

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 392/Ind/2022
(Assessment Year:2012-13)

Sarswati Vidhya Pratishthan M.P. 01, Harshwardhan Nagar Bhopal	Vs.	DCIT (E) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AADAS0899M		
Assessee by	Shri Santosh Deshmukh & Shri Parth Jhawar, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.08.2023	
Date of Pronouncement	30.08.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 14.09.2022 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2012-13. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Ld. CIT (A) grossly erred in confirming the addition of Rs. 98,45,124/- being expenses on VamanDrishtishivir incurred by the assessee.

2. On the facts and circumstances of the case and in law Ld. CIT (A) grossly erred in considering that expenses incurred by the society were for the purpose and object of the society which is carrying education and overall developments of education system through all

type and levels of educational institutions related to the society while confirming the addition.

3. On the facts and circumstances of the case and in law the Ld. CIT (A) grossly failed in appreciating that expenses incurred are not in the nature of brand promotion but was incurred for the purpose of conference held teachers and ex- students whereby deliberations were made for possible method of education and development of students which is the basic objective of trust. He also grossly failed in considering supporting filed during the course of appeal..”

2. The assessee is a society registered under the Societies Registration Act 1973 on 07.10.1986. The assessee was granted registration u/s 12AA on 30.09.2009 as stated by the AO in the assessment order. The assessee filed its return of income on 26.03.2012 declaring total income at nil after claiming exemption u/s 11 & 12 of the Act. The scrutiny assessment u/s 143(3) was passed on 28.02.2014 at the return income. Thereafter, the assessment order was revised by the CIT(E) vide order dated 14.03.2017 passed u/s 263 of the Act on the issue of expenditure of Rs.98,45,124/- on account of Vaman Drishti Shivir as the AO allowed the claim without any verification as to the genuineness of the said expenditure and further the expenditure prima facie is unrelated to the main object of the society i.e. education. While passing the revision order u/s 263 the Commissioner set aside the assessment order u/s 143(3) dated 16.03.2015 and directed the AO to reflect the assessment de novo after affording reasonable opportunity of being heard to the assessee. In pursuant to the revised order passed u/s 263 of the Act the AO has passed the assessment order u/s 143 r.w. section 263 on 28.12.2017 thereby the expenditure of Rs.98,45,124/- on account of Vaman Drishti Shivir has been disallowed as application of income for charitable purpose. Aggrieved by the assessment order the assessee filed the appeal before the Ld. CIT(A) but could not succeed.

3. Before the Tribunal Ld. AR of the assessee has submitted that the assessee is engaged in the promotion and educational activity as well as imparting education which is part of its objects? He has referred to the

bylaws of the assessee society and submitted that it is parent body of schools situated in the State of Madhya Pradesh consisting of Indore, Ujjain, Gwalior, Bhopal, and the schools in these districts are affiliated to the assessee society. The society promote the education quality of schools keeping in view of Indian Culture “भारतीय संस्कृति” by, conducting teachers training, running various co-curricular activities, vocational training workshops and competitions for students. The basic objective and philosophy to develop the education system, to acquaint students with Indian Life philosophy, culture, traditions, develop the national patriotism and overall character development which is at present need of the society. In turn assessee society takes affiliation fees from schools. Assessee society also run 1 educational institute for students. He has submitted that the assessee society has filed its Return of Income for AY 2012-13 declaring Total Income at Rs. NIL /- .The total revenue were 434.71 Lakhs against which actual expenditure was made 373.17 Lakhs and assessee claimed allowable set apart 15% i.e. Rs. 65.22 lacs- u/s 11(1)(a). Copy of Audited Balance sheet along with Audit Report and computation of income with ITR is enclosed herewith and marked as Annexure B, page no. 9 to 32 of the paper book. He has explained that during the previous year relevant to assessment year under consideration the assessee society has completed 25 years of its existence and to celebrate the successful completion a programme was arranged in the name of “**Vaman Drishti Shivir**” on 11th, 12th and 13th of November’2011. In this event there was large gathering of teachers, principals, alumni’s of the affiliated schools, from all over the Madhya Pradesh, at Indore. In this celebration program more than 10,000 teachers and principals of all the schools including ex-teachers and principals have participated. This program was inaugurated by Chief Minister of MP and various dignitaries graced this occasion. In this program deliberations were made on various topics by renowned educationist, intellectuals etc. **Coping of brochure of events along with list of speakers are filed at page no. 36 to 42 of the paper book.** He has submitted that in this program all the arrangements for seminars,

conferences, meetings, stay of participants and food etc. was made and the total expense for such program was Rs. 98,45,124/-. In this program around 10,000 Teachers, Principals and other staff participated in which various cultural program, meetings, conferences, group discussions, etc. were held. All the expenses for “Vaman Drishti Shivar” (Silver Jubilee Program) were separately audited and all expenses are well supported and duly verified in all respects and were also submitted to the Ld. AO at the time of assessment along with the books of accounts and Ld. AO after satisfying the nature of expenses have allowed the same.

3.1 He has submitted that that the case of assessee society was later selected by Ld. CIT Exemption for invoking proceeding u/s 263. The assessee submitted full details including minutes of meeting, photographs of event, annual report and various correspondence during the proceedings u/s 263 of the Act which was also submitted at the time of original hearing. However Ld. CIT (E) passed order u/s 263 against the assessee on 14.03.2017 setting aside the order considering the nature of expenses is not recurring and incurred during the year and Ld. AO had accepted without any inquiry and even could have raised his eyebrow for such exceptional expenses and set aside the order directed Ld. AO for de-novo assessment.

3.2 He has further submitted its contention before us as under:-

i. That during first assessment Ld. AO reviewed the nature of expenses incurred and its connection with the object of trust Refer clause 04 and 05 of the amended objects of the Pratishthan.

ii. That Ld. CIT (A) in his order observed that expenditure is more in nature of brand promotion than providing education. However the assessee Pratishthan is very well recognized educational entity in its area of operation and doesn't require any advertisement which is evident by number of schools affiliated with it and therefore is not the expenditure for promotion of brand but for creating an environment for better Qualitative education platform. Schools affiliated with Pratishthan are Non-profit

organizations which work on very low fees and majority of them are in rural/tribal areas. This shows the intent of the society to promote education to the weaker and unprivileged section of the society which is a main objective of our constitution.

iii. The name of event was kept “**Vaman Drishti Shivir**” which itself shows the resemblances with the Vaman Avatar which is symbol of grow the image to cover entire universe with the eye on minute details which means to educate and train the teachers to equip them with global knowledge with all details of every sector and therefore objects of shivir was formulated as under :-

- (a). To create sense of belongingness among the teachers and the students.
- (b). To upgrade teacher’s knowledge about new developments in teaching areas of all fields including skill and personality development particularly for character building and practical field knowledge whereby the students can grow as good character citizen and independent entrepreneur rather than for developing themselves as service person.

3.3 Our attention is drawn to the fact that the schedule of events shows that there were serious deliberations made by dignitaries and teachers on improving the quality of education on various subjects, how new techniques could be inculcated in education sector, how to make education more easy and accessible, and improve skill development and how education methods can be reformed looking to the new avenues etc. It is also noteworthy to mention here that the basic thinking to formulate the Education policy considering the latest changes, character building, skill development, to include sports and spiritual thinking were outcome of Shivir and was also suggested to State and Central Govt. for formation of New Education Policy.

3.4 He asserted that in all stages of proceedings none of the officers had any doubt on the authenticity and genuineness of events and its related expenditure and the only question on which the addition is made is on the basis of argument that this is a non-recurring expenses which is not related to objects of assessee society. This event was very widely covered

by the local and national newspaper and media. Copy of some sample newspaper cutting are filed in the paper book. Without prejudice to above, assessee here wants to draw the attention of the bench towards fact as per the provisions of section 11 & 12 of the Act, Capital expenditure even repayment of loan are also allowable as expenses while computing total income of the assessee. That as per the provisions of the section 11 of the act it doesn't differentiate the expenses on the basis of recurring and non-recurring expenses, capital and revenue. It only mandates that expenditure should be on the objects of trust which is very clear from above submission that the expenditure incurred was towards the objects of the trust.

3.5 In support of his contention he has relied upon the following judgements:

- i.[2007] 14 SOT 318 (Mumbai)[22-12-2005] Institute of Marine Engineers (I) vs. Assistant Director of Income-tax Exemption II(1) Mumbai**
- ii. [2005] 1 SOT 641 (Bangalore)[18-10-2004] Ganjam Nagappa & Sons Trust vs. Deputy Director of Income-tax (Exemptions)**
- iii. Credai Bengal V. ITO (Exemptions), Ward-1(1), Kolkata [2019] 110 taxmann.com 113 (Kolkata - Trib.)**
- iv. Gujarat High Court in the case of DIT (Exemption) v. Ahmedabad Management Association [2014] 47 taxmann.com 162/225 Taxman 223/366 ITR 85**

4. On the other hand, Ld. DR has submitted that the expenditure in question has been incurred by the assessee on the occasion of Silver Jubilee Celebration which shows that it has nothing to do with the objects and activity of the assessee to promote or impart education. The expenditure has not been incurred by the assessee for achieving the objects of the assessee society but it is only for Silver Jubilee Celebration of assessee society. The expenditure booked on account of organizing Silver Jubilee Celebration is disproportionate expenditure incurred by the assessee for providing education to students. This is one time expenditure incurred and not recurring nature therefore, the said expenditure cannot

be regarded as application of income for charitable purpose as provided u/s 11(1) of the Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The AO has disallowed the claim of the assessee in para 6 & 7 as under:

“6. The above submissions of the assessee have been considered but not found acceptable. It is noted that such expenditure has been booked during the year on account of organizing Shivir/Seminar. Such expenses are huge and not proportionate to the direct expenses incurred by the assessee on providing education to students. It is further seen that such expenses are incurred one time during the year and not of recurring nature. This is not incurred directly for the purpose/object of providing education to the students. Hence the same expenses claimed during the year are not allowable as application for charitable purposes.

7. In view of the above facts and circumstances, the expenditure claimed of Rs. 98,45,124/- on account of Vaman Drishti Shivir are disallowed as application of Income and computation is made accordingly. I am also satisfied that the assessee has committed default within the meaning of the provisions of section 271(1)(c) of the Act by furnishing inaccurate particulars of its income, hence, penalty proceedings u/s 271(1)(c) of the Act are initiated separately.”

5.1 Thus, it is clear that the AO has disallowed the claim primarily on two grounds, that this expenditure is incurred for organizing the Shivir/celebration and not proportionate to the normal expenditure incurred by the assessee on providing education to the students. The second objection of the AO is that this is one time expenditure and not recurring in nature and therefore, this expenditure is not incurred for the purpose/ objects of providing education to the students. In the assessment order AO has not denied the fact that this expenditure was incurred while organizing Vaman Drishti Shivir from 11 to 13 November 2011. The assessee has organized three days programme delivering lectures, holding seminars, conference and meetings on various topic for improving the quality of general education, quality of education of moral

values in the students and children in the society with best possible method of education for overall development of the students. Providing education is not confined to activity in the class rooms of schools and educational institutions but other activities of participation in seminars, conference, attending lectures are also part of imparting education to the students as well as training to the teaching staff. These are the activities which cannot be separated from the activities of imparting education. Organizing such seminars, conference and lectures provide a platform and environment for exchange of knowledge experience upgrade the knowledge about the latest development in the area of teachings, equipped with skill and practical knowledge for both teachers and students. It also facilitates the development of understanding between the participants like teachers and students for free flow of knowledge and ideas. The AO has not disputed the main object of the assessee of imparting/improving education but the expenditure in question has been disallowed on the ground that it is not incurred for achieving the objects of the assessee. The assessee has produced audited accounts and specifically the separate account of this expenditure duly audited by the auditor placed at page no.31 of the paper book. The details of all expenditure incurred during this period of shivir have been examined by the auditor and the assessing officer has not pointed out any error or defect in the separate account maintained by the assessee.

5.2 The Mumbai bench of the Tribunal in case of *Institute of Marine Engineers (I) vs. Assistant Director of Income-tax Exemption II(1) Mumbai (supra)* has considered the issue of holding conference, seminar to educate its members is incidental to the object of the trust or not. The relevant part of is reproduced as under:

“14. *The moot question for our determination is whether the assessee is pursuing its objects as per the provisions of section 2(15) of the IT Act, i.e., relief for poor, education, medical relief and advancement of any other object of general public utility and is entitled to exemption under section 11 of the IT Act. We have already noted the primary and main objects of the assessee. It is clear from the objects that the promotion of scientific development of marine engineering is the main*

activity of the assessee. In order to enable the marine engineers, i.e., members of the assessee society, to meet and exchange ideas, annual meetings are held by the assessee in addition to international meet which is held once in four years. In the said meetings, the members interact with each other in addition to technical sessions being held for enlightenment of the subject of marine engineering. In these technical and social meetings, technical papers pertaining to the Shipping Industries are presented, which are attended by members from all over the country, Government officers and representative from various companies interested in the shipping business. During the year under consideration two Meetings/Seminars were held, one at Mumbai and another international seminar in Chennai, which was attended by people from marine industries all over the world. Brochures were takes out for the said Meeting/Seminars in which the companies engaged with marine industries had given advertisements as well as sponsorships. The surplus received as a result of these international and national conferences have been shown as the income of the assessee for the year under consideration. The assessee is maintaining separate accounts for the said technical meetings which is incidental to the objects of the trust, which is in compliance of the provisions of sub-section (4A) of section 11 of the IT Act.

15. In the present case, the Assessing Officer has denied the exemption to the assessee observing that the activity carried on by it is not for the members except for holding dinners at the end of the technical sessions. No material has been brought on record by the authorities below to establish that the said activity carried on by the assessee are for earning profit and not for achieving its objects. Looking at the details of earnings and expenditure of the technical meetings and seminars, held for the year ended 31-3-2001, it is crystal clear that the funds have been raised by holding annual technical meetings at Mumbai and the International Meet at Chennai. In case, the said meetings are not being held in all the other branches, the assessee had incurred losses, which clearly proves the case of the assessee that in order to meet its day-to-day expenses at different branches, in fulfilment of its object, it was necessary and prudent for the assessee to hold such meetings wherein funds are collected which will go a long way in attaining its objects. There is no material to show that the assessee had violated any of its objects in carrying out such activities. The Technical meetings and seminars were held in order to educate its members regarding the new technology and also to enable the marine engineers to meet and facilitate inter-change of ideas amongst the members. The brochure published in such meetings is circulated amongst its members and also amongst persons connected with marine engineering, which is again in furtherance of its objects of carrying on the activity of advancing the object of general public utility. The factum of making profit from such meetings does not mean that the assessee was

carrying on business. The Apex Court, in the case of Surat Art Silk Cloth Mfrs. Association (supra), have held as under :

"The test which has not to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But, where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. 'If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than not in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity'. The restrictive condition that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit making is not the real object."

From the facts and circumstances of the case, it is clear that the assessee had not carried on 'business' as per the provisions of section 2(13) of the IT Act. In any case, as per the amended provisions of section 11(4A), which were amended by the Finance (No. 2) Act, 1991 with effect from 1-4-1992, it has been provided that in cases where the income of a trust or an institution includes profits and gains of business and such business is incidental to the attainment of the objectives of the trust or institution and separate books of account are being maintained by such trust or institution in respect of such business, such income is exempt from tax and the provisions of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall apply. In the facts of the present case, the assessee has complied with all the conditions by maintaining separate books of account in respect of income from technical meetings and seminars and coaching fees, which are in furtherance to the objectives of the assessee trust and, hence, exempt from taxation.

16. *In addition to the technical meetings, the assessee has also conducted coaching classes for its members which is as per the preparatory courses approved by the Director General of Shipping. In addition to career development income received by the assessee at the head office, for conducting the said courses, the assessee has charged entrance fees from members. In addition, the assessee has received voluntary donations from members and various industries. The assessee is also holding examination as approved by the Director General of Shipping. Some of the surplus funds received by the assessee are used for publishing its monthly journal MER(I) which is circulated to its members free of cost. The said journals are also*

circulated amongst various educational institutions and shipping companies. During the year under consideration, the cost of publishing and distribution of these journals was Rs. 6,24,600 against which the assessee had earned income on sale of journals of Rs. 94,150 only. The funds to meet the cost of publishing and distribution of these journals are utilized out of surplus funds available with the assessee. Thus, the cumulative activity carried on by the assessee trust are in furtherance of its objects and are entitled to exemption under section 11 of the IT Act.

17. *We further find that the nature of business activities of the assessee are same as carried on from year to year and has been accepted by the Income-tax Department for the preceding years. We also agree with contentions of the authorized representative that if a particular stand has been accepted from year to year by the Assessing Officer, he (Assessing Officer) should find something different in the conduct of the business in order to deviate from the said stand as held by several Courts. Res judicata does not apply to the income-tax proceedings, but if no new facts are brought on record, there should not be any deviation from a particular stand. We have carefully gone through the judicial pronouncements relied upon by the ld. AR. We find that although the Supreme Court, in the case of Radhasoami Satsang (supra) had given a note that the decision is confined to the facts of the present case, but the law is settled on this point as held by the Delhi High Court in the case of CIT v. A.R.J. Security Printers [2003] [264 ITR 276](#)¹ .*

18. *Considering the facts of the case in totality, we are of the considered view that the activities carried on by the assessee society are with a view to serve its members, for which sufficient funds were required and money was collected by way of sponsorship and advertisement in order to promote the activities of the assessee-trust and the same income is exempt under section 11 of the IT Act.”*

5.3 The Tribunal has held that the meetings and seminars were held in order to educate the members regarding the new technology and also enable the marine engineers to meet and facilitate inter-change of ideas amongst the members and therefore, the expenditure incurred in holding seminars and technical meetings is for achieving objects of the trust and therefore, the same is applied for the attainment of the object of charitable purpose of the trust.

5.4 In the case of *Credai Bengal vs. ITO (supra)* Kolkata Benches of the Tribunal held in in para 6 to 12 as under:

“6. After giving a thoughtful consideration to the rival submissions, material placed on record and the judicial precedents available on this subject, we note that in the appellant's case the lower authorities rejected appellant's claim for benefit of [Section 11](#) primarily on the ground that the appellant was holding trade fairs, exhibitions and conferences and in respect of these activities received substantial sums from the participants who were both members of the appellant organization as well as non-members. In the opinion of the lower authorities the appellant activity of holding trade fairs, exhibitions and conferences was in the nature of trade or business and therefore in terms of the proviso introduced by the ITA No. 278/Kol/2018 M.s. Credai Bengal, AY 2012-13 [Finance Act](#), 2008 in [Section 2\(15\)](#) of the Act, the said activity could not be regarded to be charitable in nature and consequently therefore the benefit of [Section 11](#) was not available to the appellant. We however find that since inception of the appellant it has been conducting the foregoing activities in furtherance of the objects of the company and in all the past assessments such activities were considered to be charitable in nature. We find that there was no material change in the factual matrix of the appellant's case though the change was brought about in [Section 2\(15\)](#) by introduction of proviso therein. On careful perusal of proviso to [Section 2\(15\)](#) it is noted that the object of advancement of general public utility is not be considered as charitable in nature if it involves carrying of any activity in nature of trade, commerce or business or any activity of rendering any service in relation to trade, commerce or business, for a cess or fee or other consideration. From the language employed by the Legislature while enacting the said proviso it is apparent that it is only when the activity of general public utility in itself involves carrying on any trade, commerce or business only then the proviso will be applicable. In other words the activity of the organization on its own should constitute either trade, commerce or business or any activity involving provision of service in relation to trade, commerce or business. We however note that in the present case the lower authorities have not brought on record any cogent or tangible material which in any manner will persuade us to hold that the activity of the appellant of holding trade fairs, exhibitions or conferences were in itself for making profit or in the nature of trade, commerce or business.

7. We note that as per Memorandum of Association, the main object of the assessee is to engage itself in establishing harmony between the construction industry and the Government Departments at the Central and State levels, local and public bodies, financial institutions and private bodies and institutions for promoting healthy growth and development of the construction industry. In order to pursue and fulfilment of the said main objectives, the appellant-association organised certain incidental or ancillary activities, as stated above, namely, organising fairs, exhibitions and several other inter-connected activities. Such fairs/exhibitions are organized by the

assessee as ancillary in the pursuit of achieving the main objectives of the institution. The purpose of organizing fairs or ITA No. 278/Kol/2018 M.s. Credai Bengal, AY 2012-13 exhibitions etc. is to disseminate information about availability of affordable housing amongst emerging urban populous and to provide effective platform for holding interface amongst various stakeholders connected with development or urban infrastructure with Govt. agencies and general public for the development of civic infrastructure. We further note that the persons taking part in such fairs and making contributions are primarily members of the appellant-institution. It may be so that some of the non-members also participate in these fairs, exhibitions & conferences. However the non-members participating are not strangers but they are important stakeholders closely connected with real estate development industry and thus have important role in the development of civic infrastructure facilities. In this factual background we are of the considered view that the activities of holding fairs, exhibitions and conferences were incidental or ancillary to the attainment of the main objects for which the appellant-institution was created and registered u/s. 12AA of the Act. In view of the foregoing facts we are of the considered opinion that the benefit of [Section 11](#) could not be denied to the appellant only because it realized net surplus from activities which were undertaken in the pursuit of attaining main object of the organization which was considered to be charitable in nature by the Department itself at the time when registration u/s 12AA was granted and in the past assessments the benefit of [Section 11](#) was also extended in respect of the self-same activities.

8. In this regard we note that the issue involved in the present appeal is covered by the majority opinion of the Hon'ble Supreme Court in Addl. [CIT vs Surat Art Silk Cloth Manufacturers Association](#) (1980) 121 ITR 1. Even though the decision of the Hon'ble Supreme Court was rendered in the backdrop of provisions of the [IT Act](#), 1961 prior to introduction of the proviso in [Section 2\(15\)](#) of the Act yet in our considered opinion the judicial principles laid down in the said decision continue to hold field and therefore still applicable even after introduction of first proviso to [Section 2\(15\)](#) of the Act. In this regard we also note that the ratio laid down by the Hon'ble Apex Court in the case of Addl. [CIT vs Surat Art Silk Cloth Manufacturers Association](#) (supra) was applied by this Tribunal in appellant-assessee's own case for A.Y. 2011-12 which is placed at page no. 68 to 87 of the ITA No. 278/Kol/2018 M.s. Credai Bengal, AY 2012-13 Paper Book in ITA No. 381/Kol/2016 passed on 30.09.2016. The relevant extracts of the decision is reproduced below:

8.1 Now in the light of above words, we have to examine as to whether the order of the ld. CIT is a valid order in the light of the above stated points/provisions of [section 263](#) of the Act.

Violation of provisions of section 2(15) of the Act

9. We find that the activities of the assessee are within the objects as per its memorandum of association. The relevant main objects and objects incidental or ancillary to the attainment of the main objects stand as under:

"Main objects:-

'3) To establish harmony between the construction industry and the Government Departments at the Central and State levels, local and public bodies, financial institutions and private bodies and institutions for promoting healthy growth and development of the construction industry.

4) xxxxxxxxxxxx

5) xxxxxxxxxxxx

6) To encourage research and development in the construction industry and for that purpose organizes conferences, seminars, exhibitions, films shows etc., and also establish laboratories, collect models and designs, etc.' Objects incidental or ancillary to the attainment of the main objects: '5) To organize conferences, exhibitions, film shows, seminars, tours, delegation, etc. in India and abroad and to nominate delegates and advisers and to take steps which may promote and support the construction industry, trade and profession.' The assessee-company was established with the aforesaid objects and the same were accepted by the Revenue while granting the registration u/s 12AA of the Act on 10.10.1995. Since the inception of the assessee-company the objects and activities remained same and which were accepted by the Revenue even under the assessment framed u/s 143(3)/147 of the Act consistently without holding the aforesaid activities as commercial in nature.

Accordingly, in view above, we are inclined to provide the relief to the assessee on the basis of consistency as there is no change in the objects and activities of the society. In this connection, we rely in the case of [Radhasoami Satsang vs. CIT](#) (1992) 193 ITR 321 where the Hon'ble Supreme Court has held as under:- "There is no dispute that the properties of the assessee are also recorded in the name of the Sabha (Central Council) and there is no personal interest claimed by the Sant Satguru in such property. Over the years the Satguru has never claimed any title over, or beneficial interest in, the properties and they have always been utilised for the purpose of the religious community. Even if the trust was revocable, the property was not to go back to the Satguru on revocation. The constitution and the bye-laws on record indicate in cl. 1(b) that where the property was given to the SantSatguru, it was intended for the common purpose of

furthering the objects of the Sant Satguru and the Central Council had the authority to manage the property. Clause 9 of the document stipulated that the properties would vest in the trust and cl. 25 provided that the trust shall be revocable at the discretion of the Council and the trustees shall hold office at its pleasure. Upon revocation the property was not to go back to the Satguru and, at the most, in place of trust, the Central Council would exercise authority. It is on record that there has been no Satguru long before the period of assessment under consideration. As a fact, therefore, the Tribunal was justified in holding that the property was subject to a ITA No. 278/Kol/2018 M.s. Credai Bengal, AY 2012-13 legal liability of being used for the religious or charitable purpose of the Satsang.--AllIndia Spinners' Assocn. vs. CIT (1944) 12 ITR 482 (PC) : TC23R.179applied; The Secretary of State for India in Council vs. Radha Swami Satsang (1945) 13 ITR 520 (All) impliedly approved; CIT vs. Radha Swami Satsang (1980) 19 CTR (All) 345 : (1981) 132 ITR 647 (All) :TC23R.644 set aside. Properties of assessee, a religious institution, were meant for the common purpose of furthering the objects of the Sant Satguru and vested in its Central Council and income was always utilised for that purpose and, therefore, assessee was entitled to exemption under ss. 11 and 12."

Now coming to the objects and activities of the assessee company, we find that the ld. CIT held that the activities are commercial in nature in terms of the provisions of section 2(15) of the Act. At this juncture we would like to reproduce the said provision which reads as under:-

"2[(15) chartable 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 :

Provided further that first proviso shall not apply if the aggregate value of receipts from activities referred to therein is twenty-five lakh rupees or less in the previous year"

The ld. CIT passed impugned order u/s 263 of the Act is treating the activities of the assessee as commercial in nature in terms of the clause of section2(15) i.e. 'advancement of any other object of general public utility'.

However we find that as per the proviso to [section 15](#) along with the speech of the Finance Minister and CBDT circular number 11 of the 2008 dated 19th December 2008 make it clear that only the institution carrying on commercial activities are intended to be covered by the proviso, not the genuine charitable institutions. The activity will be deemed to be in the nature of trade, commerce or business only if the same is carried on with the intention to earn profit. The Courts in the series of decision have held that it is an activity carried on in a systematic manner with a view to earn profit, which will be termed as "business". Accordingly in order to hold that the activity is in the nature of trade, commerce or business there should be profit motive. If during the course of carrying out any activity on non-commercial lines, some profit is received by the trust, which is incidental to the activities of the trust, the same shall not be construed to be activity in the nature of trade, commerce or business of the assessee. However, the assessee relied in the order of the Co-ordinate "C" Bench of this Tribunal in the case of Indian Chamber of Commerce Vs. ITO (ITA Nos. 1491 & 1284/Kol/2012 dated 02.12.2014. But the ld. CIT distinguished the said case law by holding that in that case the assessee's activities were incidental and ancillary to the main objects to the trade, commerce and industry but in the case on hand the main activities of the assessee are commercial in nature. However, we disagree with the view taken by the ld. CIT as the questions before the Hon'ble ITAT were as follows:-

"2. That on the acts and the circumstances of the case of the appellant the Ld. CIT(A) erred in confirming the allegation of the Ld. AO that the appellant's activities of conducting the Environment Management Centers, meetings, conferences & seminar and the Issuance of Certificate of Origin were all in the nature of business carried on systematically and continuously with a motive to earn profit from the same.

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3. That on the acts and the circumstances of the case of the appellant and in law, the Ld. CIT(A) erred in holding that decision of the Hon'ble Delhi HC dated 19th September, 2011, in the case of DIT (Exemptions) Vs. Institute of Chartered Accountants of India and that the case of The Institute of Chartered Accountant of India in Write Petition 1927 of 2010 are not applicable to the case of the appellant inasmuch the facts of the said case are different from the case of the appellant.

4. That on the acts and the circumstances of the case of the appellant the Ld. CIT(A) erred in holding that the appellant's activities of conducting the Environment management Centers, meetings, conferences & seminars and the issuance of Certificate of Origin were

not incidental to the main object of the appellant which was charitable in nature."

9. From the above facts, we find that there was no question to decide before the then Hon'ble ITAT which is arising in the instant case whether the activities of the instant assessee are incidental/ ancillary to the main objects to the trade, commerce and industry or main objects are in the nature of trade, commerce and industry. Therefore, in our considered view the facts of the case are squarely applicable of case of Indian Chamber of Commerce Vs. ITO(Supra), wherein it was held that the activities of the assessee are charitable in nature. The relevant portion of the order is reproduced below:-

"30. Hence in view of all the above, concluding this issue we hold that the purpose for which the assessee association, i.e. the Indian Chamber of Commerce was established is a charitable purpose within the meaning of [s. 2\(15\)](#) of the Act. The assessee is carrying out the said activities which are incidental to the main object of the Association and which are conducted only for the purpose of securing the main object which is the advancement and development of trade and commerce and industry in India. The activities are not in the nature of business and there is no motive to earn profit. The income arising to the assessee is only incidental and ancillary to the dominant object for the welfare and common good of the country's trade, commerce and industry. The profits earned are utilized only for the purpose of feeding its dominant object and no part of such profit is distributed amongst its members.

Profit making is not the object of the assessee. Profit is merely a by product which result incidentally in the process of carrying out the charitable purpose. Thus, the income of the assessee for AY 2008-09 is exempt from tax u/s. 11 of the Act. Accordingly, the appeal of assessee is allowed.

35. In view of the above, we thus now turn to examine and analyze in full details the particular fact of the present case. That the assessee association is a charitable institution, duly registered as such [us.12A of the Act](#), carrying in its main object of development of trade, industries and commerce. The main objects for which the association came into existence, are clearly set out in clause 3 of the memorandum of Association which duly records and reads as under:-

'3(a) To promote and protect the trade, commerce and industries and in particular the trade, commerce and industries in or with which Indians are engaged or concerned' The activities of conducting Environment Management Centre, Meetings, Conferences & Seminar and issuance of Certificate of Origin, being the activities stated to be "services in relation to trade, commerce or business" were all well covered by the main object being fully connected, incidental and

ancillary to the main purpose and were conducted solely for the empowerment, betterment and for creating awareness amongst the industrialists in order to bring about the development of trade and industries in India. Further it is to be noticed that the Memorandum has also specifically authorized the Chamber "to do all other things as may be conducive to the development of trade, commerce and industries, or incidental to attainment of the above objectives or any of them." Thus it was only for the purpose of securing its primary aims of proper development of business in India that the assessee was taking the said ancillary steps. The said activities were not carried out independent of the main purpose of the association of the institution being the development and protection of trade. There was no ITA No. 278/Kol/2018 M.s. Credai Bengal, AY 2012-13 independent profit motive in any of the said activities. The surplus arising out of the same was merely incidental to the main object to charity. The majority of the receipts in the said activities were out of the sponsorships and donations. The expenses incurred on the said activities as and when incurred were all separately debited to the said accounts and the balance was shown as surplus over receipts. Thus in view of the above it is clear that the alleged activities were all merely incidental to the main object of the assessee and the predominant object of the association being the promotion development and protection of trade and commerce which is an object of general public utility, it can never be the case that it is engaged in "business trade or commerce" or in any "service in relation to business, trade or commerce. The individual nature and purpose of the specific activities, it is stated that the activities held by AO and the (A) to be business in nature, were as follows:-

- a) Meetings, Conference & Seminars
- b) Environment Management Centre
- c) Fees for Certificate of origin

38. In view of the above decision, we are of the considered view that in the given facts and detailed reading of the various judicial decisions through the years, interpreting the definition of "charitable purpose" as laid out in sec. 2(15) of the Act and also the definition of "business" in relation to the said section amply reveals that the theory of dominant purpose has always, all through the years, been upheld to be the determining factor laying down whether the institutions Charitable in nature or not. Where the main object of the institution was 'charitable' in nature, then the activities carried out towards the achievement of the said, being incidental or ancillary to the main object, even if resulting in profit and even if carried out with non members, were all held to be "charitable" in nature. Hon'ble Apex Court in the earliest case of Andhra Chamber of Commerce (supra) had laid out the principle that if the primary purpose of an Institution

was advancement of objects of general public utility, it would remain charitable even if an incidental and ancillary activity or purpose, for achieving the main purpose, was profitable in nature, in our view the basic principle underlying the definition of "charitable purposes" remained unaltered even on amendment in the sec. 2(15) of the Act w.e.f. 1.4.2009 though the restrictive first proviso was inserted therein. Accordingly, in the given facts of the case as discussed above in detail, the assessee association primary purpose was advancement of objects of general public utility and it would remain charitable even if an incidental or ancillary activity or purpose, for achieving the main purpose was profitable in nature. Hence, assessee is not hit by newly inserted proviso to [s. 2\(15\)](#) of the Act. this issue of assessee's appeal is allowed."

Besides the above, we also rely in the case of the CIT Vs. Federation of Indian Chambers of Commerce & Industry (1981) 130 ITR 186 (SC) where the Hon'ble Supreme Court has held as under :

"Whatever reservations one may have regarding the correctness of the interpretation of the exclusionary clause in the definition of 'charitable purpose' in [s. 2\(15\)](#) of the Act, there can be no doubt that the majority decision in the Addl. [CIT vs. Surat Art Silk Cloth Manufactures Assn.](#)(1979) 13 CTR (SC) 378 : (1980) 121 ITR 1 (SC) : TC23R.195 is binding on the Bench. Undoubtedly, the activities of the assessee in regard to holding of the Conference of the Afro-Asian Organisation in the relevant accounting year were for the advancement of the dominant object and purpose of the trust, viz., promotion, protection and development of trade, commerce and industry in India. The income derived by the assessee from such activities was exempt under r/w s.11(1)(a) [s. 2\(15\)](#). There is a distinction between the "purpose" of a trust and "powers" conferred upon the trustees as incidental to the carrying out of the purpose. For instance, cl. 3(v) enables the establishment and support of associations, institutions, funds, trusts and convenience calculated to benefit the employees and their dependents, for making provision for grant of pension and allowances, etc. The ITA No. 278/Kol/2018 M.s. Credai Bengal, AY 2012-13 framing of such employee benefit scheme is essential and necessary for the proper functioning of the organisation and is incidental to the carrying out of the purpose for which it is constituted. If the primary or dominant purpose of a trust or institution is charitable, any other object which is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or the institution from being a valid charity. Likewise, cl.3(z1) and (z2) which permit the establishment of a trust or trusts, appointment of trustees thereof from time to time and the vesting of funds or surplus income or any property of the assessee in the trustees, are nothing but powers conferred on them for the proper financial management of the affairs of the trust which are incidental or ancillary to the main purpose of the trust.--Addl. [CIT vs. Surat Art Silk Cloth Manufacturers](#)

Association (1979) 13 CTR (SC) 378 : (1980) 121 ITR 1(SC) : TC23R.195 followed. The majority decision in Surat Art Silk Manufacturers case has the effect of neutralising the radical changes brought about by Parliament in the system of taxation of income and profits of charities, with particular reference to "objects of general public utility" to prevent tax evasion, by diversion of business profits to charities. It is the vagueness of the fourth head of charity "any other object of general public utility" that impelled Parliament to insert the restrictive words "not involving the carrying on of any activity for profit". It was clearly inconsistent with the settled principles to hold in the aforesaid case that if the dominant or primary object of a trust was 'charity' under the fourth head 'any other object of general public utility', it was permissible for such an object of general public utility, to augment its income by engaging in trading or commercial activities. In retrospect, it seems that it would have been better for Parliament to have deleted the fourth head of charity "any other object of general public utility" from the ambit of the definition of 'charitable purpose' while enacting s. 2(15) rather than inserted the words "not involving the carrying on of any other activity for profit", thereby creating all this legal conundrum". When the Government had not accepted the recommendation of the Direct Tax Laws Committee in Chapter 2 (Interim Report, December, 1977) for the deletion of the words "not involving the carrying on of any activity for profits", by suitable legislation, it was impermissible for this Court by a process of judicial construction to achieve the same result. It is wrong to think that all springs of charity in India will dry up if true effect is given to s. 2(15) in accordance with the minority judgment in the Surat Art Silk Cloth Manufacturers' Association's case. People who are truly charitable do not think of the tax benefits while making charities. One must realise that even the poor who do not pay income tax can be charitable and their charities made at great personal inconvenience are commendable indeed. One need not go in search of charitable persons amongst the taxpayers only. Still the majority view has got to be followed now.

The main object of assessee being promotion, protection and development of trade, commerce, and industry in India, it was an object of general public utility and income derived from activities for advancing the dominant object was exempt under s. 11."

9. Since the factual matrix of the appellant's case for the AY 2012-13 is identical with that involved in AY 2011-12, we have no hesitation in holding that the ratio laid down in the decision of the coordinate Bench of this Tribunal holds good and applies to the year under consideration as well. Applying the said decision we hold that the appellant's activity of holding trade fairs, exhibitions and conferences was not in the nature of trade, commerce or business and therefore there was no violation of Section 2(15) of the Act. Accordingly we ITA No. 278/Kol/2018 M.s. Credai Bengal, AY 2012-13 hold that the

lower authorities were legally unjustified in not granting the appellant the benefit of [Section 11](#) of the Act.

10. We also note that during the relevant year the gross receipts from the activities of holding trade fairs, exhibitions and conferences from members and non-members together totalled Rs.3,94,70,967/-. There against the expenditure incurred was Rs.3,03,60,941/- resulting in surplus of Rs.91,10,026/- which has been assessed in the impugned order as business income. In the course of appellate proceedings the Ld. AR furnished the break-up of such receipts, expenses and surplus as follows:

Particulars	Cash Basis	Accrual Basis
Inflow from Fairs etc.		
• Members		3,43,28,080
3,44,74,450		
• Non-Members (Others)		49,96,517
49,96,517		
	Total	3,93,24,597
3,94,70,967		
Outgo on a/c of Fairs etc		
• Members portion		2,87,18,963
2,65,17,636		
• Non-Members (Others)		41,80,099
38,43,305		
		3,28,99,062
3,03,60,941		
	Net Surplus	64,25,534
91,10,026		

11. We note that even though the appellant realized surplus from organizing fairs & exhibitions yet there was express understanding between the appellant and the participants that the surplus, if any, remaining after meeting the cost and expenses for holding the events would be transferred to infrastructure fund of the appellant. A sample copy of the invoice raised by the appellant on the participant from whom the contribution was received was filed from which we note that the following note was appended :

" CREDAI BENGAL is a charitable non-profit organization. The tariffs are based on the reimbursement of recurring and non-recurring expenses based on estimated expenses for the exhibition. The

surplus, if any, from the exhibition shall form part of 'OWN INFRASTRUCTURE FUND' of the association for mutual benefit of members by creation of own infrastructure and facilities and by reduction in costs to the members in future."

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12. We therefore find that the surplus generated from holding the events was an un-intended surplus which the contributor at the outset had agreed to appropriate as their contribution to 'Own Infrastructure Fund' of the appellant and therefore it was corpus in nature. Viewed from any angle therefore the surplus of Rs.91,10,026/- was not bearing income character in the hands of the appellant and therefore the lower authorities were unjustified in assessing the same as business income of the appellant. For the reasons set out in the foregoing therefore the addition of Rs.91,10,026/- is deleted and hence, Ground Nos. 1 to 3 are allowed."

5.5 Thus, it was held that the organizing fairs, exhibitions and ancillary in the pursuit of achieving the main objects of the institution/trust are incidental to the main object of the institution and therefore, cannot be held as activities of trade or commerce. Similarly the Hon'ble Gujarat High Court in case of DIT(E) vs. Ahmedabad Management Association (supra) has held in para 5.6 to 5.8 as under:

“5.6 *Now applying the ratio of the decision of the Division Bench of this Court in the case of Gujarat State Co-operative Union (Supra) reproduced hereinabove and the activities of the assessee such as Continuing Education Diploma and Certificate Programme; Management Development Programme; Public Talks and Seminars and Workshops and Conferences etc., we are in complete agreement with the view taken by the tribunal that the activities of the assessee is educational activities and/or is in the field of education.*

5.7 *Now in view of the aforesaid finding that the activities of the assessee is in the field of education, whether the assessee is entitled to exemption under Section 11 of the Act or not and whether in the facts and circumstances of the case the assessee can be denied exemption under Section 11 of the Act relying upon and/or considering the proviso to Section 2(15) of the Act is concerned so far as the amendment in Section 2(15) of the Act amended vide Finance Act, 2008 and insertion of proviso to Section 2(15) of the act is concerned, as such the same has been explained vide Circular No.11/2008 dated 19/12/2008. It is clarified that where industries or trade association claim both to be charitable institutions as well as*

mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to Section 2(15) of the Act owing to the principles of mutuality. From the Circular No.11/2008 dated 19/12/2008 it appears that the newly inserted proviso to Section 2(15) of the Act will apply to entities whose purpose is advancement of any other object of general public utility i.e. fourth limb of definition of 'charitable purpose' contained in Section 2(15) of the Act and hence such entities will not be eligible for exemption under Section 11 or under Section 10(23C) of the Act if they carry on commercial activities. Thus, on fair reading of Section 2(15) of the Act the newly inserted provision Section 2(15) of the Act will not apply in respect of the first three limbs of Section 2(15) of the Act i.e. relief to the poor; education or medical relief. Thus, where the purpose of a trust or institution is relief of the poor; education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of the commercial activities. Thus, on fair reading of Section 2(15) of the Act read with [Circular No.11/2008 dated 19/12/2008](#) it appears that if the case of the assessee does not fall within the first three limbs of Section 2(15) of the Act i.e. relief to the poor; education or medical relief and if it falls in the fourth limb i.e. advancement of any other object of general public utility and it is found that such activity of advancement of any other object of general public utility involves carrying on of (a) any activity in the nature of trade, commerce or business; or (b) 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, the same shall not be considered for "charitable purpose" and shall not be entitled to exemption under Section 11 of the Act.

5.8 *In the present case, as observed hereinabove and rightly held by the tribunal, the activities of the assessee would fall within the definition of "charitable purpose" as per Section 2(15) of the Act and, therefore, would be entitled to exemption under Section 11 of the Act."*

5.6 The activities of assessee continuing Education Diploma and Certificate Programme; Management Development Programme; Public Talks and Seminars and Workshops and Conferences are held to be fall in the realm of education which is charitable as per section 2(15) of the Act. In the case of assessee the activity of organizing the shivir which is in the nature of seminar, conference and lectures on the education and therefore, an aid to the main object of the assessee. Neither the AO nor the Ld. CIT(A) has disputed that the shivir organized by the assessee is for the

purpose of education to the students and children as well as training for the teachers. The Ld. CIT(A) has dismissed the appeal of the assessee in para 8 to 8.3 as under:

“8. I have carefully considered the action of the Assessing Officer and the submissions of the appellant. I find that the AO has disallowed a sum of Rs.98,45,124/- being expenses incurred on "Vaman Drishiti Shivir" as the Assessing Officer found it excessive and disproportionate to the income of the appellant. Appellant has claimed that 12A registration was granted on the basis of amended by-laws of Saraswati Vidhya Pratishthan (vide para 4) and that the expenditure was incurred on organizing "Vaman Drishti Shivir" on the occasion of Silver Jubilee of Saraswati Vidya Pratishthan. The appellant has claimed that around 10,000 teachers, principals and others participated in cultural programmes, meetings, conferences etc. and the expenses are allowable.

8.1 I agree with the view of the Assessing Officer that expenditure was not exclusively for the purpose of providing education. Given the nature of activities described by the appellant during the Shivir, I find that the expenditure is more in the nature of the brand promotion than providing education.

8.2 Items in Para 4 of the by-laws are very general in nature and I find it difficult to relate these expenses within the by-laws.

8.3. With the above view I do not find any need to interfere with the action of Assessing officer.”

5.7 Even if the expenditure incurred by the assessee is not regarded as solely for the purpose of providing formal education but if the same is incurred for the activities which are ancillary and part and parcel of the activities of imparting education then the same is considered as incurred for achievement of overall object of the assessee society. It is pertinent to note that various distinguished speakers have delivered their lecture on the topic of improvement of quality of education, improvement of moral values in the students and children of the society therefore, the shivir organized by the assessee cannot be separated from the activity of imparting education but it is an essential part of the educational activity for the overall development of the students as well as training of the teaching staff. Hence, the expenditure incurred in organizing such shivir/seminars, conference, lectures partake character of application of income for

charitable purpose. Accordingly the addition made by the AO on this account is deleted.

6. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 30.08.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 30.08.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore