

ICAI Accounting Research Foundation

"17. It clearly follows that even these three projects were the research projects which were given to the Petitioner Foundation having regard to its expertise in this field. Therefore, these activities per se would not bring out the Petitioner Foundation out of the ambit of Section 2(15) of the Act. It can be said that the activities amounted to "Advancement of an object of general public utility" which also appears in the definition of charitable purpose in Section 2(15) of the Act. The **only aspect, in this backdrop, which needs to be considered is as to whether charging of amount from the MCD, KMC etc. for undertaking these research projects would make the activity „commercial, as held by the Respondent No.1 in the impugned order. Before we answer this, it would be apposite to take note of some of the judgments defining „charitable purpose“**

The principles which are laid down in both the aforesaid cases (a) CIT v. K.S. Venkatasubbiah Reddiar, (1996) 221 ITR 18 (Mad) b) b) Additional CIT v. Hamdard Dawakhana, (1986) 157 ITR 639 (Del)) provide complete answer to the issue at hand. It is to be noted that the aforesaid projects undertaken on behalf of these local bodies is not a regular activity of the Petitioner Foundation. Primary activity remains the same, namely, research in accounting related fields. Even these projects which were taken up on behalf of those local bodies fit in the description of „research projects“, which can be termed as ancillary activity only. The circumstances under which the projects were undertaken make it clear that it was at the instance of the Government of India or the State Government for improving the accounting and budgetary systems in these local bodies. The expertise of the Petitioner Foundation in carrying out research in this field was sought to be utilized. Therefore, it cannot constitute „business/commercial activity“. Merely because some remuneration was taken by the Petitioner Foundation for undertaking these projects would not alter the character of these projects, which remained research and consultancy work. It is so categorically held in Hamdard Dawakhana (supra). The important test is the application of the amounts received from those projects. It is nowhere disputed that the receipts are utilized by the Petitioner Foundation for advancement of its objectives. The Memorandum of Association specifically stipulates that these are not to be distributed to the Members as dividends or profits. It is clear that most of the amount received qua these projects was spent on the project and surplus, if any, is used for advancement of the objectives for which the Petitioner Foundation is established.

21. The amended definition of „charitable purpose“ would not alter this position. No doubt, proviso to this definition clarifies that advancement of any other object of general public utility will not be treated as charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering service in relation to trade, commerce or business. However, what is not appreciated by the respondent No.1 is that the merely on undertaking those three research projects at the instance of the Government/local bodies. The

essential character of the Petitioner Foundation cannot be converted into the one which carries on , cannot be treated as the activity which carries on trade, commerce or business or activity of rendering any service in relation to trade, commerce or business...."