 19/10/2022 in the case of **Ahmedabad Urban development authority (supra)**, where applicability of the proviso to section 2(15) of the Act in case of entities engaged in charitable activity in the nature of general public utility (GPU) has been thoroughly examined and analyzed, therefore, now the issue, arises before us is whether in the light of the recent decision of the Hon'ble Supreme Court in its order dated 19/10/2022 in the case of Ahmedabad Urban development authority (supra), the proviso to section 2(15) will apply in the case of the assessee or not. For ready reference, said section 2(15) and section 13(8) [i.e. directing consequent withdrawal of exemption under section 11] are reproduced as under:

**“Section 2(15)**

*(15) "charitable purpose? includes relief of the poor, "education, "yoga,) medical relief, "(preservation of environment" (including water-sheds, 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, unless-*

*(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility?5; and*

*(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]*

**Section 13(8)**

*(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.]*

5.12 The proviso to section 2(15) is attracted in case charitable activity in the nature of ‘general public utility’. The issues adjudicated by the Hon’ble Supreme Court are related to determining the scope of the phrase “general public utility” (GPU) in the definition of “charitable purposes” primarily on the grounds that the institutions were carrying on trade, commerce or business for consideration, which does not qualify as GPU under the provisions of the Act as amended by Finance Act (FA), 2008 read with subsequent amendments.



5.13 Before the Hon'ble supreme court (supra), in the cases of most of the entities, there is no dispute as to the activities involved in the appeal qualified as GPUs within the meaning of the term "charitable purposes", but the dispute was in respect of the meaning of "fee, cess or other consideration" and its impact on construing whether the activity falls under to the description of "trade, commerce or business".

5.14 The Hon'ble Supreme Court held that where "fee, cess or other consideration" is statutorily fixed or where it represents recoupment of cost or cost with nominal mark up, the activity may not be construed as "trade, commerce or business" and will be excluded from the mischief of commercial activity under the amended provision. If, however, "fee, cess or other consideration" charged is substantially higher over cost, it is tainted with "trade, commerce or business" and will qualify for tax exemption only if receipts are within the quantitative limit prescribed by the amended provision. The relevant paragraphs of the order of the Hon'ble Supreme Court (supra) are reproduced as under for ready reference:

*"170. Classically, the idea of charity was tied up with eleemosynary<sup>143</sup>. However, "charitable purpose" – and charity as defined in the Act have a wider meaning where it is the object of the institution which is in focus. Thus, the idea of providing services or goods at no consideration, cost or nominal consideration is not confined to the provision of services or goods without charging anything or charging a token or nominal amount. This is spelt out in*



*Indian Chamber of Commerce (supra) where this Court held that certain GPUs can render services to the public with the condition that they would not charge “more than is actually needed for the rendering of the services, - may be it may not be an exact equivalent, such mathematical precision being impossible in the case of variables, - may be a little surplus is left over at the end of the year – the broad inhibition against making profit is a good guarantee that the carrying on of the activity is not for profit”.*

171. Therefore, pure charity in the sense that the performance of an activity without any consideration is not envisioned under the Act. If one keeps this in mind, what Section 2(15) emphasizes is that so long as a GPU's charity's object involves activities which also generates profits (incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated), it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to Section 2(15) for receipts from such profits, is adhered to.

172. Yet another manner of looking at the definition together with Sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts.

173. It may be useful to conclude this section on interpretation with some illustrations. The example of Gandhi Peace Foundation disseminating Mahatma Gandhi's philosophy (in Surat Art Silk) through museums and exhibitions and publishing his works, for nominal cost, ipso facto is not business. Likewise, providing access to low-cost hostels to weaker segments of society, where the fee or charges recovered cover the costs (including administrative expenditure) plus nominal mark up; or



*renting marriage halls for low amounts, again with a fee meant to cover costs; or blood bank services, again with fee to cover costs, are not activities in the nature of business. Yet, when the entity concerned charges substantial amounts- over and above the cost it incurs for doing the same work, or work which is part of its object (i.e., publishing an expensive coffee table book on Gandhi, or in the case of the marriage hall, charging significant amounts from those who can afford to pay, by providing extra services, far above the cost-plus nominal markup) such activities are in the nature of trade, commerce, business or service in relation to them. In such case, the receipts from such latter kind of activities where higher amounts are charged, should not exceed the limit indicated by proviso (ii) to Section 2(15).*

*174. The insertion of Section 13(8)144 , the seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all of which were inserted by Finance Act, 2012, but w.r.e.f. 01.04.2009), further reinforces the interpretation of this Court, of “charitable purpose”. These provisions, form the machinery to control the conditions under which income is exempt. The effect of the seventeenth proviso to Section 10(23C) is to impose the same condition i.e., that that the trade, commerce or business activity or service relating to trade, business or commerce, should be part of the GPU’s activities, to achieve its object of advancing general public utility. The other condition- which is drawn in as part of the exemption condition, is that if such trading or commercial activity takes place the receipts should be confined to a prescribed percentage of the overall receipts. Section 13(8) too reinforces the same condition.*

*175. In the opinion of this court, the change intended by Parliament through the amendment of Section 2(15) was sought to be emphasised and clarified by the amendment of Section 10(23C) and the insertion of Section 13(8). This was Parliaments’ emphatic way of saying that generally no commercial or business or trading activity ought to be*



*engaged by GPU charities but that in the course of their functioning of carrying out activities of general public utility, they can in a limited manner do so, provided the receipts are within the limit spelt out in Clause (ii) of the proviso to Section 2(15).”*

5.15 Thus, the Hon’ble Supreme Court has laid down principle giving the example of ‘Gandhi Peace Foundation’ that where in the process of dissemination of Philoshopy of Mahatama Gandhi through museum and exhibition for a nominal cost is *ipso facto* not a business. Similarly, the Hon’ble Supreme Court has held that services of low-cost hostel, providing of marriage halls or supply of blood bank for nominal markup is not in the nature of business.

5.16. In the light of above principles, the Hon’ble Supreme Court has given specific finding in respect of the trade promotion bodies, Councils etc, while dealing the facts of the Apparel Export Promotion Council (AEPC). The relevant finding of the Hon’ble Supreme Court (*supra*) is reproduced as under:

*“D. What kinds of income or receipts may not be characterized as derived from trade, commerce, business or in relation to such activities, for a consideration*

*(i) Statutory corporations, authorities or bodies*

*176. It would be essential now to deal with certain kinds of receipts which GPU charities, typically statutory housing boards, regulatory authorities and corporations may be entitled to, if mandated to collect or receive. During the course of hearing, learned counsels highlighted that statutory boards, and corporations have to recover the cost of providing essential goods and services in public interest,*



*and also fund large scale development and maintain public property. These would entail recovering charges or fees, interest and also receiving interest for holding deposits. It was further pointed out that in some cases, income in the form of rents – having regard to the nature of the schemes which the concerned board, trust or corporation may be mandated or permitted to carry on, has to be received. For instance, in some situations, for certain kinds of properties, the boards may be permitted only to lease out their assets and receive rents”.*

*Para 176 to 190 -----*

*(ii) Statutory regulatory bodies/ authorities*

*Para 191 to 199-----*

*(iii) Trade Promotion bodies, councils, associations or organizations*

*200. Surat Art Silk (supra) and other decisions, had ruled that as long as the objects of trade promotion bodies were for general public utility - wherein ‘trade promotion’ in itself, was held to be a GPU - the fact that incidentally these bodies carried on some commercial activity, leading to profit, did not preclude them from claiming to be driven by charitable purpose. As observed earlier, the enunciation of those principles were in the context of the unamended Section 2(15).*

*201. The question that arises is whether the change in definition impacts the claims of trade promotion bodies, federations of commerce, or such organizations, that they are GPU charities. The judgment in Surat Art Silk (supra) proceeded on the assumption that trade promotion was the pre-dominant object of the GPU charity before the court, and that other objects – including procuring licences, trade etc. were incidental. The assessee in Surat Silk had clear trading objects:*

*“(b) To carry on all and any of the business of Art Silk Yarn, Raw Silk, Cotton Yarn as well as Art Silk f loth, Silk*



*Cloth and Cotton Cloth belonging to and on behalf of the members.*

\*\*\*\*\*

*(e) To buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the Members.” This court, nevertheless, held that since the predominant object of the assessee was trade promotion, while furthering it, the fact that some trading occurred, leading to income, did not preclude the assessee from claiming tax exemption.*

*202. In the opinion of this court, the change in definition in Section 2(15) and the negative phraseology - excluding from consideration, trusts or institutions which provide services in relation to trade, commerce or business, for fee or other consideration - has made a difference. Organizing meetings, disseminating information through publications, holding awareness camps and events, would be broadly covered by trade promotion. However, when a trade promotion body provides individualized or specialized services - such as conducting paid workshops, training courses, skill development courses certified by it, and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective businesses, the claim for GPU status needs to be scrutinised more closely. Such activities are in the nature of services “in relation to” trade, commerce or business. These activities, and the facility of consultation, or skill development courses, are meant to improve business activities, and make them more efficient. The receipts from such activities clearly are ‘fee or other consideration’ for providing service “in relation to” trade, commerce or business.*

*203. The revenue has appealed to this court, in respect of two assessment years, in the case of Apparel Export Promotion Council (AEPC). The objects of AEPC, which was set up in 1978 – include promotion of ready-made garment export. To achieve that end, its objects include providing*



*training to instil skills in the workforce, to improve skills in the industry; guide in sourcing machinery; to serve as a body advising, providing information on market or technical intelligence; assisting the concerned industry in obtaining import licenses; showcase the best capabilities of Indian garment exports through the prestigious “India International Garment Fair” organised twice a year by AEPC, etc. These fairs host over 350 participants who exhibit their garment designs and patterns. Other functions are to provide information, and to provide market research. AEPC also assists in developing new design patterns and garments and to perform promotional activities in individual foreign markets. Further, AEPC sends missions and trade delegations abroad, who participate in international fairs; and conducts surveys to gather information on potential export of ready-made garments.*

*204. As part of its functioning, it also books bulk space, which is then rented out to individual Indian exporters, who showcase their products and services, and ultimately secure export orders. Towards these services, i.e., booking and providing space, AEPC charges rentals. Now, these rents are not towards fixed assets owned by it. They are in fact charges, or fees, towards services in relation to business; likewise, the skill development and diploma courses conducted by it, for which fees are charged, are to improve business functioning of garment exporters. Furthermore, market surveys and market intelligence, especially country specific activities, aimed at catering to specified exporters, or specified class of exporters, is also service in relation to trade, commerce or business.*

*205. In the circumstances, it cannot be said that AEPC’s functioning does not involve any element of trade, commerce or business, or service in relation thereto. Though in some instances, the recipient may be an individual business house or exporter, there is no doubt that these activities, performed by a trade body continue to be trade promotion. Therefore, they are in the “actual*



course of carrying on” the GPU activity. In such a case, for each year, the question would be whether the quantum from these receipts, and other such receipts are within the limit prescribed by the sub-clause (ii) to proviso to Section 2(15). If they are within the limits, AEPC would be – for that year, entitled to claim benefit as a GPU charity.

(iv) Non-statutory bodies - ERNET, NIXI and GS1 India

206. ERNET is a not-for profit society, set up under the aegis of the Union Government. At one time, government functionaries, including the late President, APJ Abdul Kalam, were members, on account of their ex officio capacity. The objects of this assessee are to

“3.1.1 To advance the cause of computer communication in the country in all its aspects and dimensions with a view to provide rapid nationwide development of the sector and technological and economic growth of the county. 3.1.2 To develop, design, setup and operate nationwide state of the art computer communication infrastructure with international connectivity directed towards research and development, advancement of high quality education, create and host content, express creative and academic potential via intranet and intranet peer to peer connectivity among educational and research institutions in the country and the world and make available the communication infrastructure to users in academic, research and development institutions, Govt organizations in line with national priorities.”

207. ERNET’s networks are a mix of terrestrial and satellite-based wide-area network. It provides services through its 15 Points of Presence (PoPs) located across the country. All those are equipped to provide access to Intranet, Internet and Digital Library through trial leased circuits and radio links to the user institutions. The PoP at STPI Bengaluru provides Intranet and Internet access through Satellite. ERNET provides, services, namely, Network Access Services, Network Applications Services, Hosting Services, Operations Support Services und Domain



*Registration Services under srnet.in, ac.in, edu.in & res.in domains. Funded through government grants, its projects support educational networks and development of internet infrastructure in numerous other segments of society.*

*208. Having regard to the nature of ERNET's activities, it cannot be said that they are in the nature of trade, commerce or business, or service, towards trade, commerce or business. It has to receive fees, to reimburse its costs. The materials on record nowhere suggest that its receipts (in the nature of membership fee, connectivity charges, data transfer differential charges, and registration charges) are of such nature as to be called as fees or consideration towards business, trade or commerce, or service in relation to it. The functions ERNET performs are vital to the development of online educational and research platforms. For these reasons, it is held that the impugned judgment, which upheld the ITAT's order, does not call for interference*

*209. The Revenue has appealed the decision of Delhi High Court in which the National Internet Exchange of India (NIXI) was held to be a GPU category charity. The materials on record show that NIXI was established in 2003 under the aegis of the Ministry of Information Technology of the Union Government for the promotion and growth of internet services in India, to regulate the internet traffic, act as an internet exchange, and undertake ".in" domain name registration. Concededly, NIXI, is a not for profit, and is barred from undertaking any commercial or business activity. Its object is to promote the interests of internet service providers and internet consumers in India, improve quality of internet service, save foreign exchange, and carry on domain name operations. It is bound by licensing conditions – which include the prohibition from altering its memorandum, without the prior consent of the Union Government. According to the submissions made on NIXI's behalf, it charges annual membership fee of ₹1000/- and registration of second and third level domain names at ₹500/- and ₹250/-. The finding of the ITAT and*



*the High Court are that NIXI's objects and functioning are by way of general public utility and thus it is a GPU category charity.*

*210. Having regard to the findings on record and the materials placed by the parties, it is evident that NIXI carries on the essential – crucial purpose of promoting internet services and more importantly, regulating domain name registration which is extremely essential for internet users in India. A country's need to have a domestic internet exchange, rather than depend on an international one, cannot be overemphasized. The Union Government's object of setting up of internet exchange is part of its essential function as a government to regulate certain segment of the communication networks. In the absence of a single entity authorized to register ".in" domain names, there is bound to be chaos or confusion.*

*211. In view of the foregoing discussion, this Court is of the opinion that the revenue's contention that NIXI does not merely carry-on public purpose of regulatory activity but is involved in trade, commerce, or business or in providing service in relation thereto, cannot be accepted."*

5.17 Further Hon'ble Supreme Court, on Miscellaneous application **No. 1849 of 2022 in Civil Appeal No. 21762 of 2017]** filed by the Revenue for clarification of application of the judgement for earlier on subsequent assessment years, held as under:

*"1. By this application, the revenue seeks a clarification of the judgment dated 19.10.2022, delivered by this court, in CA 21762/2017 and connected appeals. The clarification sought is that para 254 of the judgment should be such as to "enable the Revenue to redo the assessments in accordance with the above judgments for the past and examine the eligibility on a yearly basis for the future and thus render justice."*



2. This court, by the judgment in question, had considered and pronounced upon the interpretation of Section 2 (15) of the Income Tax Act, 1961, in relation to charitable trusts which engage in activities that further objects of general public utility. The activities and cases of various kinds of charities, trusts and organizations, including statutory corporations and bodies, regulatory bodies, non- statutory regulatory bodies, trade organizations and bodies, sports bodies and organizations, trusts, etc were considered by the court, and dealt with in the judgment. Para 253 recorded the court's summary of conclusions in relation to each such trust, charity or organization.

3. It was urged on behalf of the revenue, that the clarification it seeks is necessary, because in Para 253 H and in Para 254, it has been precluded from examining the facts and assessing the concerned assessment years, in relation to the assesses in these appeals. It was urged that the conclusions recorded in the judgment and those in the said two paragraphs, preclude it from dealing with the assessments of parties before this court and, furthermore, the dismissal of the revenue's appeals will preclude an examination of the merits for these assesses in future, as well.

4. A plain reading of the conclusions recorded in Para 253 (A)(B)(C) (D) and (E) would disclose that this court consciously recorded its findings, with the intent of finally deciding the issues, for various organizations- in relation to the assessment years in question, - whereas in Para 253 (F), the court remitted the matter for examination and orders by the assessing officer. Similarly, the conclusion in Para 253 G, was conclusive with respect to the claim of private trusts; the appeals were dismissed. These conclusions are accurately reflected in the final, operative directions in Para 254. In Para 254 (i) to (iv), the conclusions recorded are against the revenue. However, in Para 254 (v), (vi), (vii) and (viii), the conclusions, are in favour of the revenue.

5. The reference to application of the law declared by this court's judgment, therefore, has to be understood in the context, which is that they apply for the assessment years in question, which were before this court and were decided; wherever the



*appeals were decided against the revenue, they are to be treated as final. **However, the reference to future application has to be understood in this context, which is that for the assessment years which this court was not called upon to decide, the concerned authorities will apply the law declared in the judgment, having regard to the facts of each such assessment year.** In view of this discussion, no further clarification is necessary or called for.*

*6. The application M.A. No. 1849 of 2022 is disposed of in the above terms.*

*(emphasis supplied externally)*

5.18 Thus, the Hon'ble Supreme Court has clarified that law declared in the judgment have to be applied having regard to the facts of each assessment year. When we examine the facts of the instant case before us, we find that the ld. AO and the Ld. CIT(A) has disputed the activities of conducting exhibitions and trade fair by the assessee, which according to the Assessing Officer are in the nature of trade, commerce or business or activity of rendering service in relation to trade, commerce or business as covered by the provisions to section 2(15) of the Act.

5.19 We find that in the year under consideration, the assessee has declared expenditure of ₹ 83,77,48,288/- on the exhibitions within and outside India. The detail of said expenditure is provided in the notes to the financial statement for the year ended 31/03/2012, which is available on paperbook page 124 to 126. As against this expenditure on exhibitions, revenue (income) of ₹83,95,30,850/-



from exhibitions within and outside India has been shown in the notes to financial statement, which are available on paperbook page 119. The assessee has further claimed expenditure on advertisement for exhibition amounting to ₹1,78,37,641/-. Thus, we find that in the year under consideration there is net loss of ₹1,60,55,079/- from the activity of exhibitions conducted by the assessee within and outside India. In the immediately preceding assessment year the expenses on exhibitions were of ₹77,09,23,044/- as compared to revenue or income of ₹70,79,56,744/-. The assessee has further incurred expenditure on advertisement for exhibitions and thus there was a net loss from the consideration charged by the assessee for conducting said exhibitions or trade fair. Details of exhibition revenue and expenses submitted by the assessee for assessment year 2011-12 to 2015-16 is reproduced as under:

The Gem & Jewellery Export Promotion Council (A Company Limited by Guarantee and not having share capital)					
Summary of Income and expenditure from exhibitions activities					
Particulars	FY 2010-11 AY 2011-12	FY 2011-12 AY 2012-13	FY 2012-13 AY 2013-14	FY 2013-14 AY 2014-15	FY 2014-15 AY 2015-16
Gross Receipts	1,00,57,19,583	1,16,02,21,024	1,31,73,17,085	1,54,62,33,886	1,48,02,92,120
Exhibitions Revenue	70,79,56,834	83,95,30,850	96,11,10,912	1,15,98,98,840	1,04,02,56,135
Less: Expenditure on Exhibitions	77,09,23,044	83,77,48,288	93,65,55,637	1,13,74,94,250	99,43,90,461
Less Expenditure on Advertisement for Exhibitions	2,12,45,443	1,78,37,641	2,79,26,801	2,35,58,718	5,44,94,173
<b>Net Deficit from</b>	<b>(8,42,11,653)</b>	<b>(1,60,55,079)</b>	<b>(33,71,526)</b>	<b>(11,54,128)</b>	<b>(86,28,499)</b>



<b>Exhibitions activities</b>					
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5.20 Thus, in the instant case it is evident that assessee has charged fee or consideration for conducting exhibitions or trade fair is slightly below the cost. The Hon'ble Supreme Court in the case of AEPC has held that activity of renting space to individual exhibitors or exporters in the exhibition or trade fair is a service in relation to trade commerce or business, but in the instant case, there being no markup on consideration charged from the exporter, therefore, in the broad principles laid down by the Hon'ble Supreme Court, the activity is beyond the purview of either trade, commerce and business or activity of rendering services in relation to trade, commerce or business.

5.21. The Ld. Counsel also referred to the annual report for the year under consideration (PB-79 to 89) having discussion regarding promoting 'brand India' by way of holding of exhibitions and participation in exhibitions held by overseas trade promotion bodies. The relevant part of the annual report, focusing on the exhibition and trade fair conducted / participated is reproduced for ready reference:



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## Strengthening the Indian Gems & Jewellery Industry

The Council organises strategic initiatives that support the industry as it matures into a world-class player. These serve as platforms to integrate the Indian industry and encourage the latest trends and practices. Events such as Jewellery Week, Gem & Jewellery Trade Fairs in India and Awards are held annually.

The IJS, Signature and IJW jewellery shows organised by the Council have provided a platform for the industry to grow and collectively raise the bar in terms of quality, design and business practices. GJEPC is encouraged by the participation of industry members from around the country in these promotional initiatives. The second edition of IJW was a great success, and the 28th IJS was even bigger and better than the previous shows. The shift of Signature to Mumbai provided a larger venue and enabled many new jewellery manufacturers to participate in the show. These are collaborative efforts to establish India's stature at the forefront of the gems and jewellery world.

### India International Jewellery Week

July 31-August 4, 2011, Grand Hyatt, Mumbai

The second edition of India International Jewellery Week



(IJW) witnessed 32 of India's leading designers/design houses showcasing their exquisite collections to a niche audience. The show was beautifully orchestrated by ace fashion choreographers and featured India's top most models wearing the premium designer jewellery. Apart from the models, top Bollywood celebrities & international icons

walked the ramp making it a truly premium event. Bollywood fashion diva & GJEPC Brand Ambassador, Sonam Kapoor endorsed this mega event.

IJW was spread over five days and comprised of 32 shows (7-8 shows per day). Each participating designer/retail house showcased their collection for 20 minutes. The Grand Finale on 4th August showcased the 'best of the best' pieces of all the designers.

Extensive promotional activities were carried out for IJW including a pre-event Press Conference and Advertising in leading B2B & B2C magazines, and hoardings across Mumbai. AFPs (Advertiser Funded Property) were created on NDTV Good Times and Zoom TV for which special episodes on IJW were created & aired on these channels. This resulted in mass publicity for the show.

IJW is an initiative to showcase India's finest in jewellery, be it design, innovation, craftsmanship, technology or quality to the customers around the globe. India, the world diamond leader, is today burgeoning with energy and passion when it comes to jewellery. As the fastest growing manufacturing centre, the world's attention is focused on "INDIA", and the industry is fast progressing to be world's "Jewellery Hub".





## India International Jewellery Show (IIJS) 2011

August 4-8, 2011, Bombay Exhibition and Convention Center, Mumbai



The 28th edition of India International Jewellery Show, the biggest and the most effective platform for the Indian jewellery

industry, hosted 1700+ stalls and 850 exhibitors from India and abroad and showcased gold jewellery, diamonds, color stones, diamond jewellery, silver jewellery, pearls and other allied categories. More than 35000+ visitors from India and abroad attended the show which witnessed an astounding 24 percent increase in visitors' registration as compared to the previous year, which included trade/buyer delegations from 17 countries.

The 28th edition of IIJS 2011 was inaugurated by Shri P. K. Chaudhery, Special Secretary, Ministry of Commerce and Industry, Government of India in the presence of Guest of Honour H.E. Ahmed Bin Sulayem, Executive Chairman, Dubai Multi Commodity Centre, alongside Shri Anup Wadhawan, Joint Secretary, Ministry of Commerce & Industry, Government of India and key GJEPC office bearers like Shri Rajiv Jain, Chairman, Shri Sanjay Kothari, Vice Chairman and Shri Haresh Zaveri, Convener-Exhibitions in the presence of international delegates, trade press and other distinguished guests.

Despite the recent bomb blasts in Mumbai in the diamond and jewellery districts of Mumbai, the sizeable presence of foreign visitors at the show was due to the aggressive promotional initiatives undertaken by Council and the assurance of enhanced security at the show made by

GJEPC to the global trade fraternity immediately after the blasts.

Apart from highlighting the growth and achievements of the industry, IIJS has for several years been a catalyst for B2B trade amongst the leading players of the global gem & jewellery industry. Every year, the main endeavor is to provide impetus at every level to the industry and the major thrust each year is to surge forward towards creating Brand India.



Although many exhibitors had a cautious approach due to last year's slowdown in the Indian economy, the outcome at IIJS was beyond all expectations, indicating a resurgence in the industry. The mood of visitors clearly depicted that this is the apt buying season for jewellers and despite high gold prices, bulk business deals were being struck. The crowded halls and serpentine queue of visitors to enter the exhibition halls brought cheer to the exhibitors. The Spectrum seminar series received an overwhelming response, especially from students and mid-level executives as it provided a perfect opportunity for them to interact and discuss with the stalwarts of the Indian gem & jewellery industry as they deliberated trade issues and collectively sought solutions.

The RBS Solitaire Design Awards 2011 were presented at a gala evening in keeping with its growing international stature. The event pulsated to the rhythm of ace percussionist Taufiq Qureshi. 'Flower Power' was the theme for the Solitaire Design Awards 2011

The RBS Solitaire Design Awards 2011 were presented at a gala evening in keeping with its growing international stature. The event pulsated to the rhythm of ace percussionist Taufiq Qureshi. 'Flower Power' was the theme for the Solitaire Design Awards 2011





## Signature-IIJS 2012

January 6-9, 2012, Bombay Exhibition and Convention Center, Mumbai

**SIGNATURE**  
 MUMBAI  
 JANUARY 6th to 9th 2012

The fifth edition of Signature-IIJS 2012 was inaugurated by Ms. Varda Shine, CEO, Diamond

Trading Company, Chief Guest, and Rajiv Jain, Chairman, GJEPC. Signature-IIJS, which is a jewellery-centric show, presents India's finest in top-of-the-line jewellery design and manufacturing.

The exhibition has been conceptualized to represent and showcase the very best that India has to offer in terms of design, craftsmanship and quality. This exclusive platform saw participation from 450 of India's leading, hand-picked companies who displayed the choicest in products and design.

Signature-IIJS 2012 grew to more than double its size this year. The planned expansion of the show has enabled more than 100 new exhibitors to take part. The Signature Club, which houses the country's top-most jewellery manufacturers, was presented with even greater exclusivity. The show had almost 6000 international and national visitors.



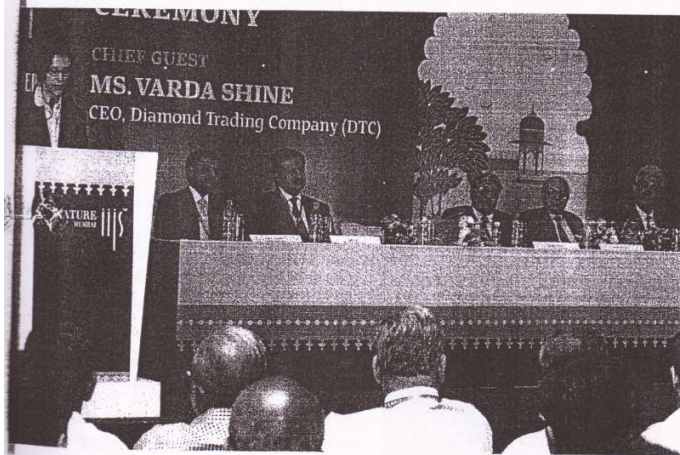
hospitality at special mezzanine lounges in the show hall which were created for their exclusive use. These select privileged retailers have been given Elite Club loyalty cards valid for IIJS 2012 and Signature 2012 / 2013.

Trend Setter networking event was organized in association with Retail Jeweller India, and was attended by more than 400 top Indian retailers. This gala networking evening featured a fashion show which highlighted the creativity and craftsmanship of India's designer jewellery.

The majority of the domestic and international visitors had a positive experience at Signature-IIJS 2012 and are looking forward to attend the event next year. As per an onsite survey, 95% of the domestic visitors were satisfied

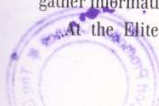
with the experience of the event this year as they were able to find quality exhibitors to meet their business needs.

More than 80% of the international visitors were interested in attending IIJS Signature next year and build on the networks they established at the event.



Visitors from Middle East and Asia together contributed around 66% of the total international visitors. The event also saw participation from Europe and Latin America. There were four international Pavilions from Israel, Turkey, Belgium and Thailand, and 12 international delegations. Representatives from both domestic and international media participated in Signature-IIJS 2012 to cover the event and to gather information on the industry.

At the Elite Club, select privileged retailers enjoyed





### 58th Annual Awards 2011



achieved, export to non-traditional markets and various other best practices.

Annexure VI:  
 List of 58th Annual Award Winners

This year the prestigious Annual Awards function of the Council was held in the manufacturing hub of the diamond industry – Surat, at Indoor Stadium on 11th October 2011. Shri Narendra Modi- Hon'ble Chief Minister, Gujarat State graced the occasion as Chief Guest.

The Council selects the manufacturer-exporters on the basis of their export performance, employment opportunity, growth in export compared to corresponding year, value addition



### Study on Perception of India

The Council conducted a survey at Basel World in March 2011 to gauge the Impact of India Show and promotion of the fair. To conduct this very special and intrinsic initiative, the Council appointed Branding Institute, Berne, Switzerland as the agency to execute the project.

The main objective of the research was market investigation, analysis & strategic recommendations based on the findings. During the Basel show which is attended by more than 1 lakh jewellers worldwide, 600 international visitors were interviewed to gain first hand insight and have an impression of how India or Indian jewellery & Made in India is perceived against other competitors like China, France, Italy, etc.



Based on the same, the Council organized a presentation at Mumbai on July 12, at Ravindra Natya Mandir, at which Mr. Marco Casanova, Founder, Branding Institute, who was in charge of the Analysis, gave a presentation on "Perception of Indian Jewellery in the International Markets & Strategies to Develop Brands". The presentation was attended by around 350-400 people affiliated to the gem and jewellery industry.

The presentation was also organized in Delhi on 13th July for Commerce Secretary, Dr. Rahul Khullar and senior officials of Department of Commerce, as well as for members of the Council in Delhi





5.22. It is the contention of the ld. counsel that object and purpose behind this activity is not to provide any individualized services to particular entity but to promote the Indian brand and the focus is on the display of the ability of the Indian gems and jewellery industry before the global stakeholders and the participation in such exhibition only enables display of the product and not purchase and sale thereof. The DR could controvert above factual aspects of the conducting affairs of the assessee.

5.23. In view of above discussion, we are of the opinion that assessee is not hit by the proviso to section 2(15) of the Act as far as activity of conducting or participating in exhibitions within India or overseas and therefore the disallowance of exemption claimed by the assessee made by the Assessing Officer and the finding of the Ld. CIT(A) on the issue in dispute are set aside and matter restore back to grant benefit of section 11 and 12 as per provisions of law. The ground No. 1 to 4 of the appeal of the assessee are accordingly allowed for statistical purposes.

6. The ground Nos. 5 and 6 have been raised by the assessee as alternative grounds. Since we have already allowed the main grounds of the appeal of the assessee on the issue on dispute, therefore, these alternative grounds are rendered as infructuous and accordingly same are dismissed.



7. The issue raised in ground No. 7 to 8 of the appeal are consequent to the issue of exemption under section 11 of the Act, which we have already allowed in favour of the assessee for statistical purpose, accordingly both the grounds also stand allowed in favour of the assessee for statistical purposes.

8. The ground Nos. 9 in 10 of the appeal of the assessee relate to the issue of claim of carryforward of deficit of earlier years.

8.1 We find that issue of claim of carryforward of deficit of earlier years has been allowed to the assessee by the Hon'ble Bombay High Court in ITA No. 1113 of 2010. Following question of law was raised by the Revenue before the Hon'ble High Court:

*“(2) Whether on the facts and circumstances of the case and in law the Tribunal was right in directing the AO to set off the deficit of earlier years to the surplus of this year and consider such adjustment as application of income for charitable purpose?”*

8.2 The Hon'ble High Court, on the second question of law dismissed the appeal of the Revenue observing as under:

*“4. As regards second question is concerned, counsel on both sides agree that the said question is covered against the revenue by the decision of this Court in the case of Commissioner of Income Tax V/s. Institute of Banking reported in [2003] 264 IT.R. 110. In this view of the matter, we see no merit in the appeal and the same is dismissed with no order as to costs.”*



8.3 We find that following above finding of the Hon'ble High Court, the Ld. CIT(A) in assessment year 2009-10 and 2010-11 has allowed the appeal of the assessee observing as under:

*“7. In the next ground, the appellant is aggrieved by action of the AO in not allowing the deficit of the year to be carried forward. AO held that there is no provision under the Act which allows determination of loss while computing income under section 11 of the Act. He has further stated that department has filed SLP against the order of the Hon'ble High Court.*

*7.1. In submissions, the Ld. AR has pointed out that the Hon'ble Mumbai High Court vide order No.1113/2010 dated 15-2-2011 (supra) has allowed the set off of deficit in assessee's own case for A.Y. 2004-06. Thus there is no reason for AO to deny the same.*

*7.2 I have considered the facts of the case and the submissions made by the appellant. Respectfully following the jurisdictional High Court decision stated above, I direct the AD to and allow the deficit to be carried forward. This ground of appeal is allowed.”*

8.4 In the year under consideration, ld CIT(A) has noted that since exemptions under section 11 had been denied to the assessee by the AO therefore, the action of AO in denying carryforward of the deficit was upheld by the ld CIT(A).

8.5 However, the claim of exemption under section 11 has been allowed to the assessee by us, therefore, the Assessing Officer is directed to allow the claim of the assessee of carryforward of the deficit following the finding of the Hon'ble jurisdiction High Court



(supra). The ground No. 9 and 10 of the appeal of the assessee are allowed for statistical purposes.

9. The issue in dispute raised in appeals for assessment year 2013-14 and 2014-15, being identical to issue in dispute raised in appeal for assessment year 2012-13, therefore following our finding for assessment year 2012-13, the grounds raised in assessment year 2013-14 and 2014-15 are decided *mutatis mutandis*.

10. In the result, all the appeals of the assessee are allowed for statistical purposes.

**Order pronounced in the open Court/under Rule 34(4) of the ITAT Rules, 1963 on 31/01/2023.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 31/01/2023  
Dragon Legal /Rahul Sharma, Sr. P.S.

**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,  
  
(Sr. Private Secretary)  
**ITAT, Mumbai**