

**IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER
&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**आयकरअपीलसं./ITA No. 46, 47, 48 & 491/MUM/2025
(निर्धारणवर्ष / Assessment Year: 2013-14, 2015-16,2016-17 &
2018-19)**

Income Tax Officer Exemptions Mumbai Room No. 609, 6 th Floor, MTNL Building, Cumballa Hill, Mumbai 400026	v/s. बनाम	The Gymkhana 16 th Road Mumbai 40071	Chembur Chembur,
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATT4163F			
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी	

निर्धारितीकीओरसे/Assessee by:	Shri Vipul Joshi
राजस्वकीओरसे /Revenue by:	Shri Yogesh Kumar, Sr. DR

सुनवाईकीतारीख /Date of Hearing	26.09.2025
घोषणाकीतारीख/Date of Pronouncement	16.10.2025

आदेश /O R D E R

PER BENCH :-

These four appeals are filed by the revenue against the orders of the National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 12.11.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Years [A.Ys.] 2013-14, 2015-16,2016-17 & 2018-19.

2. The revenue has raised the following identical grounds in these appeals:

“1. Whether on the facts and circumstances of the case and in law, and in the light of Civil Appeal No.21 762 of 2017 in various batch of appeals and SLP's (lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC)), the Ld. CITA) erred in holding that the activities of the object of 'general utilities carried on by the assessee in the present case are to be covered under residuary part of section 2(15) as "advancement of any other object of general public utility" and the assessee is not entitled to exemption u/s 11 because it is hit by the proviso to section 2(15) as the income of the assessee as spelt out clearly in the judgment of the Hon'ble Supreme Court ?

2. Whether on the facts and circumstances of the case and in law, and in the light of Civil Appeal No.21 762 of 2017 in various batch of appeals and SLP's (lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority (2022) 143 taxmann. com 278 (SC)), the Ld. CIT(A) is justified in allowing the benefit of exemption u/s. 11 of the Income Tax Act, 1961 without appreciating that the income of the assessee consists of interest income, compensation from caterers restaurant, sale of application forms, sponsorship, compensation from decorator etc. arising from regular and systematic activities which are in the nature of trade, commerce or business?

3. Whether on the facts and circumstances of the case and in law, the Ld. CITA) is justified in allowing the benefit of exemption u/s. 11 of the Income Tax Act, 1961 on the interest earned when the assessee is not entitled to exemption u/s 11 because it is hit by the proviso to section 2(15) as the income of the assessee as spelt out clearly in the judgment of the Hon'ble Supreme Court in case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority (2022] 143 taxmann. com 278 (SC).

4. Whether on the facts and circumstances of the case and in law, the Ld. CITIA) is justified in allowing the claim of the assessee for exemption u/s. 11 of the Income Tax Act, 1961 ignoring that the assessee is basically a mutual organization with commercial objectives and hence no charitable benefits to the society accrue as such?”

As the grounds of appeal are common and the facts are identical, these are being disposed off by the common order and A.Y. 2013-14 is taken as the lead case.

3. Brief facts of the case are that the assessee is registered as a public charitable trust since 1975 under the Bombay Public Trust Act, 1950. The assessee trust is also registered u/s. 12A of the IT Act since 1981. The assessee has been held to be a charitable entity pursuing objects of

general public utility and has, therefore, been claiming benefit of sec. 11 of the Act. Specifically, the assessee is providing the general public utility (GPU) services by conducting sports facilities and coaching for various sports on a ground given to it on lease by the government. The assessee is collecting charges at differential rates for these facilities from its members and non-members.

3.2 In the past years, the department had been holding the assessee to be a mutual concern not entitled to claim the benefit of section 11 of the Act. However, this issue has been decided by the co-ordinate benches in the earlier years after detailed analysis of the facts and circumstances, whereby it has been consistently held that the assessee is pursuing objects of general public utility (GPU) and hence entitled for benefit of section 11 of the Act.

3.3 Ld. AO during the assessment proceedings, held that the assessee had violated the provisions of section 13 by conferring undue benefit to 'specified persons' as per section 13(1) and, therefore, passed the assessment order for A.Y. 2013-14 treating it as a mutual concern.

Aggrieved, the assessee preferred an appeal before ld. CIT(A). Vide order dated 12.11.2024, Ld. CIT(A) directed the ld. AO to treat the assessee as an AOP as per the decision of the Hon'ble jurisdictional High Court dated 13.02.2012 in assessee's own case and allow expenses claimed after due examination.

4. However, in the meanwhile, Hon'ble Apex Court in the case of *ACIT Vs. Ahmedabad Urban Development Authority (AUDA)* and other cases, while deciding multiple issues arising in these appeals gave the correct interpretation of the proviso to section 2(15) of the Act in the context of GPU category of cases of charitable entities. Relevant portion of this judgement are reproduced below:

“Summation of interpretation of Section 2(15)

152. Section 2(15) in the wake of its several amendments between 2008 and 2015-can be juxtaposed with the interpretation of the unamended Section 2(15) by this Court. In *Surat Art Silk* (supra), the principle enunciated was that so long as the predominant object of GPU category charity is charitable, its engagement in a non-charitable object resulting in profits that are incidental, is permissible. The court also declared that profits and gains from such activities which were non-charitable had to be deployed or "fed" back to achieve the dominant charitable object.

153. The paradigm change achieved by Section 2(15) after its amendment in 2008 and as it stands today, is that firstly a GPU charity cannot engage in any activity in the nature of trade, commerce, business or any service in relation to such activities for any consideration (including a statutory fee etc.). This is emphasized in the negative language employed by the main part of Section 2(15). Therefore, the idea of a predominant object among several other objects, is discarded. The prohibition is relieved to a limited extent, by the proviso which carves out the condition by which otherwise prohibited activities can be engaged in by GPU charities. The conditions are:

(a) That such activities in the nature of trade, commerce, business or service (in relation to trade, commerce or business for consideration) should be in the course of "actual carrying on" of the GPU object, and

(b) The quantum of receipts from such activities should be exceed 20% of the total receipts.

(c) Both parts of the proviso: (i) and (ii) (to Section 2 (15)) have to be read conjunctively-given the conscious use of "or" connecting the two of them. This means that if a charitable trust carries on any activity in the nature of business, trade or commerce, in the actual course of fulfilling its objectives, the income from such business, should not exceed the limit defined in sub-clause (ii) to the proviso.

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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.

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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 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.

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188. The manner in which GPU charities has been dealt with under the definition clause, i.e., Section 2(15), indicates that even though trading or commercial activity or service in relation to trade, commerce or business appears to be barred nevertheless the ban is lifted somewhat by the proviso which enables such activities to be carried out if they are intrinsically part of the activity of achieving the object of general public utility. Furthermore, in the case of GPU charities there is a quantified limit of the overall receipts, which is permissible from such commercial activity In the case of local authorities and corporations covered by Section 10(46) no such activities are seemingly permitted.

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IV. Summation of conclusions

253. In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of "charitable purpose" (w.e.f. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act

A. General test under Section 2(15)

A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration");

A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected ("actual carrying out" inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU, and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);

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 not been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.”

Accordingly, the revenue was aggrieved by the order of Id. CIT(A) which did not consider the above decision of the Hon’ble Apex Court, and hence the present appeal.

5. Before us, Id. AR has argued at length by pointing out the history of the assessments in this case and has submitted that there is no change from earlier years in the activities of the trust and, therefore, the decisions of the co-ordinate benches for earlier years and, most importantly, that of the Hon’ble jurisdictional High Court dated 13.02.2012 hold good for the year under consideration as well. Id. AR has filed a paper book alongwith written submissions which have been taken on record.
6. Id. DR, on the other hand, has countered the arguments of Id. AR and submitted that the relevant provisions have undergone substantial changes in the last few years. He has also argued that, after the decision of the Hon’ble Apex Court dated 19.10.2022 in the case of AUDA (supra), the issues in these years have to be examined as per the applicable provisions in light of interpretation given by the Hon’ble Apex Court to section 2(15) as applicable in the cases of the GPUs. Id. DR has also filed

written submissions and further placed reliance on the decision of the co-ordinate bench in the case of *DCIT(E) Vs. Association of Mutual Funds in India* in ITA No. 3201/Mum/2022 on the same issue.

Vide order dated 29.11.2023 for A.Y. 2018-19, the co-ordinate bench, on similar facts and circumstances, has held as under:

"6. We have heard both the parties and perused the records. The Ld. DR assailing the action of the Ld. CIT(A) submitted that the only issue involved in this appeal is in respect of Ld. CIT(A) allowing the claim of exemption u/s 11 of the Act, even though the assessee was in receipt of Rs.22.99 crores from non-members. In this regard, the Ld. DR, pointed out that the following receipts the assessee received are from non-members and therefore the said receipts cannot be exempt income as "Mutuality Principle" is not attracted for the receipts like (1) ARN Fees (Rs. 1894,40 Lakhs) (2) ARN Data fees & Due diligence fee (Rs. 1.00 Lakh) (3) AMFI Summit Collection (Rs.31.09 Lakh) and (4) Other income including interest (Rs.373.20 Lakh). According to the Ld. DR, since the assessee received the aforesaid receipt from non-members, the AO held it to be business receipts and the AO after allowing deduction on account of business expenditure and depreciation has rightly assessed the taxable income at Rs.1476.53 Lakhs. According to the Ld. DR, the Ld. CIT(A) erred in allowing the claim of the assessee by merely relying on the order of the Tribunal dated 06.09.2022 for AY 2011-12 to AY 2013-14. Further, according to him, while doing so, the Ld. CIT(A) has not taken into consideration, the ratio of the recent Hon'ble Supreme Court decision in the case of Ahmedabad Urban Development Authority (supra) passed on 19.10.2022, and the Ld. DR pointed out that in any case, the Tribunal before passing its order dated 06.09.2022 for earlier year could not have considered the Hon'ble Supreme Court decision in the case of Ahmedabad Urban Development Authority (supra). Assailing the Tribunal order (supra) the Ld. DR pointed out that even after the amendment was made u/s 2(15) of the Act, the Tribunal has applied "Dominant Object Test" as laid down by the Apex Court in ACIT Vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1. According to the Ld. CIT-DR, the Hon'ble Supreme Court in Ahmedabad Urban Development Authority (supra) has considered its own decision in Surat Art Silk Cloth Manufacturers Association (supra) in Ahmedabad Urban Development Authority (supra) at para no. 200 to 205 wherein their Lordship observed as under: -

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

201. The question that arises is whether the change in definition impacts the claims of trade promotion bodies, federations of commerce, or such

organizations, that they are GPU charities. The judgment in *Surat Art Silk (supra)* proceeded on the assumption that trade promotion was the predominant object of the GPU charity before the court, and that other objects including procuring licences, trade etc. were incidental. The assessee in *Surat Silk* had clear trading objects:

"(b) To carry on all and any of the business of Art Silk Yarn, Raw Silk, Cotton Yarn as well as Art Silk cloth. Silk Cloth and Cotton Cloth belonging to and on behalf of the members.

(e) To buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the Members."

This court, nevertheless, held that since the predominant object of the assessee was trade promotion, while furthering it, the fact that some trading occurred, leading to income, did not preclude the assessee from claiming tax exemption.

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

203. The revenue has appealed to this court, in respect of two assessment years, in the case of Apparel Export Promotion Council (AEPC). The objects of AEPC, which was set up in 1978 include promotion of ready-made garment export. To achieve that end, its objects include providing training to instil skills in the workforce, to improve skills in the industry; guide in sourcing machinery, to serve as a body advising, providing information on market or technical intelligence; assisting the concerned industry in obtaining import licenses, showcase the best capabilities of Indian garment exports through the prestigious "India International Garment Fair" organised twice a year by AEPC, etc. These fairs host over 350 participants who exhibit their garment designs and patterns. Other functions are to provide information, and to provide market research. AEPC also assists in developing new design patterns and garments and awareness camps and events, would be broadly covered by trade promotion. However, when a trade promotion body provides individualized or specialized services such as conducting paid workshops, training courses, skill development courses certified by it, and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective

businesses, the claim for GPU status needs to be scrutinised more closely. Such activities are in the nature of services "in relation to" trade, commerce or business. These activities, and the facility of consultation, or skill development courses, are meant to improve business activities, and make them more efficient. The receipts from such activities clearly are 'fee or other consideration' for providing service "in relation to" trade, commerce or business.

204. As part of its functioning, it also books bulk space, which is then rented out to individual Indian exporters, who showcase their products and services, and ultimately secure export orders.

Towards these services, ie, booking and providing space, AEPC charges rentals. Now, these rents are not towards fixed assets owned by it. They are in fact charges, or fees, towards services in relation to business, likewise, the skill development and diploma courses conducted by it, for which fees are charged, are to improve business functioning of garment exporters. Furthermore, market surveys and market intelligence, especially country specific activities, aimed at catering to specified exporters, or specified class of exporters, is also service in relation to trade, commerce or business.

205. In the circumstances, it cannot be said that AEPC's functioning does not involve any element of trade, commerce or business, or service in relation thereto. Though in some instances, the recipient may be an individual business house or exporter, there is no doubt that these activities, performed by a trade body continue to be trade promotion. Therefore, they are in the "actual course of carrying on" the GPU activity. In such a case, for each year, the question would be whether the quantum from these receipts, and other such receipts are within the limit prescribed by the sub-clause (ii) to proviso to section 2(15). If they are within the limits, AEPC would be for that year, entitled to claim benefit as a GPU charity.

(iv) Non-statutory bodies - ERNET, NIXI and GSI India."

Thus, according to Ld. DR in order to decide whether the assessee's case falls under mischief of proviso to section 2(15) of the Act, one needs to examine whether fees charged by it are significantly higher than the cost incurred and whether receipts on account of such fees is more than 20% of the total receipts. According to him, from the details available in the assessment order, receipts held as business income of Rs.22.99 crores is approximately 87% of the total receipts of Rs.26.31 crores. Further, as against the total business receipts of Rs.22.99 crores, the total expenditure incurred by the assessee is only Rs.8.23 crore which is approximately 36% of the total business receipts. In other words, the assessee has earned profit of nearly 180% on the cost incurred by it. Hence, the Ld. DR asserted that there cannot be two opinion about the conclusion that the fees charged by the assessee is significantly higher than the cost incurred by it and therefore in view of the ratio laid down by the Hon'ble Apex Court, these receipts would constitute commercial or business receipts, and such income would attract mischief of proviso to section 2(15) of the Act. The Ld DR also pointed out that the ratio laid down by the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) was reiterated in the recent decision dated 31.01.2023 rendered in the case of PCIT(E) Vs. Servants of People Society (2023) 147 taxmann.com 79 (SC). In view of the above facts and discussion, he pleaded that the exemption denied u/s 11 of the Act by the AO may be upheld by reversing the impugned order of Ld. CIT(A).

7. *Per contra*, the Ld. AR appearing for the assessee pointed out that the AO has only discussed about application of "Principle of Mutuality" to deny exemption claimed by assessee, which was erroneous and the AO has not discussed anything about the amendment brought in by proviso to section 2(15) of the Act. According to the Ld. AR, the objects of the assessee are for charitable purposes and its activities are for the benefit of the public at large and not just for its members. According to him, the assessee was granted registration u/s 12A of the Act by the Competent Authority, after examination of its objects and held it to be of charitable nature. And drew our attention to the objects which have been stated by the AO at page no. 2 of his order. According to him, the amendment brought in by the proviso to section 2(15) of the Act will be attracted only where the objects of an organization was involved in carrying out any activity in the nature of trade, commerce and business with the object of earning profits. According to him, assessee does not carry on any activity in the nature of trade, commerce or business. According to him, the receipts are from the registration, examination and certification work carried on by the assessee for the benefit of investors and general public. And according to him, this Tribunal in assessee's own case for AY. 2011-12 to AY. 2013-14 (*supra*) has passed order dated 06.09.2022 wherein all aspects were considered and assessee's claim for exemption u/s 11 of the Act was allowed.

According to the Ld. AR, the Ld. CIT(A) has correctly followed the order of the Tribunal in assessee's own case which does not require any interference from our sides.

8. After considering the submission of both parties, we note that the main grievance of the revenue is that the relevant year under consideration is AY 2018-19; and the Parliament had substituted the first and second proviso of section 2(15) of the Act by Finance Act, 2015 w.e.f 01.04.2016 which is applicable for the year under consideration. According to Ld DR, the Hon'ble Supreme Court by order dated 19.10.2022 had laid the law on the 'lis' before us in the case of Ahmedabad Urban Development Authority (*supra*) after considering the proviso to section 2(15) of the Act, which admittedly the Ld. CIT(A) did not consider, even though he passed the impugned order on 28.10.2022; and Ld CIT(A) erroneously, followed the order of Tribunal dated 06.09.2022 [passed in assessee's own case for AY. 2011-12 to AY. 2013-14 (*supra*)]. Thus, according to Ld DR, the Ld CIT(A) erred in following the decision of Tribunal in earlier years without considering the ratio laid by the Hon'ble Supreme Court passed in the case of Ahmedabad Urban Development Authority (*supra*). We find force in the contention of Ld DR. We note that the relevant year under consideration is AY 2018-19 and the Parliament had substituted the first and second proviso of section 2(15) of the Act by Finance Act, 2015 w.e.f 01.04.2016 which is applicable for the year under consideration. And the Hon'ble Supreme Court had laid the law on the issue regarding claim of exemption by similar assessee's in the case of Ahmedabad Urban Development Authority (*supra*) [as well as in the case of Servants of People Society (*supra*)] which was decided after considering the proviso to section 2(15) of the Act, which admittedly the Ld. CIT(A) did not consider, before he passed the impugned order In the light of the recent decision of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (*supra*) as well as Servants of People Society (*supra*), we are of the opinion that Ld. CIT(A) erred in merely following the order of the Tribunal in assessee's own case for AY. 2011-12 to AY 2013-14 passed on 06.09.2022. And that AO has framed the assessment only discussing the 'Principle of Mutuality' and did not consider the application of proviso to section 2(15) of the Act. And since the ratio laid by the Hon'ble Supreme Court (*supra*) is applicable in the case of assessee for assessment [regarding claim of exemption] for the relevant

year under consideration, in the interest of justice and fair play, we are inclined to set aside the impugned order and restore the assessment back to the file of AO for denovo assessment in the light of the ratio laid by the Hon'ble Supreme Court in Ahmedabad Urban Development Authority (supra) and Servants of People Society (supra). The AO to decide the issues [claim of exemption] involved in assessment for AY. 2018-19 after giving proper opportunity to assessee and assessee is directed to file relevant/details/written submission and request for video conference as per rules. And the AO to consider both the decision (Ahmedabad Urban Development Authority (supra) and Servants of People Society (supra) and facts involved in the case in hand and after giving proper opportunity to the assessee, to pass fresh assessment in accordance to law. ”

7. We have heard the rival submissions and carefully perused the material placed before us as well as the relevant judicial pronouncements, relevant portions of which are reproduced hereinbefore. Admittedly, the assessee is covered under the GPU clause of section 2(15) of the Act. Thus while considering the assessee's claim of exemption u/s. 11 of the Act, the proviso to section 2(15) has to be considered in the light of the decision of the Hon'ble Supreme Court in the case of AUDA (supra). Ld. CIT(A) has decided the assessee's appeal in 2024 whereas the decision of the Hon'ble Apex Court was pronounced on 19.10.2022. Hence, Revenue is aggrieved that since the law now stands clarified by the decision of the Hon'ble Apex Court, same should have been considered by the ld. CIT(A) instead of mechanically relying on the decisions relating to earlier years of the assessee's own case. The relevant provisions are as under:

“Section 2

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(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility;

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of

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

*(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;”*

7.2 We further note that under similar facts and circumstances, the co-ordinate bench in the case of *Association of Mutual Funds in India (supra)*, had set aside the impugned order and restored it back to the file of the AO for denovo assessment in the light of the ratio laid down by the Hon’ble Supreme Court in AUDA (supra).

Respectfully following the decision of the co-ordinate bench, we restore all the four assessments for A.Y. 2013-14, 2015-16, 2016-17 & 2017-18 to the file of Id. AO for denovo assessment after applying the provisions of section 2(15) as they stood for relevant A.Ys, in the light of the decision of the Hon’ble Apex Court in AUDA (supra). Needless to add, the assessee should be given proper opportunity to furnish its reply before finalising the assessment.

Accordingly, all the four appeals of the revenue are allowed for statistical purposes.

Order pronounced in the open court on 16.10.2025

Sd/-
NARENDER KUMAR CHOUDHRY
(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-
RENU JAUHRI
(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 16.10.2025

Anandi.Nambi,
Stenographer

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति//True Copy//
आदेशानुसार/ BY ORDER,**

**सहायक पंजीकार(Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.**