

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri K.Narasimha Chary, Judicial Member

ITA No.381/Kol/2016
Assessment Years:2011-12

M/s. Credai Bengal, Jindal Tower, Block-A, 21/1A/3, Darga Road, Park Circus, Kolkata- 700017. PAN:AABCC2526D	<u>बनाम</u> / <u>V/s.</u>	Commissioner of Income Tax (Exemption), 10B, Middleton Row, Kolkata- 700071.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.K.Tulsiyan, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Niraj Kumar, CIT(DR)
सुनवाई की तारीख/Date of Hearing	22-08-2016
घोषणा की तारीख/Date of Pronouncement	30-09-2016

आदेश / O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is against the order passed by Commissioner of Income Tax (Exemption), Kolkata u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 10.02.2016. Assessment was framed by JCIT, (Exemption), Kolkata u/s 143(3)/11 of the Act vide his order dated 26.10.2013 for assessment year 2011-12.

Shri S.K.Tulsiyan, Advocate appeared on behalf of assessee and Shri Niraj Kumar, Ld. Sr. Departmental Representative represented on behalf of Revenue.

2. The issue raised by the assessee in this appeal is that Id. CIT u/s 263 of the Act erred in holding the order of the AO passed under section 143(3)/11 of the Act as erroneous and prejudicial to the interest of Revenue.

3. The facts in brief as culled out from the records are that the assessee in the instant case is a company registered u/s 25 of the Companies Act and is engaged in promoting commerce and industry relating to construction in general and building construction in particular following the concept of mutuality. The assessee filed its return of income for the assessment year under appeal claiming exemption u/s. 11 of the Act and thereby total income returned was Nil.

4. The Ld. C.IT.(Exemption), Kolkata dated observed that the order of the AO u/s 143(3)/11 of the Act, 1961 dated 26.10.2013 for the assessment year under reference is erroneous and prejudicial to the interest of revenue on account of the following two issues :-

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

(i) The assessee for the year has held three fairs out of which two were in India and one in North America. These three fairs generated surplus fund to the assessee for an amount of Rs. 1.10 crores. As per the Id. CIT observed that such activities are commercial in nature and therefore such income is purely from a business activity with an intention to earn profit and hence the provisions of sec. 2(15) of the Act i.e. advancement of any other object of general public have been violated.

Violation of provisions of section 11(1)(a) of the Act

(ii) That the income earned from holding such fair in North America had not been applied within India and thereby the assessee has contravened the provisions of section 11(1)(a) of the Act.

In view of above the Id. CIT u/s 263 of the Act issued show cause notice to the assessee for seeking the clarification on the above stated issues. The reply of the assessee stands as under :

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

- i. The assessee in compliance to the notice submitted that the activities of the assessee are in pursuance of its main object as mentioned in the memorandum of the company. These activities are conducted only for the purpose of securing its object i.e. advancement and development of trade, commerce & industry in India. As such its activities are not in the nature of business and there was no motive to earn profit. The surplus earned by the assessee is merely a by-product which resulted incidentally in the process of carrying out the charitable purpose. The assessee in support of his claim has relied in the order of Hon'ble Jurisdictional Tribunal in the case of Indian Chamber of commerce Vs. ITO in ITA No. 1491/Kol/2011 and ITA No. 1284/Kol/2011 for the AYs 2008-09 & 2009-10 dated 2.12.2014. So there was no violation of the provisions of section 2(15) of the Act.

Violation of provisions of section 11(1)(a) of the Act

- ii. As regards the violation of section 11(1)(a) of the Act with regard to the income applied outside India for the fair held outside India, the assessee submitted that all the receipts from members and participants are from India only. Similarly all the expenses in connection with the fair in North America were incurred in India. The purpose of holding the fair in North America to invite the Indian Residents residing there to make investment in realty sector in India. The assessee has not done any charitable activity outside India. As such there was no violation of the provisions of section 11(1)(a) of the Act.

However the Id. CIT rejected the plea of the assessee by observing as under:-

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

The facts of the case relied by the Assessee (*Indian Chamber of Commerce (Supra)*) are different and therefore the said case is not applicable to the assessee. In that case the activities of the assessee were incidental to the main objects but in the instant case before us the main activities of the assessee are holding fairs in & outside India. Therefore the activities are as such commercial in nature with profit motive and therefore there is violation of the provisions of section 2(15) of the Act.

Violation of provisions of section 11(1)(a) of the Act

There is no doubt that the fair was held outside India and therefore the assessee has clearly violated the provisions of section 11(1)(a) of the Act to the extent money applied in the form of expenses outside India.

Being aggrieved by the impugned order of the Id. CIT u/s 263 of the Act, the assessee is in appeal before us on the following grounds of appeal:-

- “1. That the Ld. CIT (Exemption) under the facts and in the circumstances of the case, erred in holding that the order passed by the Ld. AO u/s 143(3)/11 of the IT Act, 1961 on 26.12.2013 was erroneous inasmuch as it was prejudicial to the interest of revenue.*
- 2. That the appellant being engaged in charitable activities of promoting trade & commerce and having been recognized u/s. 12A of the Act, the holding of fairs for promotion of trade & commerce are its regular activities and, therefore, the Ld. CIT (Exemption) erred in holding that such fairs amount to carrying on business and hit by the amended provisions of sub-s.(15) of sec.2 of the Act.*
- 3. That the Ld. AO having passed the assessment order u/s. 143(3)/11 of the Act after considering all the facts emanating and relating to the concerned assessment year, the Ld. CIT (Exemption) erred in having held a contrary view by holding that the order passed by the Ld. AO is erroneous and prejudicial to the interest of revenue.*
- 4. That without disputing the appellant’s claim that for holding the fair in North America, all receipts arose and all expenses were incurred in India, the Ld. CIT (Exemption) erred in holding that the income earned*

from such fair had not been applied within India and thereby the appellant contravened the provisions of sec. 11(1)(a) of the Act.

5. That as the full facts relating to holding of fairs in India and abroad with the participation of non-members and a net surplus generated from such activities were in the knowledge of the Ld. AO and s he had already dealt with such activities in a particular manner as discussed in the assessment order for A.Y 2011-12, the Ld. CIT (Exemption) erred in assuming jurisdiction u/s. 263 of the Act in order to impose his own views on the Ld. A.O.”

5. The Id. AR before us has filed a paper book which is running from pages 1 to 176 and submitted that in this case, the assessee is not carrying out any trade, commerce or business. The object and activities being carried out by the assessee are attributable to a section of the public. Its sole motto is to provide assistance and support services to entrepreneurs and investors in real estate industry. Therefore, admittedly, there is no profit element in such activities which are rendered to a section of the people, who are entrepreneurs in housing industry. The assessee is not providing assistance/ support services to any specified individual but to a section of the people, i.e. entrepreneurs/ investors in real estate industry. Therefore, in the circumstances of the case, the object of the assessee is for the benefit of a section of the community or a class identifiable by some common quality of public and impersonal nature and as such it cannot detract from its charitable character. The activities of the assessee is, therefore, charitable within the meaning of s. 2(15) of the Act.

Similarly the allegation of the Ld. CIT that once the assessee had held the fair outside India, it was clearly evident that it had applied the receipt thereof outside India and hence the assessee had violated sec. 11(1)(a) of the Act to such extent was also not correct. The Id. CIT further held that cheques issued in India did not confirm the fact that application has been done in India. According to him, further, expenses incurred to organize fair outside India has been incurred first and subsequently income has arisen out of India. Therefore, such expenses out of the income arises in India are '**application**

outside India' out of receipts in India and hence in violation of sec. 11(1)(a) of the Act. To this, it is submitted at the cost of repetition that the fair was organized to invite the Indian residents of North America to invest in India in realty sector. So, it was for the advancement of realty business in India that the impugned fair was organized. All the members and non-members participants were mostly Indian corporate bodies and contributions from them were received in Indian currency. All expenses in connection with the trade fair at North America were also incurred in India in Indian currency. No charitable activity was carried out by the assessee at North America, Bank statements, bill/vouchers, invoices etc. already on record to prove said fact. Therefore, the allegation of the Ld. CIT that receipt on account of trade fair was utilized outside India is factually incorrect and beyond the evidence on record. Under the circumstances, the assessee, as required by section 11, has applied the receipts for charitable purposes in India and such application is deductible from the gross receipts of the Institution.

1. The Id. AR further submitted that the object and activity of the assessee organizing fair in order to advance the realty sector is incidental to the attainment of main object and cannot be taken otherwise to categorize as business. It should be noted, the assessee while pursuing its objects has to carry on the incidental activities for the attainment of the main object. Such activities may generate surplus. But generation of surplus does not make the work of the Institution as that of carrying on business. The assessee, as required by sec. 11 of the Act, has applied the receipts for charitable purposes in India and such application is deductible from the gross receipts of the institution. Section 11 of the Act duly recognizes and permits accumulation of 15% out of the gross receipts. For the furtherance of object, further accumulation is permitted by sec.11 (2) also.

Without prejudice to the above submissions, it was also pleaded that the aims and activity of the assessee right from the inception till now remained the

same. The assessments framed for earlier assessment years were consistently accepting the charitable activities carried on by the assessee and holding the same not for business and the gains/income derived from such activities and were not held to be arising from business. Further, the department has granted registration u/s 12AA of the Act since 1995 and remained in force, thereby accepting the objects for which the assessee is established to be a charitable and a non-profit making organization. In such circumstances, Rule of Consistency shall apply on the facts and in the circumstances of the instant case. In view of our above detailed submission with relevant evidences, it is prayed before the Hon'ble Bench that the order passed u/s 263 of the Act by the Ld. CIT (Exemption) may kindly be directed to be quashed and annulled and the assessee may be given such relief(s) as prayed for.

6. On the other hand, Id. DR vehemently relied on the order of the Id. CIT passed u/s 263 of the Act.

7. We have heard the rival parties, perused the material available on record and duly considered the facts of case and the applicable legal position. From the aforesaid discussion, we find that the Id. CIT has held the order of the AO as erroneous and prejudicial to the interest of revenue mainly on account of two reasons. *Firstly* the activities of the assessee are commercial in nature and *Secondly* the income of assessee has been applied in foreign country which is the contravention of the provision of section 11(1)(a) of the Act. Now the following questions arise for our consideration.

1. Whether the activities of the society are commercial in nature in the light of the above facts & circumstances.
2. Whether there is violation of the provision of section 11(1)(a) of the Act with regard to the application of income in a foreign country.

Now to arrive at the correct conclusion of the case, we deem it necessary to reproduce the relevant provisions of sec. 263 of the Act.

(1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment....”

8. The sum and substance of the above reproduced section 263(1) can be summarized in the following points:-

- 1) The commissioner may call for an examine the record of any proceeding under the Act;
- 2) If he considers that the order passed by the AO is
 - (i) Erroneous; and
 - (ii) Is prejudicial to the interest of Revenue;
- 3) He has to give an opportunity of hearing in this respect to the assessee; and
- 4) He has to make or cause to make such enquiry as he deems necessary;
- 5) He may pass such order thereon as the circumstances of the case justify including,
 - (i) An order enhancing or,
 - (ii) Modifying the assessment or
 - (iii) Cancelling the assessment and directing a fresh assessment.

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

Issue No. 1

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

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

“Main objects:-

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

4) xxx xxxx xxxx

5) xxx xxxx xxxxx

6) To encourage research and development in the construction industry and for that purpose organizes conferences, seminars, exhibitions, films shows etc., and also establish laboratories, collect models and designs, etc.’

Objects incidental or ancillary to the attainment of the main objects:

‘5) To organize conferences, exhibitions, film shows, seminars, tours, delegation, etc. in India and abroad and to nominate delegates and advisers and to take steps which may promote and support the construction industry, trade and profession.’

The assessee-company was established with the aforesaid objects and the same were accepted by the Revenue while granting the registration u/s 12AA of the Act on 10.10.1995. Since the inception of the assessee-company the objects and activities remained same and which were accepted by the Revenue even under the assessment framed u/s 143(3)/147 of the Act consistently without holding the aforesaid activities as commercial in nature. Accordingly, in view above, we are inclined to provide the relief to the assessee on the basis of consistency as there is no change in the objects and activities of the society. In this connection, we rely in the case of *Radhasoami Satsang vs. CIT* (1992) 193 ITR 321 where the Hon’ble Supreme Court has held as under:-

“There is no dispute that the properties of the assessee are also recorded in the name of the Sabha (Central Council) and there is no personal interest claimed by the Sant Satguru in such property. Over the years the Satguru has never claimed any title over, or beneficial interest in, the properties and they have always been utilised for the

purpose of the religious community. Even if the trust was revocable, the property was not to go back to the Satguru on revocation. The constitution and the bye-laws on record indicate in cl. 1(b) that where the property was given to the Sant Satguru, it was intended for the common purpose of furthering the objects of the Sant Satguru and the Central Council had the authority to manage the property. Clause 9 of the document stipulated that the properties would vest in the trust and cl. 25 provided that the trust shall be revocable at the discretion of the Council and the trustees shall hold office at its pleasure. Upon revocation the property was not to go back to the Satguru and, at the most, in place of trust, the Central Council would exercise authority. It is on record that there has been no Satguru long before the period of assessment under consideration. As a fact, therefore, the Tribunal was justified in holding that the property was subject to a legal liability of being used for the religious or charitable purpose of the Satsang.—All India Spinners' Asscn. vs. CIT (1944) 12 ITR 482 (PC) : TC23R.179 **applied**; The Secretary of State for India in Council vs. Radha Swami Satsang (1945) 13 ITR 520 (All) **impliedly approved**; CIT vs. Radha Swami Satsang (1980) 19 CTR (All) 345 : (1981) 132 ITR 647 (All) : TC23R.644 **set aside**. Properties of assessee, a religious institution, were meant for the common purpose of furthering the objects of the Sant Satguru and vested in its Central Council and income was always utilised for that purpose and, therefore, assessee was entitled to exemption under ss. 11 and 12.”

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

“2[(15) 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 :

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

The Id. CIT passed impugned order u/s 263 of the Act is treating the activities of the assessee as commercial in nature in terms of the clause of section 2(15) i.e. '**advancement of any other object of general public utility**'. However we find that as per the proviso to section 15 along with the speech of the Finance Minister and CBDT circular number 11 of the 2008 dated 19th December 2008 make it clear that only the institution carrying on commercial activities are intended to be covered by the proviso, not the genuine charitable institutions. The activity will be deemed to be in the nature of trade, commerce or business only if the same is carried on with the intention to earn profit. The Courts in the series of decision have held that it is an activity carried on in a systematic manner with a view to earn profit, which will be termed as "business". Accordingly in order to hold that the activity is in the nature of trade, commerce or business there should be profit motive. If during the course of carrying out any activity on non-commercial lines, some profit is received by the trust, which is incidental to the activities of the trust, the same shall not be construed to be activity in the nature of trade, commerce or business of the assessee. However, the assessee relied in the order of the Co-ordinate "C" Bench of this Tribunal in the case of *Indian Chamber of Commerce Vs. ITO* (ITA Nos. 1491 & 1284/Kol/2012 dated 02.12.2014. But the Id. CIT distinguished the said case law by holding that in that case the assessee's activities were incidental and ancillary to the main objects to the trade, commerce and industry but in the case on hand the main activities of the assessee are commercial in nature. However, we disagree with the view taken by the Id. CIT as the questions before the Hon'ble ITAT were as follows:-

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

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

4. That on the acts and the circumstances of the case of the appellant the Ld. CIT(A) erred in holding that the appellant's activities of conducting the Environment management Centers, meetings, conferences & seminars and the issuance of Certificate of Origin were not incidental to the main object of the appellant which was charitable in nature."

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

"30. Hence in view of all the above, concluding this issue we hold that the purpose for which the assessee association, i.e. the Indian Chamber of Commerce was established is a charitable purpose within the meaning of s. 2(15) of the Act. The assessee is carrying out the said activities which are incidental to the main object of the Association and which are conducted only for the purpose of securing the main object which is the advancement and development of trade and commerce and industry in India. The activities are not in the nature of business and there is no motive to earn profit. The income arising to the assessee is only incidental and ancillary to the dominant object for the welfare and common good of the country's trade, commerce and industry. The profits earned are utilized only for the purpose of feeding its dominant object and no part of such profit is distributed amongst its members. Profit making is not the object of the assessee. Profit is merely a by-product which result incidentally in the process of carrying out the charitable purpose. Thus, the income of the assessee for AY 2008-09 is exempt from tax u/s. 11 of the Act. Accordingly, the appeal of assessee is allowed.

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

‘3(a) To promote and protect the trade, commerce and industries and in particular the trade, commerce and industries in or with which Indians are engaged or concerned.’

The activities of conducting Environment Management Centre, Meetings, Conferences & Seminar and issuance of Certificate of Origin, being the activities stated to be “**services in relation to trade, commerce or business**” were all well covered by the main object being fully connected, incidental and ancillary to the main purpose and were conducted solely for the empowerment, betterment and for creating awareness amongst the industrialists in order to bring about the development of trade and industries in India. Further it is to be noticed that the Memorandum has also specifically authorized the Chamber “**to do all other things as may be conducive to the development of trade, commerce and industries, or incidental to attainment of the above objectives or any of them.**” Thus it was only for the purpose of securing its primary aims of proper development of business in India that the assessee was taking the said ancillary steps. The said activities were not carried out independent of the main purpose of the association of the institution being the development and protection of trade. There was no independent profit motive in any of the said activities. The surplus arising out of the same was merely incidental to the main object to charity. The majority of the receipts in the said activities were out of the sponsorships and donations. The expenses incurred on the said activities as and when incurred were all separately debited to the said accounts and the balance was shown as surplus over receipts. Thus in view of the above it is clear that the alleged activities were all merely incidental to the main object of the assessee and the predominant object of the association being the promotion development and protection of trade and commerce which is an object of general public utility, it can never be the case that it is engaged in “**business trade or commerce**” or in any “service in relation to business, trade or commerce. The individual nature and purpose of the specific activities, it is stated that the activities held by AO and the (A) to be business in nature, were as follows:-

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

38. In view of the above decision, we are of the considered view that in the given facts and detailed reading of the various judicial decisions through the years, interpreting the definition of “charitable purpose” as laid out in sec. 2(15) of the Act and also the definition of “business” in relation to the said section amply reveals that the theory of dominant purpose has always, all through the years, been upheld to be the determining factor laying down whether the institutions Charitable in nature or not. Where the main object of the institution was ‘charitable’ in nature, then the activities carried out towards the achievement of the said, being incidental or ancillary to the main object, even if resulting in profit and even if carried out with non members, were all held to be “charitable” in nature. Hon'ble Apex Court in the earliest case of Andhra Chamber of Commerce (supra) had laid out the principle that if the primary purpose of an Institution was advancement of objects of general public utility, it would remain charitable even if an incidental and ancillary activity or purpose, for achieving the main purpose, was profitable in nature, in our view the basic principle underlying the definition of “charitable purposes” remained unaltered even on amendment in the sec. 2(15) of the Act w.e.f. 1.4.2009 though the restrictive first proviso was inserted therein. Accordingly, in the given facts of the case as discussed above in detail, the assessee association primary purpose was advancement of objects of general public utility and it would remain charitable even if an incidental or ancillary activity or purpose, for achieving the main purpose was profitable in nature. Hence, assessee is not hit by newly inserted proviso to s. 2(15) of the Act. this issue of assessee’s appeal is allowed.”

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

“Whatever reservations one may have regarding the correctness of the interpretation of the exclusionary clause in the definition of ‘charitable purpose’ in s. 2(15) of the Act, there can be no doubt that the majority decision in the [Addl. CIT vs. Surat Art Silk Cloth Manufactures Assn.](#) (1979) 13 CTR (SC) 378 : (1980) 121 ITR 1 (SC) : TC23R.195 is binding on the Bench. Undoubtedly, the activities of the assessee in regard to holding of the Conference of the Afro-Asian Organisation in the relevant accounting year were for the advancement of the dominant object and purpose of the trust, viz., promotion, protection and development of trade, commerce and industry in India. The income derived by the assessee from such activities was exempt under r/w s. 11(1)(a) s. 2(15). There is a distinction between the “purpose” of a trust and “powers” conferred upon the trustees as incidental to the carrying out of the purpose. For instance, cl. 3(v) enables the establishment and support of associations, institutions, funds, trusts and convenience

calculated to benefit the employees and their dependents, for making provision for grant of pension and allowances, etc. The framing of such employee benefit scheme is essential and necessary for the proper functioning of the organisation and is incidental to the carrying out of the purpose for which it is constituted. If the primary or dominant purpose of a trust or institution is charitable, any other object which is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or the institution from being a valid charity. Likewise, cl. 3(z1) and (z2) which permit the establishment of a trust or trusts, appointment of trustees thereof from time to time and the vesting of funds or surplus income or any property of the assessee in the trustees, are nothing but powers conferred on them for the proper financial management of the affairs of the trust which are incidental or ancillary to the main purpose of the trust.—[Addl. CIT vs. Surat Art Silk Cloth Manufacturers Association](#) (1979) 13 CTR (SC) 378 : (1980) 121 ITR 1 (SC) : TC23R.195 **followed**.

The majority decision in Surat Art Silk Manufacturers case has the effect of neutralising the radical changes brought about by Parliament in the system of taxation of income and profits of charities, with particular reference to **"objects of general public utility"** to prevent tax evasion, by diversion of business profits to charities. It is the vagueness of the fourth head of charity **"any other object of general public utility"** that impelled Parliament to insert the restrictive words **"not involving the carrying on of any activity for profit"**. It was clearly inconsistent with the settled principles to hold in the aforesaid case that if the dominant or primary object of a trust was **'charity'** under the fourth head **'any other object of general public utility'**, it was permissible for such an object of general public utility, to augment its income by engaging in trading or commercial activities. In retrospect, it seems that it would have been better for Parliament to have deleted the fourth head of charity **"any other object of general public utility"** from the ambit of the definition of **'charitable purpose'** while enacting s. 2(15) rather than inserted the words **"not involving the carrying on of any other activity for profit"**, thereby creating all this legal conundrum".

When the Government had not accepted the recommendation of the Direct Tax Laws Committee in Chapter 2 (Interim Report, December, 1977) for the deletion of the words **"not involving the carrying on of any activity for profits"**, by suitable legislation, it was impermissible for this Court by a process of judicial construction to achieve the same result. It is wrong to think that all springs of charity in India will dry up if true effect is given to s. 2(15) in accordance with the minority judgment in the Surat Art Silk Cloth Manufacturers' Association's case. People who are truly charitable do not think of the tax benefits while making charities. One must realise that even the poor who do not pay income-

tax can be charitable and their charities made at great personal inconvenience are commendable indeed. One need not go in search of charitable persons amongst the taxpayers only. Still the majority view has got to be followed now.

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

Issue 2

Violation of provisions of section 11(1)(a) of the Act

The Id. CIT has also held that the income of the assessee has been applied in a foreign country and the provisions of Section 11(1)(a) has been violated. Therefore the assessee is not entitled for exemption u/s 11 of the Act. At this juncture, we would like to reproduce the provisions of section 11(1)(a) of the Act which reads as under:-

“Income from property held for charitable or religious purposes.

11(1) Subject to the provisions of sections 60 o 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

[(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of [fifteen] per cent of the income from such property;”

10. From the above provision, we find that there is restriction to apply the income outside India but as per the submission of the assessee we find that all the expenses were incurred in India and the Id. DR has not brought anything contrary to the argument of the Id. AR. The argument of the Id. AR is fortified from the details of expenditure, bank statement, receipts & expenditure of foreign fair, participants list which are placed on record on pages 21 to 52 of the paper book. The Id. DR has not brought anything supporting to the fact that the income of the assessee has applied outside India. The fair in North America was organized to invite the Indian residents to

invest in India in realty sectors. Therefore the object and activity for the fair in North America was for the advancement of realty business in India. Mostly all the participants were Indian corporate and contributions were received in Indian currency. There was no charitable act done in North America. In similar set of facts the Hon'ble Supreme Court in the case of *ACIT Vs. Surat Art Silk Cloth Manufacturing Association* (1980) 121 ITR 1 (SC) has decided the issue in favour of assessee. The relevant extract of the judgment is reproduced below:

“17. If we apply this test in the present case, it is clear that the activity of obtaining licences for import of foreign yarn and quotas for purchase of indigenous yarn, which was carried on by the assessee, was not an activity for profit. The predominant object of this activity was promotion of commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth, which was clearly an object of general public utility and profit was merely a by-product which resulted incidentally in the process of carrying out the charitable purpose. It is significant to note that the assessee was a company recognised by the Central Government under s. 25 of the Companies Act, 1956, and under its memorandum of association, the profit arising from any activity carried on by the assessee was liable to be applied solely and exclusively for the promotion of trade and commerce in various commodities which we have mentioned above and no part of such profit could be distributed amongst the members in any form or under any guise. The profit of the assessee could be utilised only for the purpose of feeding this charitable purpose and the dominant and real object of the activity of the assessee being the advancement of the charitable purpose, the mere fact that the activity yielded profit did not alter the charitable character of the assessee. We are of the view that the Tribunal was right in taking the view that the purpose for which the assessee was established was a charitable purpose within the meaning of s. 2, cl. (15), and the income of the assessee was exempt from tax under s. 11. The question referred to us in each of these references must, therefore, be answered in favour of the assessee and against the Revenue.”

We also rely in the case of the of CIT Vs. Federation of Indian Chambers of Commerce & Industry 130 ITR 186 where the Hon'ble Supreme Court of India has held as under:-

“Whatever reservations one may have regarding the correctness of the interpretation of the exclusionary clause in the definition of 'charitable purpose' in s. 2(15) of the Act, there can be no doubt that the majority decision in the [Addl. CIT vs. Surat Art Silk Cloth Manufactures Assn.](#) (1979) 13 CTR (SC) 378 : (1980) 121 ITR 1 (SC) : TC23R.195 is binding on the Bench. Undoubtedly, the activities of the assessee in regard to holding of the

Conference of the Afro-Asian Organisation in the relevant accounting year were for the advancement of the dominant object and purpose of the trust, viz., promotion, protection and development of trade, commerce and industry in India. The income derived by the assessee from such activities was exempt under r/w s. 11(1)(a) s. 2(15). There is a distinction between the "purpose" of a trust and "powers" conferred upon the trustees as incidental to the carrying out of the purpose. For instance, cl. 3(v) enables the establishment and support of associations, institutions, funds, trusts and convenience calculated to benefit the employees and their dependents, for making provision for grant of pension and allowances, etc. The framing of such employee benefit scheme is essential and necessary for the proper functioning of the organisation and is incidental to the carrying out of the purpose for which it is constituted. If the primary or dominant purpose of a trust or institution is charitable, any other object which is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or the institution from being a valid charity. Likewise, cl. 3(z1) and (z2) which permit the establishment of a trust or trusts, appointment of trustees thereof from time to time and the vesting of funds or surplus income or any property of the assessee in the trustees, are nothing but powers conferred on them for the proper financial management of the affairs of the trust which are incidental or ancillary to the main purpose of the trust.—[Addl. CIT vs. Surat Art Silk Cloth Manufacturers Association](#) (1979) 13 CTR (SC) 378 : (1980) 121 ITR 1 (SC) : TC23R.195 **followed**.

The majority decision in Surat Art Silk Manufacturers case has the effect of neutralising the radical changes brought about by Parliament in the system of taxation of income and profits of charities, with particular reference to "objects of general public utility" to prevent tax evasion, by diversion of business profits to charities. It is the vagueness of the fourth head of charity "any other object of general public utility" that impelled Parliament to insert the restrictive words "not involving the carrying on of any activity for profit". It was clearly inconsistent with the settled principles to hold in the aforesaid case that if the dominant or primary object of a trust was 'charity' under the fourth head 'any other object of general public utility', it was permissible for such an object of general public utility, to augment its income by engaging in trading or commercial activities. In retrospect, it seems that it would have been better for Parliament to have deleted the fourth head of charity "any other object of general public utility" from the ambit of the definition of 'charitable purpose' while enacting s. 2(15) rather than inserted the words "not involving the carrying on of any other activity for profit", thereby creating all this legal conundrum".

When the Government had not accepted the recommendation of the Direct Tax Laws Committee in Chapter 2 (Interim Report, December, 1977) for the deletion of the words "not involving the carrying on of any activity for profits", by suitable legislation, it was impermissible for this Court by a process of judicial construction to achieve the same result. It is wrong to think that all springs of charity in India will dry up if true effect is given to s. 2(15) in accordance with the minority judgment in the Surat Art Silk Cloth Manufacturers' Association's case. People who are truly charitable do not

think of the tax benefits while making charities. One must realise that even the poor who do not pay income-tax can be charitable and their charities made at great personal inconvenience are commendable indeed. One need not go in search of charitable persons amongst the taxpayers only. Still the majority view has got to be followed now.

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

11. We also find that the activity of conducting the trade fair in foreign country of the assessee is within the object clause which was permitted while granting the registration under section 12AA of the Act. We also find that the income which has arisen from the non-members has already been taxed by the AO while framing the assessment u/s 143(3) of the Act. In view of above, we hold that the assessee has not spent any money in a country outside India although the fair was organized in a foreign country. Similarly we also find that the facts of the case Nachimuthu Industrial Association Vs. CIT 235 ITR 190 as relied by the Id. CIT are different from the instant case before us. The facts in the above case stand as under :

"The following two questions were raised before the Tribunal :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of Rs. 2,50,000 could not be said to have been applied for charitable or religious purposes in India within the meaning of s. 11(1) of the IT Act, 1961, in the accounting period relevant to the asst. yr. 1965-66 ?

(2) If the answer to question No. (1) is in the negative, whether the assessee was entitled to any further exemption from tax of any portion of its income for the asst. yr. 1965-66 ?"

2. The amount of Rs. 2,50,000 was set apart as provision in the accounts of the assessee. The finding of fact is that the amount was not actually applied for charitable or religious purposes. In that view of the matter, the question was answered against the assessee.

3. We see no reason to interfere with this order of the High Court. The appeal is dismissed. There will be no order as to costs."

From the above we find that the issue in the above case was on different grounds and the same was not relevant to the instant case before us. The issue before us is whether the expense incurred in India in relation to the fair organized outside India amounts to income applied outside India. As from the facts it is clear that the expenses are not incurred by the assessee outside India therefore in our considered view there is no violation to the provisions of section 11(1)(a) of the Act. Accordingly we conclude that the impugned order of the Id. CIT passed u/s 263 of the Act is not sustainable in law and accordingly directed to be set aside. Hence, we quash the impugned order passed u/s 263 of the Act by Ld. CIT is unsustainable in law and we, therefore, cancel the same. This ground of assessee's appeal is allowed.

12. In the result, assessee's appeal allowed.

Order pronounced in open court on 30/09/2016

Sd/-
(Narasimha Chary)
Judicial Member
*Dkp Sr.PS

Sd/-
(Waseem Ahmed)
Accountant Member

दिनांक:- 30/09/2016 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s. Credai Bengal, Jindal Tower,
Block-A, 21/1/3, Darga Road, Park Circus, Kolkata-700017.
2. प्रत्यर्थी/Respondent-Commissioner of Income Tax (Exemption), 10B,
Middleton Row, Kolkata-700071.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता