

<b>आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई। IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH: CHENNAI</b>		
<b>श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखासदस्य के समक्ष BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER</b>		
<b>आयकर अपील सं./ITA No.1250/Chny/2024 निर्धारण वर्ष /Assessment Year: 2018-19</b>		
Smt. Lingammal Ramaraju Shastra Prathistha Trust, No.1, Gandhi Kalaimanram Road, Rajapalayam - 626 117. [PAN: AABTS 2841L]	<b>Vs.</b>	The Asst. Commissioner of Income Tax (Exemptions), Coimbatore.
<b>(अपीलार्थी /Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>
अपीलार्थी की ओर से/ Appellant by	:	Shri S. Muralidhar, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh Kumar, CIT
सुनवाई की तारीख/Date of Hearing	:	24.09.2024
घोषणा की तारीख /Date of Pronouncement	:	18.11.2024

### आदेश / ORDER

#### **PER ABY T. VARKEY, J.M. :**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Exemptions) [in short 'CIT(E)'] dated 27.03.2024 passed u/s 263 of the Income Tax Act, 1961 [in short 'the Act'] in relation to the Assessment Year [in short 'AY'] 2018-19.

**2.** The facts as noted are that, the assessee is a Public Charitable Trust registered u/s 12A of the Act vide order no. 464/122/97-98 dated 27.01.1998. The assessee trust is noted to be running a music school and a library as its main charitable activity, viz., education and it also runs a petrol pump whose receipts are claimed to be utilised for meeting its



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charitable objects. For the relevant AY 2018-19, the assessee had filed return of income declaring NIL total income after claiming exemption u/s 11 of the Act. The case of the assessee was selected for scrutiny u/s 143(2) of the Act dated 22.09.2019, on the CASS reason - '*Receipts of the Trust*'. After examining the details furnished by the assessee, including its Trust deed, financials, details of receipts, note on activities, separate accounts of petrol pumps including its financials, details of employees etc., the Assessing Officer, National Faceless Assessment Centre [in short 'AO'] is noted to have issued show cause notice u/s 142(1) of the Act dated 14.01.2021 proposing to deny the exemption claimed u/s 11 of the Act in relation to the surplus of Rs.73,27,209/- derived from the petrol outlet on the ground that, although separate books of accounts were being maintained for this business, this business activity was not incidental to the attainment of the objects of the Trust as required u/s 11(4A) of the Act. It is noted that, the assessee had furnished its explanation on 22.01.2021 in which, the assessee had explained that, running the petrol outlet was not its object but an incidental activity to the attainment of the main charitable object i.e. education. The assessee is noted to have submitted that, the petrol outlet was being run to generate surplus for meeting the costs and expenses for achieving the main charitable object of the Trust which was running & maintenance of the music school and library. The assessee brought to the notice of the AO that, on the identical line of reasoning, the assessee's claim of exemption u/s 11 of the Act in respect of the surplus derived by the Petrol outlet, was denied in the income tax assessment completed u/s 143(3) of the Act, for the earlier AY 2012-13. Thereafter, pursuant to a petition filed u/s 264 of the Act, the Ld. CIT(E) had examined the factual matrix of its case and in his revisionary order passed u/s 264 of the Act dated 14.03.2016 for AY 2012-13, the Ld. CIT(E) had set aside the assessment and directed the AO



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to grant exemption u/s 11 of the Act in respect of the surplus derived by the petrol outlet as well. Thereafter, in all the income tax assessments, completed u/s 143(3) of the Act for AYs 2013-14 to 2015-16, the Revenue is noted to have allowed the exemption claimed by the assessee u/s 11 of the Act. The assessee is noted to have further submitted before the AO that, on similar facts & circumstances, the Hon'ble Supreme Court in the case of **ACIT vs Thanthi Trust (247 ITR 275)** [in short '*Thanthi Trust*'] and the jurisdictional Madras High Court in the case of **DIT(E) vs Wellington Charitable Trust (195 Taxman 232)** had allowed the exemption claimed u/s 11 of the Act. Upon considering the reply of the assessee dated 22.01.2021, the AO is noted to have completed the assessment u/s 143(3) r.w. 143(3A) and 143(3B) of the Act on 12.04.2021 wherein, the exemption claimed by the assessee u/s 11 of the Act was accepted and allowed.

**3.** Subsequent to completion of the assessment, the Ld. CIT(E) is noted to have issued a show cause notice u/s 263 of the Act on 06.02.2024 proposing to revise the income tax assessment order passed on 12.04.2021 and withdrawing the exemption u/s 11 of the Act on the following grounds:

- (a) that the assessee Trust is engaged in the activity of running a petrol bunk from where it earned more than 80% of its income;
- (b) that the activity is not undertaken in the course of carrying out the advancement of any other object of General Public Utility;
- (c) that the provisions of the proviso to Section 2(15) stood violated and
- (d) that the observations of the Hon'ble Apex Court in the case of **ACIT(E) V. Ahmedabad Urban Development Authority (143 taxmann.com 278)** [ in short '*AUDA*'] and **New Noble Education Society V. CCIT (143 taxmann.com 276)** [in short '*New Noble*'], are against the assessee's case.

**4.** The assessee is noted to have responded to the above show cause notice on the same lines as in the assessment proceedings. The assessee



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is noted to have further explained that, the Trust was pursuing the charitable object of education and it didn't have any object of General Public Utility ('GPU') and therefore the decision of the Hon'ble Supreme Court in *AUDA* being relied upon by the Ld. CIT(E) in the show cause notice for denying the exemption claimed u/s 11 of the Act, was distinguishable, as the said decision was rendered only in the context of 'GPU' trusts and not to 'per se charitable' trusts. It was also submitted that, the decision of Hon'ble Apex Court in the case of *New Noble* was rendered in the context of exemption u/s 10(23C)(vi) of the Act and not to the charitable institutions registered u/s 12A claiming exemption u/s 11 of the Act and therefore this decision also was of no relevance. It was accordingly explained that, the decision of the Hon'ble Supreme Court in *Thanthi Trust* which was applicable to 'per se charitable' trusts and the findings given in the revisionary order u/s 264 of the Act passed in assessee's own case for AY 2012-13 continued to hold good and that there was no error committed by the AO nor was any prejudice caused to the interests of the Revenue by the AO, while allowing the exemption u/s 11 of the Act, in the assessment order passed u/s 143(3) of the Act for AY 2018-19.

**5.** The Ld. CIT(E), after considering the reply of the assessee, rejected the same and passed the impugned order u/s 263 of the Act setting aside the assessment order dated 12.04.2021 and directed the AO to withdraw the exemption claimed u/s 11 of the Act. The reasons adduced by the Ld. CIT(E) were that, the case of *Thanthi Trust* being relied upon by the assessee was different as in that case, the Trust carried on the business of a Newspaper which was a '*business held under Trust*' as specified u/s 11(4) of the Act, whereas the assessee's activity of running a petrol bunk was not a '*business held under Trust*' and thus fell under Section 11(4A) of the Act, in terms of which business income is eligible for exemption,



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only if, the business is incidental to attainment of the objects of the Trust and separate books of accounts for such business are maintained. For this, the Ld. CIT(E) relied upon the decision in the case of *New Noble*, wherein it was held that a business can be said to be incidental to the attainment of the objectives of the Trust only when it is something related to the main activity/objectives of the society. The Ld. CIT(E) also relied upon the ruling in *AUDA*, which according to him, led to a paradigm shift in the interpretation of the word '*incidental*' overruling the earlier decision of Hon'ble Supreme Court in the case of *Thanthi Trust*.

**6.** The Ld. CIT(E) further observed that, the Hon'ble Supreme Court in the case of *AUDA* has clarified that, an assessee advancing GPU object, cannot engage itself in any trade or commerce or business or provide service in relation thereto for any consideration unless the activity is undertaken in the course of carrying out the GPU object and the receipts from such activity does not exceed 20% of total receipts of the Trust. The Ld. CIT(E) quoting from the decision of *New Noble*, held that, there is no nexus between the running of a petrol bunk and the objectives/activities of running a library and conducting the music classes and observed that, it is neither inextricably connected/linked to the main activity nor strengthens the same. The Ld. CIT(E) thus concluded that, although the assessee maintains separate books of accounts and fulfilled the second condition of Section 11(4A) of the Act, it failed the test of the first condition namely "*the business is incidental to the attainment of the objectives of the trust*". The Ld. CIT(E) further observed that, alternatively, if it is considered that, the assessee's activities of running a library and music school are not education and that it falls under the last limb of Section 2(15) of the Act, namely advancement of General Public Utility, then also the assessee's claim for exemption fails, since the activity of running a petrol bunk is not a part of its actual function of



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running a library nor conducting music classes. The Ld. CIT(E) further noted that, the receipts from the petrol bunk activity is more than 80% of its total receipts, which is in violation of proviso to Section 2(15) of the Act. With these observations, the Ld. CIT(E) directed the AO to deny the exemption u/s 11 of the Act.

**7.** Being aggrieved by the impugned order of the Ld. CIT(E), the assessee has preferred the present appeal before us.

**8.** Assailing the action of the Ld. CIT(E), the Ld. AR for the assessee Shri. S Muralidhar submitted that, the conclusions drawn by the Ld. CIT(E) was unjustified and contrary to the position of law and also the assumption of jurisdiction u/s 263 of the Act was untenable. The Ld. AR submitted that, his contentions can be broadly classified into the following arguments: -

(a) that the original assessment was completed after elaborate enquiry and due application of mind on the very issue raised by the Ld. CIT(E) in the revisionary order which had already been addressed in the original assessment and that the view adopted by the AO allowing the claim of exemption was a plausible one and thus the assessment order could not be regarded as erroneous and prejudicial to the interests of the assessee;

(b) that the Ld. CIT(E) proceeded on the erroneous understanding that, the assessee is a GPU trust, whereas the assessee was an educational trust, which was corroborated not only by the objects of the trust deed as amended on 10.02.2016 but also the specific finding recorded by his predecessor Ld. CIT(E) in the order passed u/s 264 of the Act in assessee's own case for AY 2012-13;

(c) that the reliance placed by the Ld. CIT(E) on the decisions of *AUDA* and *New Noble* was argued to be misplaced as according to the Ld. AR, the decision in *AUDA* was rendered in the context of GPU trusts and had no application to *per se* educational trusts and that the decision of *New Noble* was rendered in the context of educational institutions covered u/s 10(23C)(vi) of the Act and therefore didn't apply to *per se* charitable trusts registered u/s 12A of the Act;



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(d) that the decision of the Hon'ble Supreme Court in the case of *Thanthi Trust* continued to hold good and was applicable to the assessee's case and that the decisions rendered in the cases of *AUDA* and *New Noble* didn't over-rule *Thanthi Trust*, which was rendered in the context of *per se* educational trusts, such as that of the assessee;

(e) that the Ld. CIT(E) wrongly held that the petrol outlet was not a '*business held under trust*' whereas the contemporaneous facts on record showed otherwise;

(f) that, in the alternate and without prejudice to above, the decisions of *AUDA* and *New Noble* are prospective in application and therefore could not be applied to the impugned AY in appeal;

(g) that, in the alternate and without prejudice to above, the AO had followed the position of law which held field for the relevant assessment year at the material time when the assessment was completed u/s 143(3) of the Act and therefore the view adopted by the AO could not be regarded as an unsustainable view in law, in light of the subsequent decision rendered by the judicial forums post completion of the assessment.

**9.** After outlining the above arguments, the Shri S Muralidhar first took us through the background facts and history of the assessee Trust. He submitted that, the assessee has been running a music school for over twenty-five years, and it teaches Carnatic Music - Vocal and Instrumental to the students, and that the entire music course is divided into Eight Grades namely Grade 1 to Grade 8. The Id. Counsel showed us that, the entire syllabus was structured for each of the grades which was in line with the requirement of the Grade Certificate Program offered by the Annamalai University. He drew our attention to the Note on activities of the Trust, which was placed at Pages 7 to 9 of the Paper Book - Volume 1 together with the Annexures containing the details of the syllabus for each of the Grades, the sample attendance records of students, and the certificates issued by the Annamalai University to the students of the music school on successful completion of Grade certificate examinations.



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He brought to our notice that, the school has a total of 496 Students and showed us the qualifications of the teachers, most of whom are qualified post-graduates in music. The school maintains attendance for the students and a minimum attendance of 75% is required for the student to be eligible to appear for the Grade Certificate Examination. He further pointed out that, the school charges a nominal fee ranging from Rs.225 to Rs.400 per month for the music course. He further pointed out that, the library housed in the same premises as the music school has a total of 8,939 books on a variety of subjects and is an adjunct to the music school activity. Shri S Muralidhar thus argued that the music school being run by the assessee was in pursuance of its object of 'education' and it did not constitute a 'general public utility', as alleged by the Ld. CIT(E).

**10.** The Ld AR additionally drew our attention to the object of the Trust contained in the Trust Deed as amended by the Court order of 10-2-2016 placed at Page 105 of the Paper Book which reads as follows: -

- a) To establish, acquire, take over, administer, manage and assist educational institutions, libraries and centres of learning
- b) To provide scholarship/fellowship and financial assistance to students teachers, research scholars and professionals.
- c) To donate funds to educational and medical institutions.
- d) To provide or assist in the provision of vocational training to orphans, pensioners, widows, destitute women and to general public.
- e) To distribute or financially assist in the distribution of free food, sweets clothing medicines, spectacles, umbrellas, rain coats, warm clothing and such other equipments and vocational implements with a view to alleviate the sufferings of the poor and needy
- f) To provide medical assistance either by way of assisting the sick and needy financially or by providing them with equipment's, transport, medicines, nursing clinical care, hospitalisation etc. which may be required by them.
- g) To establish, acquire, take over, administer, manage, run and assist hospitals, nursing homes, health care centres, clinics, laboratories,



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operation theatres, X rays units, Therapy centres, Blood banks and other similar banks with a view to provide medical relief.

h) To associate with research institutions, hospitals, etc to promote research and development.

i) To print, publish or assist in printing and publication of books, periodicals and journals including audio, video, and film, etc. for the attainment of the objects of the Trust

j) To conduct seminars, conferences and meetings on medical, technical, scientific, philosophy and vedantha.

k) To construct or acquire or take on lease or rent buildings, lands with a view to provide shelter to the poor and needy.

l) To provide financial assistance to scholars of ancient and modern literature and poor Artists and poor sports persons in all fields with a view to promote literature and sports.

m) To co-operate with other organisations having similar objects and if necessary to contribute to such organisations

n) To do all other things necessary for carrying out the above objects and for proper execution of the projects connected therewith in any manner."

**11.** Taking us through the above objects, the Ld AR submitted that, the objects related to education, relief of the poor, and medical relief and that none of the objects falls in the GPU category. The Id. Counsel thus vehemently stressed on the fact that, the assessee was an 'educational' trust and not a 'GPU' trust and in that view of the matter the fundamental premise on which the Ld. CIT(E) proceeded to draw conclusions in the impugned revisionary order was factually incorrect. In support of his contention, the Ld AR relied on the decision of Hon'ble Delhi High Court in the cases of **Delhi Music Society Vs DGIT (357 ITR 265)** and **CIT Vs NIIT Foundation (467 ITR 63)**.



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**12.** Having submitted the above, the Ld AR next drew our attention to the Memo of Income of the Trust for AY 2018-19 wherein the composition of the sources of income and application of funds was detailed, which was placed at Page 302 of the Paper Book. It was shown to us that, the assessee had declared gross receipts of Rs.84,68,183/- which comprised of (a) fees from music classes and library subscription of Rs.8,92,082/-, (b) interest income of Rs.1,79,926/- and (c) surplus from petrol outlet of Rs.73,27,209/-. It was brought to our notice from the balance-sheet that, these receipts were applied towards (i) music school expenses of Rs.16,48,709/-, (ii) library and related expenses of Rs.42,47,815/-, (iii) administrative and other expenses of Rs.14,34,140/- and (iv) capital expenditure of Rs.5,56,722/-. The Ld AR accordingly submitted that, the facts on record showed that, the entire surplus from the petrol bunk of Rs.73,27,209/- had been applied towards the educational activities, namely the music school and library activities of the assessee Trust. In light of these facts, the Ld AR gave us a brief overview of the history of sections 2(15), 11(4), and 13(1)(bb) (now not in the statute book), and then drew our attention to Paragraph 18 of the *Thanthi Trust* wherein it was held that a business whose income is utilized by the trust for the purpose of achieving its objective, is a business that is incidental to the attainment of objectives of the trust. According to him therefore, following the ratio laid down in the decision of *Thanthi Trust* and also the revisionary order passed u/s 264 of the Act in its own case for AY 2012-13, since the assessee had applied the surplus from petrol outlet for attainment of its charitable objects, it had rightly claimed exemption u/s 11 of the Act.



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**13.** The Ld AR explained to us that, the Ld. CIT(E) had erred in rejecting the assessee's reliance on *Thanthi Trust*. He submitted that, the Ld. CIT(E) had incorrectly applied the two decisions of the Supreme Court in *AUDA* and *New Noble*, which according to him, did not apply to the assessee's case, both on law and facts. The Ld AR first took us through the decision of *AUDA* and the subsequent clarificatory judgment rendered by the Hon'ble Apex Court and showed us that the decision was rendered in specific relation to 'GPU' trusts and therefore did not apply to the assessee which was a '*per se educational*' trust. The Ld AR particularly took us through Paras 126, 127 & 166-169 of the judgment and argued that, the Hon'ble Supreme Court carved out a clear distinction between the '*per se categories*' of charity i.e., education, medical relief, relief to the poor, preservation of water sheds, monuments, environment, and yoga and 'GPU' charities and, had held that, the restriction imposed by Parliament against charities prohibiting them from carrying on activities of profit do not apply to the first six categories i.e. the '*per se categories*'. The Ld AR further showed us that, the Hon'ble Apex Court in *AUDA* had taken cognizance of their earlier decision in *Thanthi Trust* and endorsed the views rendered therein which was in the context of '*per se categories*' of charities. He showed us that, the Hon'ble Supreme Court itself has specifically clarified in *AUDA's case* that, the ratio in *Thanthi Trust* would continue to apply to '*per se categories*' of charities and that the 'GPU' Trusts could not take the benefit of that decision due to the amendment made to Section 2(15) by the Finance Act, 2008. In light of the foregoing, the Ld AR reiterated that, the assessee was an education trust and therefore fell under the '*per se categories*' and in that view of the matter the decision of *AUDA* which was rendered with reference to the 'GPU' Trusts did not apply to it.



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**14.** Shri S Muralidhar next took us through the decision rendered in *New Noble* which was also relied upon by the Ld. CIT(E) to hold that the activity of running petrol outlet could not be said to be 'incidental' business to attainment of its charitable objects. He showed us that, the decision of *New Noble* was rendered specifically in the context of educational institutions claiming exemption u/s 10(23C)(vi) of the Act which required these institutions to be engaged "solely" in educational activities and not for the purposes of profits. Shri Muralidhar explained that, in the absence of any such restrictive condition laid down in Section 11 of the Act, the said decision also did not have any application to the assessee's case. Even otherwise, he particularly invited our attention to Para 78 of the said judgment wherein it was held that the decision in *New Noble* had prospective application and therefore, according to him, the ratio laid down therein did not apply to AY 2018-19 which is impugned before us.

**15.** The Ld AR thus summing up his arguments stated that, the assessee was an 'educational' trust and therefore fell under the category of 'per se' charities to whom the proviso to Section 2(15) and the amendment of 2008 did not apply and likewise the decision of *AUDA* had no application. He stressed his reliance on the decision of *Thanthi Trust*, which according to him, still held good and was applicable to its case. He accordingly submitted that the AO's action of allowing the benefit of exemption u/s 11 of the Act was in accordance with law and that the Ld. CIT(E) had erred in holding the assessment order to be erroneous and prejudicial to the interests of the Revenue.

**16.** The Ld AR, in the alternate argued that, if interpretation of the Ld. CIT(E) with reference to the decisions of *AUDA* and *New Noble* is found to be tenable, then also, the said decisions were having prospective



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application could not be applied to the assessee's case as the year impugned was AY 2018-19 i.e. prior to these judgements. He further submitted that, in any event, on the day the assessment was made, it was completed in line with the judgement of the Hon'ble Supreme Court in *Thanthi Trust* which was prevalent and in force at that time, and therefore the assessment order cannot be considered erroneous. In this connection, he relied on the decision of the Hon'ble Calcutta High Court in **PCIT Vs SPPL Property Management P Limited (2023) 151 taxmann.com 103**, where it was held that, an assessment completed in accordance with the decision of the jurisdictional High Court in the matter of deduction U/s 36(i)(va) could not be considered erroneous based on the subsequent decision of Hon'ble Supreme Court reversing the High Court's view. Overall, therefore, he urged that the impugned revisionary order passed u/s 263 of the Act being unsustainable on facts and in law, ought to be quashed.

**17.** Per contra, the Ld. CIT, DR appearing on behalf of the Revenue Shri R Clement Ramesh Kumar supported the order of the Ld. CIT(E). He took us through the specific line of reasoning set out by the Ld. CIT(E) in its order. According to him, the assessee could not be regarded as an educational trust but was a GPU trust and therefore the decision of *AUDA* applied in its case. The Ld. CIT-DR further submitted that, the receipts from the petrol bunk to the extent of Rs.73.27 Lakhs is more than 80% of the income of the trust. According to him, since the receipts was in excess of 20% of the annual receipts, the assessee Trust was in violation of Sec 2(15) of the Act. He also cited the following decisions wherein the exemption claimed u/s 11 of the Act wherein the assessee Trusts were falling foul of the proviso to sec 2(15) of the Act:

- Chennai Kammavar Trust [2017] 81 taxmann.com 365 (Chennai - Trib)
- Nirmithi Kendra [2018] 100 taxmann.com 293 (Cochin - Trib.)



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- Young Women's Christian Association of Madras [2014] 41 taxmann.com 142 (Chennai - Trib.)
- Murasoli Trust [2016] 65 taxmann.com 186 (Chennai - Trib.)

**18.** The Ld. CIT, DR further reiterated the Ld. CIT(E)'s reliance on the CBDT **Circular Nos. 621 dated 19-12-1991 & 642 dated 11-12-1992** and submitted that the activity of running petrol outlet was not an incidental business activity as contemplated u/s 11(4A) of the Act and thus the surplus derived therefrom has to be brought to tax. He argued that, if the main object of the Trust is education, the running of the petrol bunk is not related to that object. He submitted that, as per Sec 11(4) running of petrol bunk is not a business incidental to the object of the assessee being education, medical relief, and relief to the poor. He also contended that, the assessee was falling foul of the proviso to sec 2(15) as more than 80% of its receipts were from business activity and hence, the Ld. CIT(E) had rightly directed denial of exemption u/s 11 of the Act

**19.** The Ld. CIT, DR further argued that, the case facts of *Thanthi Trust* were different from that of the assessee. In that case, the '*business was held under trust*' in terms of Section 11(4) of the Act, while in the assessee's case, the '*business is not held under trust*' and thus assessee's case was to be examined under the provisions of sec 11(4A) of the Act alone. According to him, the assessee failed the test of the first condition that, the business should be incidental to the attainment of the objectives of the trust and therefore the ratio laid down in *Thanthi Trust* cannot be extended to the assessee, as the business being carried on was not held under trust and whose income is utilized to feed the charitable object of the trust.

**20.** The Ld AR in his rejoinder first distinguished the decisions relied upon by the Revenue. The Ld. AR submitted that, all these decisions were rendered in the context of 'GPU' trusts which were falling foul of the



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proviso to sec 2(15) and were thus denied the exemption u/s 11 of the Act. He reiterated that, the assessee was an 'educational' trust and had all along been assessed by way of an 'educational' trust and therefore the decisions cited by the Revenue in context of 'GPU' trusts were factually distinguishable. On the two Circulars (supra), the Ld AR submitted that, these Circulars only reiterate the provisions of the new sub-section (4A) by stating that the business income of the charitable and religious trusts will be exempt from tax, if the business activities are incidental to the attainment of the objectives of the Trust. However, according to him, these Circulars did not elaborate the term 'incidental', which had to be understood only from judicial precedence/case-laws.

**21.** On the applicability of the ratio of *Thanthi Trust* and whether the petrol outlet could be regarded as '*business held under trust*', the Ld. AR for the assessee referred to the Petrol bunk license issued to the assessee trust placed at Page 278 of the Paper Book and the dealer appointment letter issued in the name of the assessee-Trust placed at Page 292 of the paper book to assert the fact that the petrol bunk was a business held under trust. He further relied upon the financial statements of the trust for AY 2018-19 placed at Pages 296 to 301 of the paper book to establish that the assets of the petrol bunk were reflected as part of the assets of the Trust in its Balance Sheet under the head "Retail outlet-Alathiyur". He further submitted that, in terms of the decision of the Supreme Court in *Thanthi Trust*, to claim exemption in respect of business income in the case of educational trusts, the only requirement stipulated in sec 11(4A) to be complied with, is that, the business should be meant to feed the charity i.e. for the attainment of the objects of the Trust and that separate accounts have to be maintained in respect of such business. This according to Ld AR was met by the assessee and therefore the ratio laid down in *Thanthi Trust* applied to it.



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**22.** We have heard both the parties and perused the records placed before us. In the several grounds raised in the appeal, the assessee has in sum & substance challenged the jurisdiction of the Ld. PCIT to pass the impugned order u/s 263 of the Act. Before advertng to the facts of the case, it is first necessary to examine the scope of revisional jurisdiction u/s. 263 of the Act. For that, let us take the guidance of decision rendered by the Hon'ble Apex Court in **Malabar Industrial Co. Ltd. v. CIT (243 ITR 83)** wherein their Lordship have held that twin conditions should be satisfied before jurisdiction u/s 263 of the Act is exercised by the Id. CIT. The twin conditions which need to be satisfied are that (i) the order of the Assessing Officer must be erroneous and (ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue. It is in the following circumstances, that the order of the AO can be held to be erroneous i.e.,

- (i) if the AO's order was passed on assumption of incorrect facts; or assumption of incorrect law;
- (ii) if the AO's order is in violation of the principles of natural justice;
- (iii) if the AO's order is passed without application of mind; or
- (iv) if the AO has not investigated the issue before him.

**23.** In the circumstances enumerated above, the order passed by the Assessing Officer can be termed as erroneous for the purpose of invoking the revisionary powers under Section 263 of the Act. It has to be borne in mind that, even if the Ld. PCIT finds that the assessment order is erroneous, he cannot invoke the revisional jurisdiction u/s 263 of the Act without satisfying the requirement of second limb i.e., the Ld. PCIT has to show that due to the erroneous assessment order, prejudice has been caused to the interest of revenue. This proposition of law has been laid down by the Hon'ble Supreme Court in the case of *Malabar Industrial*



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(supra) wherein their Lordship's held that this phrase i.e., "prejudicial to the interest of the revenue" has to be read in conjunction with an "erroneous" order passed by the Assessing Officer. Further the Hon'ble Supreme Court held that 'for invoking powers conferred by section 263 of the Act, the CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue'. At this juncture, one has to understand what is prejudicial to the interest of revenue. Their Lordship explaining the same in the said judgment held that, every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. It was explained that, when the Assessing Officer adopts one of the courses permissible in law and it has resulted in loss to the Revenue, or where two views are possible and the Assessing Officer has taken one view with which the Ld. CIT does not agree, it cannot be treated as an order prejudicial to the interest of the revenue **unless the view taken by the Assessing Officer is unsustainable in law.**

**24.** In light of the above position of law, we now revert back to the facts of the present case. The first question before us is, whether the Ld. CIT(E) was justified in exercising jurisdiction vested u/s 263 of the Act and revising the assessment order dated 12.04.2021 by holding that, the AO had wrongly allowed the exemption u/s 11 of the Act and directing the AO to tax the receipts/surplus generated by the assessee from the petrol outlet being operated by it. Having taken into consideration the facts as narrated in the preceding paragraphs, it is not in dispute that, the case of the assessee was selected for CASS scrutiny on the reason "Receipts from Trust" and that the AO during assessment proceedings has asked specific queries on the details of receipts from petrol outlet and its application as



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well through notice u/s 142(1) of the Act to which the assessee is noted to have furnished its reply along with details. It is noted that, upon perusal of the same, the AO had issued show cause notice dated 14.01.2021 proposing to deny the exemption claimed u/s 11 of the Act in relation to the surplus of the petrol outlet amounting to Rs.73,27,209/- on the ground that, although separate books of accounts were being maintained for this business, but this business activity was not incidental to the attainment of the objects of the Trust as mandated u/s 11(4A) of the Act. To this, the assessee is noted to have furnished his explanation vide letter dated 22.01.2021 in which, it explained the facts of the case in as much as that the surplus of the said business activity was utilized for attaining the main charitable objects of the assessee trust and therefore it was in compliance with Section 11(4A) of the Act. The assessee is noted to have relied on the decision of Hon'ble Supreme Court in *Thanthi Trust*, which was prevalent and in force at that material time, and also the revisionary order dated 14.03.2016 passed u/s 264 of the Act by Ld. CIT(E) in assessee's own case for AY 2012-13, on the same set of facts & circumstances. Having considered the same, and in absence of change in facts or provisions of law, it is noted that, the AO had considered and accepted the same, and allowed the exemption claimed by the assessee u/s 11 of the Act *inter alia* including the surplus derived from petrol outlet. Accordingly, it can be seen that the AO had, in fact, made inquiries into the claim of exemption u/s 11 of the Act, more particularly, in relation to surplus of the petrol outlet and after applying his own mind, he had allowed the same. From these admitted facts, it cannot be said on the given facts and circumstances of the case that, it is a case of non-enquiry or lack of enquiry.

**25.** Hence, on this admitted factual position and having regard to the position of law as explained in the case of *Malabar Industrial (supra)*, the



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Ld. CIT(E), in the present case, could have validly assume jurisdiction u/s 263 of the Act only if he himself conducts enquiry on this issue and records his own categorical finding which would show that AO's view, despite enquiry, was patently erroneous or unsustainable in law thereby causing prejudice to the interests of the Revenue. From the order of the Ld. CIT(E), it is noted that, the Ld. CIT(E) has recorded his own reasons as to why, according to his view, the assessee was wrongly allowed the exemption u/s 11 of the Act. For this, the Ld. CIT(E) is noted to have primarily relied on the later judgments of Hon'ble Supreme Court in the cases of *AUDA & New Noble [supra]*. The Ld. CIT(E) also relied on the CBDT Circular Nos. 621 dated 19-12-1991 & 642 dated 11-12-1992 and upon examining the nature of business activity, he held that, not only was the assessee falling foul of Section 11(4A) of the Act but since the percentage of receipts from the business activity exceeded 20% of the total receipts, it was also in violation of proviso to Section 2(15) of the Act. For these reasons, the Ld. CIT(E) is noted to have held that, the AO's action of allowing exemption u/s 11 of the Act was unsustainable in law and therefore directed him to deny the same.

**26.** In light of the above findings of Ld. CIT(E), the issue which now requires our adjudication is, whether the view adopted the AO allowing the exemption u/s 11 of the Act, after making enquiry into the same, can be termed as erroneous or a view which is unsustainable in law and therefore whether the Ld. CIT(E) had validly assumed jurisdiction u/s 263 of the Act. Before proceeding to adjudicate this legal issue, the first factual issue which is required to be settled is the nature of assessee trust viz., whether it is an 'educational' trust or a 'GPU' trust. From the facts placed before us and having regard to the objects of the Trust deed (*supra*), it is noted that, the main activity carried on by the Trust is the running of a music school and an adjacent library. From the Paper book filed before us, it is



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observed that, the school has a total of 496 students. The music course covers Carnatic music- both vocal and instrumental. The course has been divided into eight Grades- from Grade 1 at the lowest level to Grade 8 at the highest level. There is a structured syllabus for each grade. The classes are conducted regularly. The school also maintains attendance for the students who are trained to appear for the Grade Certificate Examinations conducted by Annamalai University for which a minimum 75% attendance is mandated. The teachers of the school are also noted to be well-qualified with most of them being postgraduates in music. The school collects a nominal fee ranging from Rs 225 per month to Rs 400 per month for the courses. From the details of source & application of funds, it is revealed that, the gross receipts from the music school and library was Rs.8,92,082/- and the expenses incurred on the music school activity itself was Rs. 16,48,709/-, thus resulting in a deficit. Having regard to these facts narrated in the foregoing, we note that, the assessee trust is imparting of a systematic formal education through the music school and therefore the said activity is noted to qualify as 'education' under Section 2(15) of the Act. For this, we gainfully refer to the following findings of the Hon'ble Supreme Court in the case of *New Noble (supra)* :-

"33. The subject of education is vast, even sublime. Yet, it is not the broad meaning of the expression which is involved in this case. As was held in *T.M.A Pai Foundation (supra)*, education in the narrower meaning of the term as scholastic structured learning is what is meant in Article 21-A, Articles 29-30 and Articles 45 - 46 of the Constitution. As to what is 'education' in the context of the IT Act, was explained in *Sole Trustee, Loka Shikshana Trust v. CIT [1975] 101 ITR 234 (SC)/[1976] 1 SCC 254* in the following terms:

"5. The sense in which the word "education" has been used in section 2(15) is the instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is



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education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge....All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. **What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."**

**Thus, education i.e., imparting formal scholastic learning, is what the IT Act provides for under the head of "charitable" purposes, under section 2 (15).**

**(emphasis supplied)**

**27.** We find the reliance placed by the Ld AR of the assessee on the decision of Hon'ble Delhi High Court in the case of **CIT Vs NIIT Foundation (supra)** to be relevant and applicable to facts of the present case. In the instant case, the assessee was a charitable trust conducted various training programs for underprivileged youth spread across various streams such as Information Technology, English, Soft skills, BPO, Retail, Banking and Service sectors. The AO had allowed the exemption claimed u/s 11 of the Act. The Ld. CIT in the revision proceedings u/s 263 of the Act however held that the assessee was not engaged in any formal educational activity as it was not affiliated with any regulatory body. Instead, according to Ld. CIT, the assessee acted as a contractor/service provider with the elements of formal schooling being absent, and its activities, was construed to be of a GPU, being liable to be viewed as contravening the proviso to Section 2(15) of the Act. On appeal the Hon'ble Delhi High Court after considering the decision of *New Noble (supra)* has held that, where the activities undertaken by assessee were systematic and proceeded along well-defined lines based on curated courses all of which were designed to skill and educate students who had been enrolled and that the assessee was also able to show that courses run by it were informed by a fixed curriculum and attendance criteria, the



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said activity fulfilled all essential ingredients of formal education, and that affiliation with and recognition by regulatory authority was not an essential attribute to qualify as 'education' under section 2(15) of the Act. The relevant findings taken note of by us is as follows:-

"30. We also find merit in the Tribunal's conclusion that the mode and manner in which education is imparted would be a concept which would have to necessarily be evaluated bearing in mind the march of technology and the myriad modes of imparting instruction which now exist and have enabled institutions to overcome barriers of distance and time. Imparting of education through a virtual mode or by the adoption of new technologies would not detract from the said activity, otherwise fulfilling the requirements of structured education. The test, as propounded by Lok Shikshana Trust, essentially requires us to evaluate whether a formal and systematic process of imparting education had been adhered to. We thus approve and affirm the following observations as they appear in the order of the Tribunal: -

"30. Before parting, we would like to put on record that, at the time of dictation, whole world is experiencing 'new normal' in all spheres of activities. Education is no exception. Naturally, classrooms have no bricks and mortar, no benches and blackboards. 'Blackboard Collaborate' and digital white boards have replaced blackboards. Teachers and students do not assemble at one place but they reach each other on cloud through Meets, Teams, WebEx and Zoom! Such cloud classes have wide representation of students across the globe blurring the geographies of traditional classrooms. Students love Polls, Live Q & A sessions and pre-recorded videos. Books and Notebooks have been replaced by smart phones, tabs etc. Most importantly, attendances are also virtual instead of physical. Chat boxes are medium of group discussion. Strikingly, Timings are 24\*7. Still it has all the essential of a "classroom". It definitely covers 'process of training, developing the knowledge, skill, mind and character of students' like normal schooling. Thus, in true sense the activities performed by the assessee are no different from 'classrooms.'

31. In view of above facts, we hold that assessee is carrying on educational activities which are covered by the provisions of section 2 (15) of the Income-tax Act and it is neither business nor profession of the assessee. It definitely constitute a charitable activity as it does not charge the fees at the level of market rate and even otherwise the surplus generated is also used for charitable activities of education. This is the finding of the learned assessing officer for assessment year 14-15 and for earlier assessment years. In view of this, the order



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passed by the assessing officer is not at all erroneous. Therefore, we set aside and quash the order passed by the learned CIT - exemption under section 263 of the Income-tax Act For assessment year 2014-15 on 26th of March 2018. Thus, we allow ground number 3- 6 of the appeal of the assessee."

31. We thus find no merit in the challenge which stands raised to the order of the Tribunal. Considering the conclusions that we have arrived at on the principal issue of Section 2(15), the question with respect to whether the CIT(E) was justified in invoking its powers conferred by Section 263 of the Act pales into insignificance and need not be answered."

**28.** We find ourselves to also be supported by the earlier decision of the Hon'ble Delhi High Court in **Delhi Music Society Vs. DGIT (supra)**. In the instant case, the assessee was running a music school collecting tuition fees and admission fees from students. The music school was teaching and promoting all forms of music and dance, western, Indian or any other. The prescribed authority rejected the application filed by the assessee u/s 10(23C)(vi) of the Act by relying upon the decision of the Hon'ble Apex Court in **Sole Trustee, Lok Shikshana Trust Vs. CIT (101 ITR 234)** wherein the word 'education' has been explained to denote systematic instruction, schooling or training given to the young in preparation for the work of life and it also connotes the whole course of scholastic instruction which a person has received. On appeal, the Hon'ble High Court noted that the music school was run like any school or educational institution in a systematic manner with regular classes, attendance, vacations, and so on and that, there is imparting of systematic instruction, schooling or training given to students so that they attain proficiency in the field of their choice- vocal or instrumental in western classical music. On these facts, the Court concluded that the authority had misunderstood the judgment of the Supreme Court in the case of Loka Shikshana Trust (supra). The Court held that, the assessee had satisfied the requirements laid down in Loka Shikshana Trust (supra)



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in as much as it was imparting scholastic learning in a formal and systematic manner and hence it was to be regarded as an institution engaged in providing education. We note in particular that, in the instant case, the Revenue had contended that, the school was no different from a coaching centre, which the Court distinguished on the basis of profit motive. It held that, *"The coaching centres, as we understand them, are where candidates are specially prepared to appear in competitive examinations such as civil services, entrance examination for IIMS, IITs and other professional colleges. Profit motive pervades and is the essence of the business activity undertaken by the coaching institutes. The primary object of the coaching institutes is personal or self-gain and activity undertaken is with the said objective. Knowledge of education may be imparted but "charity" or philanthropy is missing. No such finding or observation is recorded and stated in the impugned order. The difference between coaching centres and an "educational institution" from section 2(15) or 10(vi) is apparent"*. In the present case also, the absence of profit motive is evident from the nominal fees charged which has resulted in a deficit in the music school activity, as already noted above.

**29.** Therefore, in light of the above findings, we are of the considered view that, the assessee trust is to be regarded as an 'education' trust.

**30.** Having held so above, the legal issue which now requires our attention is whether the carrying on of the petrol bunk activity vitiates the claim of exemption u/s 11 of the Act. To adjudicate this, we first consider it fit to take note of the provisions that deal with the tax treatment to be meted out to the income of a charitable trust. In terms of Section 11(1) of the Act, the income derived from property held under Trust wholly for charitable or religious purposes is exempt from tax subject to fulfilment of several conditions stipulated in the Act. Sub-Section (4) of Section 11



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clarifies that, "*property held under trust*" includes a business undertaking so held. Therefore, profits derived from a business undertaking held under trust also qualify for the exemption, subject to fulfilment of other conditions. Section 11(4A) thereafter stipulates two conditions for the claim of exemption of business income u/s 11(1); one being that the business is incidental to the attainment of objectives of the trust and the other being that separate books of accounts are maintained in respect of such business.

**31.** The above provisions are applicable to all charitable trusts registered u/s 12A of the Act seeking exemption u/s 11 of the Act. The question therefore is whether the petrol outlet business can be said to be 'incidental' to the education activities of the trust and whether the assessee is entitled to the benefit accorded u/s 11(4) & 11(4A) of the Act. Also, whether the fact that the receipts from the petrol outlet business is in excess of 20% of the annual receipts would result in the assessee falling foul of proviso to Section 2(15) of the Act.

**32.** As noted above, Section 11(4A) stipulates two conditions viz., (a) the business is incidental to the attainment of objectives of the trust and (b) that separate books of accounts are maintained in respect of such business. It is not disputed by the Ld. CIT(E) that condition (b) is met by the assessee, but the question is whether condition (a) stands satisfied or not. The Ld. CIT(E) in the impugned order u/s 263 is noted to have relied upon the decisions of the Hon'ble Supreme Court in *AUDA* and *New Noble* to understand the expression 'incidental' business, and concluded that the activity of running petrol outlet cannot be said to be incidental to attainment of the objects of the Trust. As already noted by us above, the assessee is an educational trust. On reading of the decision of *AUDA*, we find that, the Hon'ble Supreme Court has classified the charitable trusts



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into two categories viz., 'per se categories' of charities (which includes education) and 'GPU' trusts and thereafter interpreted the term 'incidental' in the context of GPU trusts. In this regard, we gainfully refer to Paras 126 to 128 of the said judgment, which reads as under:-

**"126. As observed at the beginning of this judgment, GPU charities have been recognized as distinct from the 'per se categories' of charity (education, medical relief, relief to the poor; and later - preservation of water sheds, monuments, environment, and yoga). The judgment of this court in Dharmadeepti (supra) has clarified that the per se categories - are not subjected to the restrictive condition of eschewing activities of profit. This enunciation of the principle has been endorsed in all later decisions - starting with Surat Art Silk (supra). Therefore, the restriction imposed by Parliament against charities - prohibiting them from carrying on activities of profit do not apply to the first six categories.** Although the occasion did not so arise in Surat Art Silk (supra) (since this Court was dealing with A.Ys prior to 1975), the provision in section 13(1)(bb) which prevailed then with effect from 1-4-1977 made the position clearer in that it permitted these per se category charities, in the course of their actual carrying on of their activities, to earn profits. Of course, this provision was deleted from 1-4-1984. Alongside, the restriction imposed on GPUs from engaging in activities for profit, was also deleted.

127. As noticed in Thanthi Trust (supra), section 11(4A) was originally introduced with effect from 1-4-1984 and substituted w.e.f. 1-4-1991. At that stage, the statute as it stood, did not restrict GPU category charities from carrying on activities of profit or from carrying on business. This court nevertheless was bound by the decision in Surat Art Silk (supra) which had ruled that:

(i) A GPU category charity with a constitution granting discretion to the trustees to engage in charitable and non-charitable activities, could not claim the exemption;

(ii) The main or dominant purpose of the GPU category charity had to be essentially charitable. If it was so, and it incidentally entailed carrying on activities that led to profit, it was entitled to exemption.

128. This court's understanding of the law as expressed in Thanthi Trust was therefore, coloured by the statute as it existed, and the formulation in Surat Art Silk (supra). **As a result, Thanthi Trust, interpreted section 11(4A) in this background and held that the assessee in that case incidentally was engaged in activities for profit. The**



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**court was also of the opinion that section 11(4A) was wider than the revenue urged it to be, in that activities by way of business could not be carried on incidentally by a Trust, which otherwise was a GPU category trust.**

**(emphasis supplied)**

**33.** Having held so, the Hon'ble Apex Court in *AUDA*, held that, the word "incidental" as appearing in Section 11(4A) qua the GPU trusts, has to be interpreted in the light of sub-clause (i) of the proviso to sec 2(15) i.e., the business should be conducted in the course of actually carrying on the GPU object and the receipts from the business should not exceed 20% of the total receipts of the trust. Thus, this interpretation of Hon'ble Apex Court required a *first-degree nexus* between the business and the charitable activity in as much as this additional condition imposed was only for GPU trusts on their business activities in terms of proviso to Sec 2(15) of the Act. Also, the limit of 20% of the total receipts set out in the proviso to Section 2(15) was held to be applicable to trusts pursuing GPU objects. The relevant findings of the Hon'ble Apex Court, in this regard, as taken note of by us, is as follows:-

**"166. What then is the interpretation of the expression "incidental" profits, from "business" being "incidental to the attainment of the objectives" of the GPU charity (which occurs in section 11(4A))? As stated earlier, the interpretation of that expression in *Thanthi Trust (supra)* was in the context of a *per se* charity, i.e., where the trust's object was education....**

167. Thus, the journey which began with *Surat Art Silk* was interpreted in *Thanthi Trust* to mean that the carrying on of business by GPU charity was permissible as long as it inured to the benefit of the trust. **The change brought about by the amendments in questions, however, place the focus on an entirely different perspective: that if at all any activity in the nature of trade, commerce or business, or a service in the nature of the same, for any form of consideration is permissible, that activity should be intrinsically linked to, or a part of the GPU category charity's object.** Thus, the test of the charity being driven by a predominant object is no longer good law.



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Likewise, the ambiguity with respect to the kind of activities generating profit which could feed the main object and incidental profit-making also is not good law. **What instead, the definition under section 2(15) through its proviso directs and thereby marks a departure from the previous law, is - firstly that if a GPU charity is to engage in any activity in the nature of trade, commerce or business, for consideration it should only be a part of this actual function to attain the GPU objective and, secondly - and the equally important consideration is the imposition of a quantitative standard - i.e., income (fees, cess or other consideration) derived from activity in the nature of trade, business or commerce or service in relation to these three activities, should not exceed the quantitative limit of Rs. 10,00,000 (w.e.f. 1-4-2009), Rs. 25,00,000 (w.e.f. 1-4-2012), and 20% (w.e.f. 1-4-2016) of the total receipts. Lastly, the "ploughing" back of business income to "feed" charity is an irrelevant factor - again emphasizing the prohibition from engaging in trade, commerce or business.**

168. If one understands the definition in the light of the above enunciation, the sequitur is that the reference to "income being profits and gains of business" with a further reference to its being incidental to the objects of the Trust, cannot and does not mean proceeds of activities incidental to the main object, incidental objects or income derived from incidental activities. **The proper way of reading reference to the term "incidental" in section 11(4A) is to interpret it in the light of the sub-clause (i) of proviso to section 2(15), i.e., that the activity in the nature of business, trade, commerce or service in relation to such activities should be conducted actually in the course of achieving the GPU object, and the income, profit or surplus or gains can then, be logically incidental."**

**(emphasis supplied)**

**34.** Therefore, what follows from the decision (supra) is that, the requirement for a business to be considered incidental in a 'GPU' Trust is that, the business should be carried on or conducted actually in the course of achieving the GPU objects, that is to say that there should be a *first-degree nexus* between the business carried on and the charitable activity. However, the important point to be noted is that, the aforesaid interpretation of the term incidental is specifically only in the context of 'GPU' trusts who are hedged by the additional condition in the proviso to



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sec 2(15), namely that the business activity is undertaken in the course of actual carrying out the GPU object. The Ld AR for the assessee has rightly pointed out that, this position was also specifically clarified by the Hon'ble Supreme Court vide their later order in *AUDA's case* which is reported in **144 taxmann.com 78**. The relevant portion, taken note of by us, is as follows:-

**"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.

**(emphasis supplied)**

**35.** In light of our above discussions, we agree with Shri Muralidhar appearing for the assessee that this interpretation of Hon'ble Supreme Court in *AUDA's case* will obviously not apply to the assessee trust as it is an 'education' trust, not hedged by the proviso to Sec 2(15) as is the case with a 'GPU' trust.

**36.** We now take up the decision of *New Noble* relied upon by the Ld. CIT(E). It is observed that, in the instant case, all the taxpayers before the Hon'ble Apex Court were institutions seeking exemption under 10(23C)(vi) of the Act which exempts income derived by any university or other educational institution existing *solely* for educational purposes and not for the purposes of profit. The main questions before the Hon'ble Apex Court were, (i) the correct meaning of the term "*solely*" occurring in sec 10(23C)(vi) of the Act and (ii) whether the profits and surpluses accruing to the educational institutions from certain incidental activities qualified for



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exemption in the light of the seventh proviso to sec 10(23C)(vi), which was worded similar in line to sec 11(4A) of the Act. In answering the first question the Hon'ble Apex Court held at Para 50 that, the word "solely" means "only" or "exclusively". The court therefore rejected the arguments of the assessee that solely would mean "predominantly" or "mainly". In light of this finding, the Court proceeded to interpret the term 'incidental' business occurring in the seventh proviso to see 10(23C)(vi) at Para 58 of their judgment wherein it was held that, the term incidental business occurring in said proviso has to be read as education or educational activity, as stated in the main provision, and nothing other than that. Only then can the business be said to be incidental to the attainment of the objectives of education. The reason for this narrow interpretation of the term 'incidental' in relation to institutions seeking exemption u/s 10(23C)(vi) was because the primary condition set out in the section was that these institutions must exist solely for educational purposes and therefore the Hon'ble Court held that any 'incidental' activity resulting in a surplus and covered by the seventh proviso must also be an education activity only and nothing else. In fact, the Court also cited examples to explain the contextual meaning of 'incidental' used in seventh proviso in conjunction to the condition 'solely for education purpose' as set out in the main provision. The Court explained that, where the assessee institution sourced and sold books to its students or provided transport through buses for its students, these activities would incidental to education of students. However, where institutions provide their premises or infrastructure to other entities for the purposes of conducting workshops, seminars or even educational courses in which outsiders are permitted, then the income derived from such activity cannot be characterised as part of education or 'incidental' to the imparting education. It is therefore noted that the contextual meaning of 'incidental' as interpreted by the



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Hon'ble Apex Court in relation to the seventh proviso to Section 10(23)(vi) of the Act was much narrower than the contextual interpretation of Section 11(4A) of the Act meted out in *AUDA's case*, qua the 'GPU' trusts. Having perused the judgment therefore, the important point noted by us is that, the contextual interpretation of the term 'incidental' business was rendered in the context of sec 10(23C)(vi) and the proviso thereto and therefore the same cannot be applied to 'per se categories' of trusts (including education) seeking exemption u/s 11 of the Act.

**37.** So far, we have taken note of the contextual meaning of the term 'incidental' used in Section 11(4A) in context of 'GPU' trusts and the term 'incidental' used in seventh proviso to Section 10(23)(vi) which is applicable to institutions 'solely' engaged in providing education. We now come to the third class which is the 'per se categories' of trusts. In so far as 'per se educational trusts' such as the assessee are concerned, the term 'incidental' business is to be contextually understood in the manner interpreted by the Hon'ble Supreme Court in *Thanthi Trust*, which according to us, still holds field. As shall be noted from the above excerpts from the decision of *AUDA's case*, the Hon'ble Supreme Court has not overruled the decision of *Thanthi Trust* but rather endorsed its view and found it to be applicable in context of 'per se categories' of trusts, and it was clarified that their interpretation was rendered in context of 'GPU' trusts, in light of the subsequent amendments to the provisions and primarily the amendment made to Section 2(15) of the Act by the amendment Act of 2008. In the *Thanthi Trust's case*, the assessee was an 'educational' trust. While interpreting the word 'incidental' occurring in Section 11(4A) of the Act as was applicable from AY 1992-93 onwards, the Hon'ble Supreme Court, rejected the argument of the Revenue that, a first degree nexus is required between the carrying on a business activity and the charitable objects and instead held that "A business whose income



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*is utilised by the trust or the institution for the purpose of achieving the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust".* For coming to this conclusion, the Hon'ble Supreme court at Para 18 held as under:-

"Clearly, the scope of sub-section (4A) is more beneficial to a trust or institution than was the scope of sub-section (4A) as originally enacted. In fact, it seems to us that the substituted sub-section (4A) gives a trust or institution a greater benefit than was given by section 13(1)(bb). If the object of Parliament was to give trusts and institutions no more benefit than that given by section 13(1)(bb). the language of section 13(1)(bb) would have been employed in the substituted sub-section (4A). As it stands, all that is required for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of the objectives of the trust or institution. **A business whose income is utilised by the trust or the institution for the purpose of achieving the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust"**

**(emphasis supplied)**

**38.** Therefore, in terms of the above decision in *Thanthi Trust*, in the case of 'per se categories' of charities, as is the case of the assessee, a business whose income feeds the charity is to be regarded as a business incidental to the attainment of the objectives of the trust or the institution.

**39.** From the above discussions, it is gathered that, the expression 'incidental' is not to be interpreted as its plain dictionary definition to mean the same across all categories of trusts in the same like manner, instead, its contextual meaning has to be understood in the context and purpose of the scheme of the Act. The key to true and contextual meaning of the expression "incidental", lies in the 'intent and purpose' of the respective provisions. From the above decisions of Hon'ble Apex Court, we therefore note that, the term 'incidental' business has been interpreted in three different manner contextually with reference to the type of charitable trust



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and the additional conditions set out for businesses run by such trusts in the respective sections. Firstly, in the specific case of *GPU trusts*, it has been held in *AUDA's case* at Para 168 that, the word "*incidental*" has to be interpreted in the light of sub-clause (i) of the proviso to sec 2(15) i.e., the business should be conducted in the course of actually carrying on the GPU object and the receipts from the business should not exceed 20% of the total receipts of the trust. This interpretation requires a first-degree nexus between the business and the charitable activity which is found to be based on the additional condition imposed only on GPU trusts on their business activities in the proviso to sec 2(15) of the Act.

**40.** Secondly, in the case of educational institutions claiming exemption u/s 10(23C)(vi) of the Act, the contextual meaning of 'incidental' used in seventh proviso is hedged by a primary condition in that section that they must exist "solely" for educational purposes. Accordingly, while interpreting the term "incidental" occurring in the seventh proviso to Sec 10(23C)(vi), the Hon'ble Supreme Court in *New Noble's case* at para 58 held that, '*incidental*' business has to be read as education or educational activity only and nothing other than that.

**41.** Thirdly, the last category, in respect of *per se charitable trusts* claiming exemption u/s 11, '*incidental*' business has been interpreted in *Thanthi Trust's case* at Para 18 to mean a business whose income feeds the charity. The Hon'ble Supreme Court, for holding so, had taken into context of the historical developments in the requirements to be fulfilled by businesses carried on by these *per se* charitable trusts. It was noted that, for AYs 1979-80 to 1983-84, when Section 13(1)(bb) was in the statute book, the Hon'ble Supreme Court denied the benefit of exemption to the business income earned by the *Thanthi Trust* on the ground that Section 13(1)(bb) which applied only to *per se* charitable trusts, required



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a first-degree nexus of business with the charitable activity. Thereafter for the period AY 1984-85 to AY 1991-92, when sec 13(1)(bb) was deleted and a new Section 11(4A) was introduced, the Hon'ble Supreme Court again denied the exemption on the ground that the requirement in Section 11(4) at that time, namely that the business should be carried on by the beneficiaries of the institution, was not fulfilled. Thereafter, for the period from AY 1992-93 onwards, the Hon'ble Supreme Court upheld the exemption for the business income on noting that the amended Section 11(4A) only required that the business should be incidental to the achievement of objectives of the Trust. The Hon'ble Court noted that the substituted Section 11(4A) gives a greater benefit than what was given by Sec 13(1)(bb) or for that matter the erstwhile sec 11(4A) of the Act. In light of the legislative background of law, the Apex Court thus held that post AY 1992-93 and onwards, the requirement of 'incidental' business with regard to per se charitable trusts, was any business whose income feeds the main charity, is a business incidental to the attainment of the objects of the trust.

**42.** In the facts before us, the assessee trust is falling under the third category i.e. 'per se charitable trusts' and therefore applying the ratio laid down in *Thanthi Trust's case*, the petrol bunk business carried on by the assessee trust is to be regarded as business incidental to the attainment of the educational objects of the trust as the assessee has demonstrated that the entire surplus from the petrol bunk was utilized for the main charitable activities of the Trust i.e. education, and separate books of accounts have been maintained in respect of such business. We accordingly hold that, the assessee was fulfilling the conditions set out in Section 11(4A) of the Act and hence the view adopted by the AO allowing the exemption claimed u/s 11 of the Act to the assessee in the income-tax



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assessment framed u/s 143(3) for AY 2018-19 was in accordance with law, and cannot be termed to be erroneous, as alleged by the Ld. CIT(E).

**43.** As far as the decisions cited by the Ld. CIT, DR is concerned, we agree with the Ld AR of the assessee that, all these decisions were rendered in context of GPU trusts, and in light of the above discussions, since the assessee is an 'educational' trust, to whom proviso to Section 2(15) and the limits specified therein i.e. 20% of annual receipts, did not apply, these decisions are not applicable to the present case. In the case of Chennai Kammavar Trust (supra), it is noted that, it was a GPU trust running a kalyana mandapam, was found to be collecting rent for the letting out of kalyana mandapam in the guise of corpus donations. Since the GPU trust had violated the proviso to sec 2(15), this Tribunal had denied the exemption u/s 11 of the Act. In the case of Nirmithi Kendra (supra), the assessee was a State accredited agency formed with the object of generating and propagating innovative housing ideas. It *inter alia* carried out various construction activities such as Panchayath Community Hall, Kudumbasree womens hostel, Krishibhavan office, Vayanasala Office etc. by using MPs, MLAs and local authority funds. The Tribunal found this to be a GPU activity and the receipts therefrom violated the proviso to sec 2(15) and hence confirmed the denial of exemption claimed u/s 11 of the Act. In the case of Young Women's Christian Association of Madras (supra), the dominant part of the income of the assessee was from running a Working Women's hostel and International Guest House. This Tribunal held this activity to be a GPU object and as the assessee had not complied with the proviso to sec 2(15), the exemption was denied. In Murasoli Trust (supra) also, the trust was found carrying on the business of publishing a newspaper on commercial lines and thus falling foul of the proviso to sec 2(15). On these grounds the exemption was denied. As held above, the assessee is an



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educational trust and not a GPU trust and therefore these decisions do not apply to it.

**44.** We now come to the next contention raised by the Revenue that, the decision of *Thanthi Trust* cannot be extended to the assessee as the petrol outlet was not a '*business held under trust*'. As noted from the facts discussed in preceding paragraphs, the very license to carry on the petrol bunk business has been issued in the name of the trust and the assets thereof are reflected in the Balance Sheet of the Trust under the head "Retail Outlet-Alathiyur" and thus this was indeed a '*business held under trust*' and hence the assessee was compliant with Section 11(4) of the Act. Hence, this contention of the Revenue is also rejected.

**45.** In the light of the above discussions, we therefore find that, not only did the AO discharge his dual role as an investigator as well as adjudicator but, also as noted (*supra*), the AO had examined the relevant facts and thereafter rightly allowed the exemption u/s 11 of the Act as the activity of running the petrol outlet was for attainment of the objectives of the trust in as much as the twin conditions laid down in Section 11(4A) stood satisfied. We thus hold that, the view adopted by the AO cannot be said to be erroneous or an unsustainable view in law and therefore the Ld. CIT(E) was unjustified in holding the assessment order to be erroneous as well as prejudicial to the revenue.

**46.** Apart from the above, we also find merit in the alternate contention of the assessee that, the view adopted by the AO was in accordance with the prevalent law at that material time, when the assessment was completed and therefore the Ld. CIT(E) could not have exercised jurisdiction u/s 263 of the Act and held the assessment to be erroneous and prejudicial to the interests of the Revenue. It is noted that, the decision taken by the AO was in accordance with the decision of Hon'ble



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Apex Court in *Thanthi Trust* and the jurisdictional Madras High Court in the case of DIT(E) vs Wellington Charitable Trust (supra) and also the view expressed by the Ld. CIT(E) in assessee's own case in his order u/s 264 of the Act for AY 2012-13. Thus, the AO having followed these decisions (supra), which held the field, at the relevant point of time, his assessment order cannot be held to be erroneous and prejudicial to the interest of revenue. For this, we gainfully refer to the decision of Hon'ble Calcutta High Court in the case of **SPPL Property Management (P.) Ltd (supra)**. In the decided case, the Ld. PCIT had exercised revisionary powers u/s 263 of the Act to set aside the assessment order allowing the deduction for belated payment of employee's contribution to PF/ESI, in light of the decision of the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. v. CIT (448 ITR 518)* wherein it was held that the delayed payment of employees' contribution to PF/ESI was to be added u/s 36(1)(va) of the Act. On appeal, the Hon'ble High Court upholding the order of the Kolkatta Tribunal held that, since the AO had followed decision of jurisdictional High Court which held field in the relevant AY, allowing deduction for belated payment of employee's contribution to PF/ESI, the said view of the AO cannot be termed as erroneous and prejudicial to the interests of the Revenue, based on the subsequent decision of Hon'ble Supreme Court reversing the decision of jurisdictional High Court, which was rendered post completion of assessment. The relevant findings, as noted by us, is as follows:-

"...The other issue with regard to the provident fund contribution, as mentioned, the assessment order was of the year 2017-18 and on the date, when the assessing officer completed the assessment, the law on the subject as laid down by the jurisdictional High Court, namely this Court is in the case of *CIT v. Vijay Shree Ltd. [2014] 43 taxmann.com 396/224 Taxman 12 (Mag.)*. Thus the assessing officer had followed the decision of this Court in the said case and had completed the assessment. Thus the assessing officer having followed the decision of the Jurisdictional High Court which held the field, at the relevant point of



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time, the assessment cannot be held to be prejudicial to the interest of revenue.

**46.** For the various reasons set out above, we thus hold the Ld. CIT(E) has erred in invoking revisional jurisdiction u/s 263 of the Act, for imposing his view, which as held above, was untenable on facts and in law, and so we are inclined to quash the impugned order of Ld. CIT(E).

**47.** In the result, the appeal stands allowed.

*Order pronounced on 18<sup>th</sup> November, 2024.*

**Sd/-**

(मनोज कुमार अग्रवाल)

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

**Sd/-**

(एबी टी. वर्की)

(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 18<sup>th</sup> November, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित / **Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF