

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 4025/DEL/2012[A.Y 2009-10]

The A.D.I.T [E]  
INV. Circle -1  
New Delhi

Vs.

Andhra Pradesh Technology  
Development & Promotion Centre  
23 to 26 Institutional Area  
Lodhi Road, New Delhi

PAN - AAATA 5160 B

(Applicant)

(Respondent)

Assessee By : Ms. Ekta Kumari, Adv

Department By : Ms. Ritu Sharma, CIT-DR

**Date of Hearing : 22.11.2024**

**Date of Pronouncement : 18.02.2025**

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the Revenue is preferred against the order of the  
ld. CIT(A) - XXI, New Delhi dated 17.05.2012 pertaining to A.Y 2009-10.

2. The Revenue has raised the following grounds of appeal:

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the assessee's claim that its activities were covered under the first limb i.e. 'Relief of the poor in the definition of 'Charitable Purpose' as defined in section 2(15) of the Income Tax Act, 1961.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the assessee's claim that the intellectual property rights, consultancy income was incidental to the assessee's activities as per MOA and was towards the relief of poor and not in the nature of business for profit.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the decision in the case of Thanthi Trust 247 ITR 785 (SC) applied to the assessee's case and allowing the exemption u/s. 11 without appreciating the amendment in the definition of 'charitable purpose' as per section 2(15) of the Income Tax Act, 1961 w.r.t. the activities falling under the category of 'advancement of any other object of general public utility'.*

*4. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

3. Brief facts of the case is that the assessee is a resident Trust registered u/s 12A (a) of the I.T Act, since 23.06.2010. The assessee (APTDC) is promoted by Confederation of Indian Industry (CII), Government of Andhra Pradesh (GoAP) & Technology Information Forecasting and Assessment Council (TIFAC), is an autonomous society, registered under the Andhra Pradesh Public Societies Registration Act. APTDC has been extending techno-managerial consultancy services in the area of Technology & IPR, including promoting bamboo oriented enterprises.

4. The assessee has filed Return of income declaring Nil Income on 21.03.2011. The case was selected for scrutiny on the basis of guidelines for selection of cases for scrutiny and notice u/s 143(2) was issued on 21.09.2011.

5. The assessee has claimed that its activities fall under the limb “Relief of the poor” u/s section 2(15) as it was formed with the sole objective to uplift Andhra Pradesh economy by providing relief to the people. This being the aim assessee society is engaged in:

- In promoting cottage and rural industries
- Art and handicrafts

- Provided help in marketing their Products
- Provide help to micro small and medium entrepreneurs technical guidance and legal expert opinion in the matter of preserving their business rights. This is done so that they may not be deprived of such needs.
- Creation of livelihood for tribal's and people depending on food products by promoting their value added products from bamboo which is available plenty in Indian forests.
- Help in improving the unhealthy and unhygienic conditions of rag pickers, waste collectors and recyclers by implementing municipal solid waste management projects.
- Provide better employment opportunities.

6. The assessee has referred to its audited accounts to show that the assessee society has received three government grants for following purposes which clearly establish that the thrust of the society is on rural upliftment:

- 1) Grant of Rs 27,00,000/- received from Ministry of Rural development for the implementation of the project on Wasteland Development with sustainable livelihood based on Bamboo Plantation and Value added products for Housing, Food, fodder, and Bio- Fuels "

2) Grant of Rs 2,25,000/- received from Textile Committee Ministry of Textile Government of India for the purpose of study, Survey Awareness and Documentation, preparing statement of cases and filing of the applications, Registration of GI for Dharmavaram Saree, Uppada and Jamdhani Saree and Fabrics.

3) Grant of Rs 3,00,000/- from Development Commissioner of Handlooms. For the purpose of Study, Survey, Awareness and Documentation, preparing statement of case and filing of the applications, Registration of GI for Narayanpet, SiddipetGollabama, Mangalagiri and Venkatagiri Sarees.

7. The Society commercial activities involve providing services for protection of all forms of Intellectual property Rights (IPR) and assist parties with filing, prosecution and registration of Patents, Trade Marks, Designs on Geographical Indications (GI) and Copyrights in India and Abroad. The service is provided by the network of IP EXPERTS (Law firms across the country) and also in-house IP experts. It is claimed that:

7.1 To recover costs and overheads, parties who are supported are charged for providing such services. At times, the fees are highly subsidised for parties who cannot afford. Only fees paid to the government are charged.

7.2 Workshops & Seminars are organised as a platform for representatives of various Government Departments, Entrepreneurs, Scientists, Research Scholars, Experts, University students etc; from India and abroad, who participate in the deliberations during the various sessions. In order to recover the cost of organising such programs, the society receives funds in the form of Sponsorships from Industry & Government as well as Delegate fees.

7.3 It is submitted that they also receive funds from the Government to conduct GI awareness workshops and seminars for the stake holders. In such cases, they do not charge any fees from the delegates, as these are artisans/stakeholders who would benefit immensely from the conference. Such seminars are for capacity building/awareness and training for all GI stakeholders.

7.4 It is also submitted that they have three different broad activities under IPR:

- i) IPR awareness/Training: conducting training programmes /seminars, workshopsfor capacity building for all stakeholders in the country. At times this is completely subsidized and at times only a nominal delegate fee is charged.
- ii) IPR Facilitation Services: are provided to MSME, Institutions and Individuals at a very competitive price and help them to file IP's through our in house IP experts and Network IP expert Law firms.
- iii) IP Policy and Advisory Services: for such services society works closely with Government agencies and Bodies, Industry and Institutions to frame policy guidelines and also works on key issues of IPR which is needed for the economic growth and for the interest and benefit of all industry.

8. The AO examined the assessee's nature of receipts, expenses, w.r.t the activities conducted by it in the light of the amended provisions of section2(15) and related sections 11 to 13 of the I.T Act and CBDT

Circular No. 11/2008 and reached a conclusion that the assessee's activities if at all charitable fall under the category of advancement of any other object of general public utility. The assessee has rendered services in relation to trade, commerce or business for a fee or consideration and therefore, its activity towards the advancement of any other object of general public utility shall not be for charitable purpose. The AO held that its business venture in the bamboo furniture for a sum of money does not show even remotely that some poor people were going to benefit from this activity of the assessee. The AO held that the activity of giving consultancy for a price/consideration is in the nature of services rendered for a fee or consideration in connection with the business.

9. It was further observed by the Assessing Officer that the assessee only acts as a middleman and contracts for the job are awarded to various companies for a price and the assessee keeps its share for such services rendered. It does not have the expertise to implement the various project w.r.t the Waste Management activity as claimed to have been done by it. Further it has not been able to establish that the activities w.r.t to intellectual property rights has been for the

alleviation of poverty and benefited any particular class of poor people, through any concrete evidence.

10. The AO further noted that the assessee is showing amount receivable from different persons including private Ltd companies year after year in its balance sheets. For eg. in the balance sheet for the year ended 31.03.2007 the amount receivable are shown at Rs. 36,53,157/-. In the balance sheet for 31.03.2008, such receivable are Rs. 29,27,503/- in the balance sheet under consideration i.e., as on 31.03.2009 it is shown at Rs. 40,37,008/- and in the balance sheet as on 31.03.2010 receivables are shown at Rs. 70,14,764/- Another striking feature is that against some of the persons like Ram Energy Pvt.Ltd. (Rs. 200,000/-); Thermal System (Hyderabad)P.Ltd.) (Rs. 3,00,000/-) Microsoft Corporation India Pvt. Ltd. (Rs. 2,00,000/-) Mr. Fredrik Lorence (Rs. 400435/-) Ms.Tide (60,000/-) have been shown outstanding from 31.03.2007 to 31.03.2010. The AO held that this cannot be said as the application of fund for charitable purpose and it does not conform to the provisions of section 11(5) of the I.T Act,

11. The Assessing Officer concluded that the fee for intellectual property right service at Rs. 92,01,850/- is essentially covered under the two provisos of section 2(15) as amended w.e.f 01.04.2009. Further, this activity is with a profit motive as the expenses, directly related and shown under the head "Expenses on Intellectual property service", are only Rs. 35,34,888/-. Though the motive of profit is not required to be established yet such huge profit cannot be without a conscious effort with meticulous planning and lot of deliberation and precise execution. The activity of the assessee is also not found to be incidental to the objects as declared in the MOA (Memorandum of Association). The AO finally held that the activity of the assessee does not qualify for charitable purpose in view of the provisions of section 2(15) as discussed above and clarification issued by the board as stated above. Hence, the income of the assessee does not qualify for exemption u/s 11 of the I.T Act. In view of the above the income of the assessee was assessed at Rs. 54,84,739/-.

12. Aggrieved, the assessee went in appeal before the Id. CIT(A) who after considering the facts and submissions, held as under:

“3.2 I have gone through the findings of the AO in the assessment order and written submission of the Ld.AR of the appellant as discussed above. In this regard, Ld.AR of the appellant has placed his reliance on the circular No.11/2008 dated 19.12.2008, wherein, CBDT has very specifically explained that fourth limb which is advancement of any other object of general public utility cannot be applied on the assessee whose activities comes under purview of relief of the poor, education or medical relief: In the relevant para 3, 3.1 & 3.2 of the above mentioned circular it has been emphasized as under:-

3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). 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. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1 There are industry and trade associations who claim exemption from tax u/s.11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned

to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations 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) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

3.2 In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assesseees, who claim that their object is 'charitable purpose' within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business."

3.3 As the appellant's case comes under the first limb, i.e., relief of the poor which is very specifically mentioned in the written submission dated 12.3.2012 and it has been further clarified that assessee is maintaining books of accounts as required u/s.11(4A) of the IT Act. So in my consideration opinion, treating the activities of the assessee as trade, commerce and business is a misconceived action on the part of the AO. Various case laws relied upon by the Ld.AR of the appellant especially reliance on the decision in the case of ACIT Vs. Thanthi Trust (2001) 247 ITR 785 is found to be attracted on the facts of the case because business of the appellant is incidental to the attainment of the object of the trust. So in my considered opinion,"

13. Aggrieved, the Revenue is before us.

14. The ld DR has vehemently argued that the CIT(A) has not adjudicated as to how the assessee fits into the 1st limb of "Relief of the poor". The ld DR drew attention to the aims and objective of the assessee as described in the assessment order to show that there is no mention of relief of the poor in the aims and objectives. The ld DR vehemently argued that the amendment in section 2(15) was brought with the purpose of bringing such kind of assessee who are doing business in the garb of activities for the poor. The ld DR submitted that the agreement with Green Earth Associates for setting up bamboo wood

manufacturing unit was cancelled by the assessee which shows that the society had not executed any activity for upliftment of rural population far less promoting “relief to the poor”.

15. Per contra, the ld counsel of the assessee explained that the term “relief to poor” has to be understood in a wider perspective. For instance, it is not necessary that the object should be for the betterment of all the poor people living in a particular country or province. It would be sufficient if the objects are for the benefit of a section of the public as distinguished from individuals. It may be noted that in order to become charitable, the relief should be for a section of the community which could be well defined and identified by some common quality of public nature.

16. The ld AR further stated that since the trust is formed with a view to provide help and guidance to the villagers, small artisans and micro- small and medium sized entrepreneurs, therefore, it would be wrong to equate the activities of the assessee trusts with activities falling in the fourth limb of the definition of charitable purpose which reads :-

"Advancement of any object of general public utility". The Id AR stated that being engaged in providing relief to the poor under no stretch of imagination be deemed as engaged in advancing any other object of general public utility.

17. It is stated that charging fees for such activity in order to recover costs should not be deemed a commercial activity as schools, hospitals also charge fees but they are not rendered any the less charitable. The Id AR stated that the activities are not business oriented for every year they result in deficit. Fee is charged only to recover overheads. Had there been any motive of business, its financial result would have registered surplus. So therefore, under no stretch of imagination it should be considered engaged in the activity of the nature of trade, commerce or business.

18. The Id counsel of the assessee stated that societies or Institutions formed by central or state governments are formed with a different motive which is to strengthen the economic, life of people, therefore, Government schemes are not floated with the aim to make profit any narrow view would be unpragmatic and retrogressive and against the

spirit of state policy. The Id AR relied on the decision of Supreme Court in the case of *Lisie Medical Institution* (2017) 14 Supreme Court Cases 533 and *Thanthi Trust* (2001) 2 Supreme Court Cases 707. The Id AR also argued that the amendment does not disturb the 1<sup>st</sup> limb of section 2(15)i.e., relief of poor and that the assessee falls under 1<sup>st</sup> limb.

19. We have heard the rival submissions and have perused the relevant material on record. We have heard the rival contentions and perused the material available on record. Admittedly, the assessee is a registered society u/s 12A of the Act and is involved in commercial activities like providing consultancy service to its client in the field of Bamboo management; Waste management by providing technical and infrastructural guidance to clients like municipalities to set up Municipal Solid Waste Management Plants and Intellectual Property Rights activities by providing services for protection of all forms of intellectual Property Rights (IPR) and assists parties with filing, prosecution and registration of patents, trade- marks, designs and copy rights.

20. Admittedly, the society maintains separate books for its commercial activity as required u/s.11(4A) of the Act. We find that the assessee has asserted that its commercial activities are undertaken to

fund its rural activities which aim to provide help and guidance to the villagers where funds mobilization for small artisans is always in deficit as Govt grants are never adequate to meet the expenditure. Admittedly, till 31 March 2009, Financial support to the tune of Rs.11,45,430/- has been provided out of commercial activity to meet commitment for its rural activity. We find that the AO has considered the intellectual property right activity as purely business activity and not incidental to the attainment of the objectives of the society.

21. We note that the issue of charitable activities and its taxation has been adjudicated by the Hon'ble Supreme Court in the case of *ACIT (Exemptions) vs. Ahmedabad Urban Development Authority*, (2022) 449ITR1(SC), wherein the Hon'ble Supreme Court has laid down certain principles, and particularly about the GPU. The Hon'ble Supreme Court has considered this issue at paragraphs 166 to 173, as under:

*"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. However, the restrictive or negative terms enjoining GPU*

*charities from carrying on profitable activity had been deleted in 1983 (w.e.f. 01.04.1984). In Surat Art Silk (supra), the court had articulated the determinative test for defining whether a Trust was a GPU charity if its predominant object was to carry out a charitable purpose and that if that was the case, the fact that it earned profit would not per se deprive it of tax exemption. This decision was interpreted in the context of Section 11(4A) by this court in Thanthi Trust, to hold that business can be incidental to attainment of the trust's objects.*

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. 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 ₹10,00,000 (w.e.f. 01.04.2009), ₹25,00,000 (w.e.f. 01.04.2012), and 20% (w.e.f. 01.04.2016) 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. The amendment of 2016, inserting sub clause (i) to proviso to Section 2(15) was therefore clarificatory. Thus interpreted, there is no conflict between the definition of charitable purpose and the machinery part of Section 11(4A). Further, the obligation under Section 11(4A) to maintain separate books of account in respect of such receipts is to ensure that the quantitative limit imposed by sub-clause (ii) to Section 2(15) can be computed and ascertained in an objective manner.*

169. *The conclusion recorded above is also supported by the language of seventh proviso to Section 10(23C). Whereas Section 2(15) is the definition clause, Section 10 lists out what is not income. Section 10(23C) - by sub-clauses (iv) and (v) exempt incomes of charitable organisations. Such organisations and institutions are not limited to GPU category charities but rather extend to other types of charities (i.e. the per se kind as well). The controlling part of Section 10(23C) along with the relevant clauses (iv) and (v) seek to exclude income received by the concerned charities. However, the provisos hedge such exemption with conditions. The seventh proviso - much like Section 11(4A) and the definition - carve out an exception, to the exemptions such that income derived by charities from business, are not exempt. The seventh proviso virtually echoes Section 11(4A) in that business income derived by a charity (in the present case, the GPU charities) which arises from an activity incidental to the attainment of its objective is not per se excluded.*

170. *Classically, the idea of charity was tied up with eleemosynary 143. However, "charitable purpose" - and charity as defined in the Act have a wider meaning where it is the object of the institution which is in focus. Thus, the idea of providing services or goods at no consideration, cost or nominal consideration is not confined to the provision of services or goods without charging anything or charging a token or nominal amount. This is spelt out in Indian Chamber of Commerce (supra) where this Court held that certain GPUs can render Services to the public with the condition that they would not charge "more than is actually needed for the rendering of the services, - may be it may not be an exact equivalent,*

*such mathematical precision being impossible in the case of variables, - may be a little surplus is left over at the end of the year - the broad inhibition against making profit is a good guarantee that the carrying on of the activity is not for profit".*

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

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

*173. It may be useful to conclude this section on interpretation with some illustrations. The example of Gandhi Peace Foundation disseminating Mahatma Gandhi's philosophy (in Surat Art Silk) through museums and exhibitions and publishing his works, for nominal cost, ipso facto is not business. Likewise, providing access to low-cost hostels to weaker*

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

22. In similar circumstances as in the present case, the Hon'ble Supreme Court, further, from paragraphs 247 to 252, has considered issue, as under:

*"247. The revenue appeals a decision of the Allahabad High Court affirming the order of the ITAT which had directed the CIT to grant registration under Section 12AA of the Income Tax Act.*

*248. The assessee is a registered society which was formed with the object of establishing and running a health club, Arogya Kendra; its object included organization of emergency relief centre, etc. Other objects, included promotion of moral values, eradication of child labour, dowry, etc. The assessee had entered into arrangements with the state*

*agencies to supply mid-day meals to students of primary schools in different villages through contracts entered into with the Basic Shiksha Adhikari, District Meerut. It is a matter of record that the materials for preparation of mid-day meal was supplied by the government. The assessee society claimed that it only obtains nominal charges for preparation of mid-day meals. The assessee's claim for registration was rejected on the ground that it was involved in commercial activity. Upon appeal, the ITAT agreed with the assessee that supply of mid-day meals did not constitute business or commerce and that it promoted the objects of general public utility.*

*249. The revenue in its appeal contends that the assessee's only activity for the relevant year was supply of mid-day meals to primary schools. This was not relatable to any object of the society. The assessee's contention is that the state ordinarily would have carried on the activity of supply of mid-day meals. Yet, nevertheless it outsourced its activity to an outside agency like the assessee which performed it for nominal charges.*

*250. This court is of the opinion that there is no clarity with respect to whether the activity of supplying mid-day meals falls within the objects clause of the assessee society. The order of the ITAT as well as the High Court disclosed that the assessee's objects involved maintenance of health clubs, Arogya Kendra, promotion of moral values and provision of emergency relief. These do not however include the activity which it actually performed, i.e.. entering into contracts for supply of mid-day meals and the activity of cooking and supply of mid-day meals. In the absence of fuller material, it would not be possible for the court to assess the activity with which the assessee was engaged, and*

*determine whether it could be said to legitimately fall within the description of GPU.*

*251. The first consideration would be whether the activity concerned was or is in any manner covered by the objects clause. Secondly, the revenue authorities should also consider the express terms of the contract or contracts entered into by the assessee with the State or its agencies. If on the basis of such contracts, the accounts disclose that the amounts paid are nominal mark-up over and above the cost incurred towards supplying the services, the activity may fall within the description of one advancing the general public utility. If on the other hand, there is a significant mark-up over the actual cost of service, the next step would be ascertain whether the quantitative limit in the proviso to Section 2(15) is adhered to. It is only in the event of the trust actually carrying on an activity in the course of achieving one of its objects, and earning income which should not exceed the quantitative limit prescribed at the relevant time, that it can be said to be driven by charitable purpose.*

*252. This court, in the normal circumstances, having regard to the above discussion, would have remitted the matter for consideration. However, it is apparent from the records that the tax effect is less than Rs.10 lakhs. It is apparent that the receipt from the activities in the present case did not exceed the quantitative limit of Rs. 10 lakhs prescribed at the relevant time. In the circumstances, the impugned order of the High Court does not call for interference." Finally, while summarizing the conclusions, the Hon'ble Supreme Court, in paragraphs 253(A3) and (A4), held as under:*

*"A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.*

*A.4. Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has now been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.e.f. 01.04.2009), reaffirm the interpretation and bring uniformity across the statutory provisions."*

23. In light of the principles laid down in the judgement of *Ahmedabad Urban Development Authority* (supra), we have to determine the nature of activities of the assessee society. We find that the aims and objects do not include the “relief to poor” as its objective and the submissions of the assessee do not quantitatively nor qualitatively demonstrate that it is engaged in charitable activities which may fall under the 1st limb of section 2(15). We also find that the assessee is also engaged in commercial activities such as Bamboo management; waste management and Intellectual Property Rights activities where it provides technical consultancy service which falls under the 4<sup>th</sup> limb of section 2(15). We note that neither the AO nor the CIT(A), in the present case, has considered the activities of the assessee in the light of conditions as elaborated by the Hon’ble Supreme Court above, whether aim/object of the trust or GPU is charitable or not? To consider the principle laid down by Hon’ble Supreme Court in the above case, we set aside the order of CIT(A) and that of the AO, and, remand the matter back to the file of the AO with the following direction:

i)The AO will give finding with reference to the financial accounts whether the activities of the assessee such as bamboo plantation, waste management and IPR falls within the objects clauses of the assessee's society and, in turn, they are charitable activity or general public utility (GPU) ?Needless to say that the assessee society shall furnish evidence to support its claim that its activities fall within the 1<sup>st</sup> limb of the section 2(15).

ii) Whether, in the assessee's case, in achieving its objective under the GPU activity, if the charity involves itself in activities that entail charging amounts only at cost or marginal mark up over cost or derive some profit, the prohibition against carrying on business or service is not attracted, if the aggregate value of such receipts did not exceed Rs 10,00,000/. This needs reconsideration.

24. In terms of the above, the matter is restored back to the file of the AO, and the appeal of the Revenue is allowed for statistical purposes.

25. In the result, the appeal of the Revenue in ITA No. 4025/DEL/2012 is allowed for statistical purposes.

The order is pronounced in the open court on 18.02.2025.

**Sd/-**  
**[VIKAS AWASTHY]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[NAVEEN CHANDRA]**  
**ACCOUNTANT MEMBER**

Dated: 18<sup>th</sup> February, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi