***** **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITON (CIVIL) NO. 1927 OF 2010**

Reserved on : 21st July, 2011.

% **Date of Decision** : 19th September, 2011.

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR. .... Petitioners

Through Mr. N.K. Poddar, Sr. Advocate with Mr. Pramod Dayal, Advocate.

VERSUS

THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS), DELHI & ORS. .....Respondents

Through Mr. Abhishek Maratha, Standing Counsel for the Revenue.

CORAM:
HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.:

The Institute of Chartered Accountants of India and Mr. Amarjit Chopra, President and Member of the Central Council of the Institute of Chartered Accountants of India (hereinafter referred to as the petitioners) have filed the present writ petition under Article 226 of the Constitution of India for setting aside the order dated 19th May, 2009 passed by the Director General of

Income-Tax (Exemptions), New Delhi (hereinafter referred to as the respondent) dismissing/rejecting the institute's application under Section 10(23C)(iv) of the Income-Tax Act, 1961 (Act, for short) for the assessment year 2009-10 onwards. The petitioners have prayed that the respondent should be directed to recognize and grant approval to the petitioner institute under the aforesaid Section for the assessment years 2006-07, 2007-08, 2008-09 and 2009-10 and onwards.

2. On 7th May, 2008, the petitioner institute had filed an application in form No. 56 for grant of exemption under Section 10(23C)(iv) of the Act for the assessment year 2009-10 onwards. The petitioners claim that the institution was/is established for charitable purpose as defined under Section 2(15) of the Act and that they were/are complying with all conditions/pre-requisites and, therefore, they were entitled to exemption under Section 10(2C)(iv) of the Act. The impugned order dated 19th May, 2009 has rejected the application on several grounds. Firstly, the petitioner institute was holding coaching classes and, therefore, was not an educational institution as per the interpretation placed on the word "education" used in Section 2(15) of the Act. Reliance was placed on ***Sole Trustee, Loka Shikshana Trust versus***

Commissioner of Income Tax, [1975] 101 ITR 234 (SC) and ***Bihar Institute of Mining and Mine Surveying versus CIT,*** [1994] 208 ITR 604 (Patna). Secondly, the petitioner- institute was covered under the last limb of charitable purpose, i.e. advancement of any other object of general public utility. In view of the amendment made in Section 2(15) of the Act with effect from 1st April, 2009 for the assessment year 2009-10 onwards, the petitioner institute was not entitled to exemption as it is an institution which conducts an activity in nature of business and also charges fee or consideration. It was earning huge profits in a systematic and organized manner and, therefore, it was not an institute existing for charitable purposes under the last limb of Section 2(15) of the Act. Thirdly, the petitioner-institute had advanced an interest free loan to a sister concern, namely ICAI Accounting Research Foundation, of Rs.565.20 lacs. The petitioner-institute had accordingly violated the third proviso to Section 10(23C) as the cumulated funds have not been invested in one or more specified funds/institutions stipulated in sub-section 5 to Section 11 of the Act.

3. To decide the contentions raised by the parties, it is necessary to examine Section 10(23C)(iv) and Section 2(15)

after its amendment with effect from 1st April, 2009. The relevant provisions read as under:

> ***"Section 2. Definitions-***
>
> (15) "charitable purpose" includes relief of the poor, education, 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 the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year**.**
>
> **10. Incomes not included in total income**.— In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—
>
> (23-C) any income received by any person on behalf of—

> (*iv*) any other fund or institution established for charitable purposes which may be notified by the Central Government in the Official Gazette, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States"

4. The core or real controversy raised in the present writ petition, as we perceive, relates to two issues. Whether the petitioner is an institution which carries on charitable activities in the nature of education or advancement of any other object of general public utility and secondly, in case the petitioner-institute is engaged in the activity of advancement of any other object of general public utility, can the institute be denied exemption in view of the proviso to Section 2(15), which was introduced with effect from 1st April, 2009.

5. A scrutiny of Section 2(15) of the Act elucidates that charitable purpose for the purpose of the Act has been divided into six categories, namely, (i) Relief to the poor (ii) education (iii) medical relief, (iv) preservation of environment (including watersheds, forests and wildlife), (v) preservation of monuments or places or objects of artistic or historical importance and (vi) advancement of any other object of general public utility.

6. The petitioner- institute will fall under the sixth category, i.e. advancement of any other object of general public utility. The petitioner institute cannot be regarded as an educational institute as the petitioner's main or predominant objective is to regulate the profession of, and the conduct of, Chartered Accountants enrolled with them. The petitioner is a statutory authority under the Chartered Accountants Act, 1949 (the "CA Act") and its fundamental or dominant function is to exercise overall control and regulate the activities of the members/enrolled Chartered Accountants. This is apparent from the CA Act, and the regulations framed under the said Act.

7. The CA Act was enacted, as per the preamble, to make provisions for regulation of the profession of Chartered Accountants and for that purpose to establish an institute of Chartered Accountants. As per the statement of objects and purpose the enactment was to authorize incorporation of a autonomous professional body for the said purpose. The function and the object and purpose of the institute can be also gathered from Section 15 of the CA Act, which prescribes functions of the Council. For the sake of convenience Section 15 is reproduced below:

"**15. Functions of the Council**.- (1) The duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include-

(a) the examination of candidates for enrolment and the prescribing of fees therefor;

(b) the regulation of the engagement and training of **a**[articled and audit clerks];

(c) the prescribing of qualifications for entry in the Register.

(d) the recognition of foreign qualifications and training for purposes of enrolment;

(e) the granting or refusal of certificates of practice under this Act;

(f) the maintenance and publication of a Register of persons qualified to practice as chartered accountants;

(g) the levy and collection of fees from **b**[* * * *] members, examinees and other persons;

(h) the removal of names from the Register and the restoration to the Register of names which have been removed;

(i) the regulation and maintenance of the status and standard of professional qualifications of **c**[members of the Institute];

(j) the carrying out, by financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;

(k) the maintenance of a library and publication of books and periodicals relating to accountancy; and

(l) the exercise of disciplinary powers conferred by this Act.

[a] Substituted for the words "articled clerks" by the Chartered Accountants (Amendment) Act (15 of 1959) S.13 (1-7-1959).

[b] Words "chartered accountants", omitted, ibid.

[c] Substituted for the words "chartered accountants", ibid."

8. Similarly, the functions of the Council can be gathered from Section 30, which authorizes the Council to make regulations for the purpose of carrying out the objects of the CA Act. Sub-section 2 to Section 30 authorises and permits regulations to be made in the matter of the standard and conduct of examinations; qualifications for entry of the name of any person in the register as its member; the conditions under which examination or training may be treated as equivalent to examination or training prescribed; manner in which and conditions for entry into the register of members; fee payable for membership of the institute and annual fee payable, training of articled and audit clerks, fixation of limits within which premium may be charged from the articled clerks etc, regulation and maintenance of the status and standard of professional qualifications of members of the institute etc.

9. In ***Commissioner of Income-Tax, Bombay versus Bar Council of Maharashtra***, (1981) 130 ITR 28 (SC), the Supreme Court had examined whether the Bar Council of Maharashtra, a body corporate established under the Advocates Act, 1961, qualifies and can be regarded as 'charitable institution' under the last limb of Section 2(15) of the Act. Looking at the preamble,

nature and functions of the Bar Council prescribed under the Advocates Act, 1961, it was held that the primary purpose and object of the Bar Council is the advancement of the object of general public utility and hence it is covered by Section 2(15). However, with reference to the provisions that permitted constitution of one or more funds for the indigent, disabled or other Advocates and the effect thereof, the question was left open but it was held that even if such fund was constituted, question would be considered and the Court would have to decide whether the functions so undertaken had become the dominant purpose.

10. No doubt, the petitioner holds classes and provides coaching facilities for candidates/articled and audit clerks who want to appear in the examinations and want to get enrolled as Chartered Accountants and as well as for members of the petitioner-institute who want to update their knowledge and develop and sharpen their professional skills, but this is not the sole or primary activity. The petitioner-institute may hold classes and give diploma/degrees to the members of their institute in various subjects but this activity is only an ancillary part of the activities or functions performed by the petitioner institute. This one or part activity by itself, does not mean that the petitioner is

an educational institute or is predominantly or exclusively engaged in the activity of education. The petitioner institute is engaged in multifarious activities of diverse nature, but the primary and the dominant activity is to regulate the profession of Chartered Accountancy. For this purpose it holds entrance examination and enrolls members. It regulates the conduct of its members, prescribes and fixes accountancy standards, etc.

11. Thus, we uphold the impugned order dated 19th May, 2009 passed by the respondent to the extent it has been held that the petitioner institute is covered by the last limb of Section 2(15) and is not an institute providing education but for reasons different than those ascribed in the said order. We are conscious of the fact that in ***Mohinder Singh Gill versus Chief Election Commissioner*** (1978) 1 SCC 405, and other cases it has been held that only reasons mentioned in the impugned order can be looked into, but we have gone into the said aspect as we perceive there cannot be any cavil or dispute with regard to the object and purpose of the petitioner institute and the statutory functions assigned to them. We have done so to avoid any prolix and lengthy litigation on the said aspect though the matter is being remitted to the authorities concerned on the second

aspect i.e. application of the first proviso to Section 2(15) of the Act introduced with effect from 1st April, 2009.

12. As the first proviso was introduced with effect from 1st April, 2009, the scope and ambit of the said proviso to Section 2(15) of the Act has to be examined and considered. Earlier orders under Section 10(23C)(iv) are not relevant and are inconsequential, as they have not examined the scope and ambit of the first proviso. The proviso applies only if an institution is engaged in advancement of any other object of general public utility and postulates that such an institute is not "charitable" if it is involved in carrying on 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. The second part, "any activity of rendering any service in relation to any trade, commerce or business" obviously intends to expand the scope of the proviso to include services, which are rendered in relation to any trade, commerce or business. The proviso further stipulates that the activity must be for a cess or fee or any other consideration. The last part states that the proviso will apply even if the cess or fee or any other consideration is applied for a charitable activity/purpose. The proviso has to be given full effect to. Thus, even if cess, fee or consideration is used or

utilized for charitable purposes, the proviso and the bar will apply. An institution will not be regarded as established for charitable purpose/activity under the last limb, if cess, fee or consideration is received for carrying on any activity in nature of trade, commerce or business or for any activity of rendering of any service in relation to any trade, commerce or business, even if the consideration or the money received is used in furtherance of the charitable purposes/activities. In view of the first proviso, the decisions that the application of money/profit is relevant for determining whether or not a person is carrying on charitable activity, are no longer relevant and apposite. Even if the profits earned are used for charitable purposes, but fee, cess or consideration is charged by a person for carrying on any activity in the nature of trade, commerce or business or any activity of rendering of any service in addition to any trade, commerce or business, it would be covered under the proviso and the bar/prohibition will apply.

13. Reliance place by the petitioners on ***Additional CIT versus Surat Art Silk Cloth Manufacturers Association***, (1980) 121 ITR 1 (SC) may not be fully appropriate after introduction of the first proviso as the statutory requirements were then different. Utilization of the funds or income earned

whether for charitable purpose or otherwise is not relevant now in view of the first proviso and cannot be a determining factor for deciding whether the petitioner institute is covered by Section 2(15) of the Act. In the said decision, it was held that the primary or dominant purpose of the trust or institution has to be examined to determine whether the said trust/institution was involved in carrying out any activity for profit. If the "object" of the trust or institution was to carry out object of general public utility and this was the primary or dominant purpose and not carrying on any activity for profit, the same would satisfy the requirements of Section 2(15) as it existed. It was immaterial whether members had benefitted from some of the activities. The aforesaid observations of the Supreme Court in the said case and other cases will be relevant only for determining and deciding the question whether the trust or institution is carrying on any business. In pursuance to the above stated, the following paragraphs are reproduced:-

> "3. ….The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a

charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with Beg J. when he said in Sole Trustee, Loka Sikhshana Trust's case [1975] 101 ITR 234, 256 (SC) that:

"If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity."

The learned judge also added that the restrictive condition "that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit-making is not the real object." (emphasis* supplied). We wholly endorse these observations.

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If, for example, in the illustration given by us, it is found that the publication of the monthly journal is carried on wholly on

> commercial lines and the pricing of the monthly journal is made on the same basis on which it would be made by a commercial organisation leaving a large margin of profit, it might be difficult to resist the inference that the activity of publication of the journal is carried on for profit and the purpose is non-charitable. We may take by way of illustration another example given by Krishna Iyer J. in the Indian Chamber of Commerce [1975] 101 ITR 796 (SC) where a blood bank collects blood on payment and supplies blood for a higher price on commercial basis. Undoubtedly, in such a case, the blood bank would be serving an object of general public utility but since it advances the charitable object by sale of blood as an activity carried on with the object of making profit, it would be difficult to call its purpose charitable. Ordinarily, there should be no difficulty in determining whether the predominant object of an activity is advancement of a charitable purpose or profit-making. But cases are bound to arise in practice which may be on the border line and in such cases the solution of the problem whether the purpose is charitable or not may involve much refinement and present real difficulty."

14. The most material and relevant words in the proviso are "trade, business or commerce". The activities which are undertaken by the institute/person should be in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. The three words "trade", "commerce" or "business" have been

interpreted by the Supreme Court and other courts in various decisions. The word "trade" was elucidated in the case of ***State of Punjab v. Bajaj Electricals Ltd.,*** (1968) 2 SCR 536. It has been opined:-

> "3. The expression "trade" is not defined in the Act. "Trade" in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture. The question whether trade is carried on by a person at a given place must be determined on a consideration of all the circumstances. No test or set of tests which is or are decisive for all cases can be evolved for determining whether a person carries on trade at a particular place. The question, though one of mixed law and fact, must in each case be determined on a consideration of the nature of the trade, the various steps taken for carrying on the trade and other relevant facts.
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> **4.** In the present case, the respondent has no shop or office within the State of Punjab. The respondent supplies goods within the State pursuant to orders received and accepted at New Delhi, and also receives price for the goods within the State. But these are ancillary activities and do not in our judgment amount to carrying on trade within the State of Punjab. We need not refer in detail to cases such as *Grainger and Son* v. *Gough* (*Surveyor of Taxes*); *F.L. Smith & Co*. v. *F. Greenwood* (*Surveyor of Taxes*) and *Firestone Tyre Co. Ltd.* v. *Lewellin* which interpret the expression "trade exercised

> within the United Kingdom" in the English Income Tax Acts, for they merely lay down that for the purpose of the Income Tax Acts, there is no single, decisive or "crucial" test to determine whether the taxpayer exercises trade at a given place"

15. The Supreme Court in ***Khoday Distilleries Ltd. v. State of Karnataka***, (1995) 1 SCC 574 was of the opinion :-

> **"68.** There is no doubt that the word 'business' is more comprehensive than the word 'trade' since it will include manufacture which the word 'trade' may not ordinarily include. The primary meaning of the word 'trade' is the exchange of goods for goods or goods for money. However, the word 'trade' has also secondary meaning, viz., business carried on with a view to profit. In fact, the words 'trade' and 'industry' are also used interchangeably many times. It all depends upon the context in which the words occur. In *Words and Phrases Legally Defined*, 3rd Edn., (Vol. 4; R-Z) by John B. Saunders, the word 'trade' is explained as:
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> > " 'Trade' in its primary meaning is the exchange of goods for goods or goods for money and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts, or learned professions and from agriculture. However, the word is of very general application, and must always be considered in the context in which it is used. *As used in various revenue Acts, 'trade' is not limited to buying and selling, but may include manufacture.* In the expression 'restraint of trade' the word is used in

its loosest sense to cover every kind of trade, business, profession or occupation."

69. In *Skinner* v. *Jack Breach Ltd.*, Lord Hewart, C.J. has observed:

"No doubt in a great many contexts the word 'trade' indicates a process of buying and selling, but that is by no means an exhaustive definition of its meaning. It may also mean a calling or industry or class of skilled labour."

70. While interpreting the provisions of the Industrial Courts Act, 1919 Lord Wright in *National Assn. of Local Government Officers* v. *Bolton Corpn.* has observed thus:

"Section 11 of the Act of 1919 shows that 'trade' is used as including 'industry' because it refers to a trade dispute in the industry of agriculture. ... Trade and industry are thus treated as interchangeable terms. Indeed, 'trade' is not only in the etymological or dictionary sense, but in legal usage, a term of the widest scope. It is connected originally with the word 'tread' and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate; it may also mean a skilled craft."

71. In *Aviation and Shipping Co. Ltd.* v. *Murray (Inspector of Taxes)*, Lord Donovan has observed:

"A trade is an organised seeking after profits, as a rule with the aid of physical assets."

> **72.** Thus it is apparent that the word 'trade' may include all the connotations of the word 'business'..."

16. "Trade", as per the Webster's New Twentieth Centuary Dictionary (2nd edition), means amongst others, "a means of earning one's living, occupation or work. In Black's ,Law Dictionary, trade means a business which a person has learnt or he carries on for procuring subsistence or profit; occupation or employment, etc.

17. The meaning of "commerce" as given by the Concise Oxford Dictionary is "exchange of merchandise, specially on large scale". In ordinary parlance, trade, and commerce carry with them the idea of purchase and sale with a view to make profit. If a person buys goods with a view to sell them for profit, it is an ordinary case of trade. If the transactions are on a large scale it is called commerce. Nobody can define the volume, which would convert a trade into commerce. For the purpose of the first proviso to section 2(15), trade is sufficient, therefore this aspect is not required to be examined in detail.

18. The word "business" is the broadest term and is encompasses trade, commerce and other activities. Section 2(13) of the Income Tax Act defines the term 'Business' as under: -

> "**2. Definitions**-
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> xxx
>
> (13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture"

19. The word "Business" is a word of large and indefinite import. Section 2(13) defines business to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The intention of the legislature is to make the definition extensive as the term "inclusive" has been used. The legislature has deliberately departed from giving a definite import to the term "business" but made reference to several other general terms like "trade", "commerce", "manufacture" and "adventure or concern in the nature of trade, commerce and manufacture".

20. In Black Law's dictionary, Sixth Edition, the word 'business' has been defined as under:

> "Employment, occupation, profession or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. Union League Club v. Johnson, 18 Cal. 2d 275
>
> Enterprise in which person engaged shows willingness to invest time and capital on future outcome. Doggett v. Burnet, 62 App.D.C. 103, 65 f.2D 191, 194.

> That which habitually busies or occupies or engages the time, attention, labour and effort of persons as a principal serious concern or interest or for livelihood or profit."

21. According to Sampath Iyengar's Law of Income Tax (9th edition), a business activity has four essential characteristics. Firstly, a business must be a continuous and systematic exercise of activity. Business is defined as an active occupation continuously carried on. Business vocation connotes some real, substantive and systematic course of activity or conduct with a set purpose. Second essential characteristic is profit motive or capable of producing profit. To regard an activity as business, there must be a course of dealings continued, or contemplated to be continued, normally with an object of making profit and not for sport or pleasure [***Bharat Development (P) Ltd v. CIT*** (1982) 133 ITR 470 (Del)]. The third essential characteristic is that a business transaction must be between two persons. Business is not a unilateral act. It is brought about by a transaction between two or more persons. And lastly, the business activity usually involves a twin activity. There is usually an element of reciprocity involved in a business transaction.

22. In ***Barendra Prasad Ray versus Income Tax Officer***, [1981] 129 ITR 295 (SC), the Supreme Court has examined the

scope of the term “business” in the general law or in common parlance as well as Indian Partnership Act, 1932 and held as under:-

> “The expression “business" does not necessarily mean trade or manufacture only. It is being used as including within its scope professions, vocations and callings from a fairly long time. The Shorter Oxford English Dictionary defines “business” as “stated occupation, profession or trade” and “a man of business” is defined as meaning “an attorney” also. In view of the above dictionary meaning of the word " business ", it cannot be said that the definition of business given in s. 45 of the Partnership Act, 1890 (53 & 54 Vic. c. 39), was an extended definition intended for the purpose of that Act only. Section 45 of that Act says:
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> > " . . . . . The expression ' business ' includes every trade, occupation, or profession. "
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> Section 2(b) of the Indian Partnership Act, 1932, also defines “business” thus:
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> “‘Business ' includes every trade, occupation and profession.” The observation of Rowlatt J. in Christopher Barker & Sons v. IRC [1919] 2 KB 222, 228 (KB), “All professions are businesses, but all businesses are not professions . . . . . “also supports the view that professions are generally regarded as businesses. The same learned judge in another case, IRC v. Marine Steam Turbine Co. Ltd. [1920] 1 KB 193, 203 (KB) held:
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> > The word 'business', however, is also used in another and a very different sense, as meaning an active occupation or profession continuously carried on and it is in this sense that

> the word is used in the Act with which we are here concerned. "
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> The word “business " is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. We are of the view that in the context in which the expression “business connection” is used in s. 9(1) of the Act, there is no warrant for giving a restricted meaning to it excluding “professional connections” from its scope.”

23. In ***State of Andhra Pradesh versus H. Abdul Bakhi & Bros.***, (1964) 15 STC 664, the Supreme Court elucidated that the expression “business” is an extensively used word of indefinite import. In the taxing statutes it is used in the sense of an occupation or profession which occupies time, attention or labour of a person and normally associated with the object of making profit. It was held as under:

> “4. ….To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying selling and supplying the same commodity. Mere buying for personal consumption i.e. without a profit motive will not make a person, dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer….”

24. In ***CIT versus Lahore Electric Supply Company Limited***, [1966] 60 ITR 1 (SC) it was held that the term "business", as contemplated under the Indian Income Tax Act, 1922, contemplates activity capable of producing profit which can be taxed. A closed business when the person has no intention of continuing or intention to resume, cannot be inferred and considered to be a business when the activities are for the purpose of paying off the outstanding liabilities.

25. In the ***State of Gujarat versus Raipur Manufacturing Company***, (1967) 19 STC 1 (SC) it was stated that business is normally with the object of making profit. To regard an activity as business, there must be a course of dealings either actually continued or contemplated to be continued with profit motive and not for sport or pleasure. The expression "profit motive" does not postulate or intends that profit must, in fact, be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or a series of transactions. It predicates a motive which pervades the transaction(s) effected by the person in the course of his activity. Thereafter, it was observed as under:

> "In actual practice, the profit motive may be easily discernible in some transactions: in others it would have to be inferred from a review of the circumstances attendant upon the transaction. For instance, where a person

> who purchases a commodity in bulk and sells it in retail it may be readily inferred that he has a profit motive in entering into the series of transactions of purchase and sale. A similar inference may be raised where a person manufactures finished goods from raw materials belonging to him or purchased by him, and sells them. But there a person comes to own in the course of his business of manufacturing or selling a commodity, some other commodity which is not a bye-product or a subsidiary product of that business and he sells that commodity, cogent evidence that he has intention to carry on business of selling that commodity would be required. Where a person in the course of carrying on a business is required to dispose of what may be called his fixed assets or his discarded goods acquired in the course of the business, an inference that he desired to carry on the business of selling his fixed assets or discarded goods would not ordinarily arise. To infer from a course of transactions that it is intended thereby to carry on business ordinarily the characteristics of volume, frequency, continuity and regularity indicating an intention to continue the activity of carrying on the transactions must exist. But no test is decisive of the intention to carry on the business: in the light of all the circumstances an inference that a person desires to carry on the business of selling goods may be raised."

26. A similar view has been expressed in the ***Director of Supplies and Disposal versus Member, Board of Revenue***, (1967) 20 STC 398 (SC) wherein it has been held:-

> 14. …The expression "business" though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is

> used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive; there must be some real and systematic or organised course of activity or conduct with a set purpose of making profit. To infer from a course of transactions that it is intended thereby to carry on business ordinarily there must exist the characteristics of volume, frequency, continuity and system indicating an intention to continue the activity of carrying on the transactions for a profit. But no single test or group of tests is decisive of the intention to carry on the business. It must be decided in circumstances of the each particular case whether an inference could be raised that the is carrying on the business of purchasing or selling of goods within the meaning of the statute."

27. We may now refer to some High Court judgments. In ***Sarojini Rajah versus CIT***, (1969) 71 ITR 504 (Mad) in the context of difference between investment and business, the following observations, which we feel are relevant to the present context, have been made:-

> "We think that the presence of commercial motive is a primary legal requisite of trade. Purchase and sale as a business deal in the present context may be another requisite. Intention to make a profit normally inspires trade and commerce, but it seems it may not be the essence of trade. Likewise, habitual

> dealing is ordinarily indicative of trade or commerce, but is not necessarily so, as pointed out by Rowlatt K. in Graham v. Green. There may be other legal requisites which may have to be satisfied with reference to the character of particular transactions in different kinds of trade or businesses. But whether these legal requisites are satisfied or are present will themselves, in their turn, be a mixed question of law and fact. The character of the motive or intention with reference to a transaction is a matter of inference from the other facts. It is here the badges of trade indicated by the Royal Commission earlier referred to are of assistance. The subject-matter of a transaction may by such as is commonly or usually dealt with in trade or commerce."

28. Almost identical view has been expressed by the Patna High Court, Orissa High Court and Madras High Court in ***Eclat Construction Private Limited versus CIT***, [1988] 172 ITR 84 (Pat), ***CIT versus M.P. Bazaz***, [1993] 200 ITR 131 (Ori) and ***Commissioner of Income Tax versus Meenakshisundaram (R.M.)***, [1995] 212 ITR 220 (Mad). Delhi High Court in ***Bharat Development Private Limited versus CIT*** (*supra*) has expressed the view and elucidated that the term "business" means some real, substantive, systematic or organized course of activity or conduct capable of producing profit.

29. It may be, however, pointed out that the term "profit motive" is not only the sole or relevant consideration that has to be kept in mind. It is one of the aspects. Normally intention to earn profit is required. Emphasis, however it does appear, has shifted and the concept and principle of "economic activity" has gained acceptability. The definition of the term "business" may also vary when we are examining taxability under Sales Tax, Excise Duty, Value Added Tax, etc. because these are not taxes on income but the taxable event occurs because of the "economic activity" involved. Even if a person/an organization is carrying on trading on the principle of "no loss no profit", it may be liable to pay taxes or comply with the statute when the charge, or incidence of tax, is on the "economic activity". This concept is today well recognized in European Union and England (see ***Riverside Housing Association Limited versus Revenue and Customs Commissioner,*** (2006) EWHC 2383 (Ch) and the case law cited therein). It may also be also appropriate here to refer the decision of the House of Lords in ***Town Investments Limited and Others versus Department of the Environment,*** (1977) 1 All ER 813. In this case, a Government department was claiming benefit under a legislation that protected "business tenancies" from increase in rent. The

term “business” in the said case by a majority decision was held to include Government activities. It was held that the word “business” is a etymological chameleon; it suits its meaning to the context in which it is found. It is not the term of legal art but in its dictionary meaning it includes anything which is an occupation, as distinguished from pleasure-- anything which is an occupation or a duty which requires attention is business. It was also observed that business conveys in ordinary meaning the notion of a distinct enterprise (not necessarily for profit) having its distinct object, distinct management and distinct assets and liabilities.

30. In ***Institute of Chartered Accountants in England and Wales Vs. Customs and Excise Commissioners,*** (1999) 1 W.L.R. 701, the House of Lords examined the question whether the aforesaid institute was liable to pay value added tax for supply of goods and services as it was issuing licences and certificates under three enactments for a fee. Question arose whether the Institute was carrying on “economic activity” for the purposes of Value Added Tax Act, 1994, the definition of which is rather extensive and wide. However, the expression ‘business’ was examined with reference to the statutory mandate imposed

on the institute and whether the statutory activities can be classified as a business, and it was observed as under:-

> "Although differences between them may arise, it seems to me that the appellants were right in their case to accept that "The expression 'business', it is accepted, represents 'economic activity'". It is not necessarily sufficient (though it may often be sufficient in different contexts) that money is paid and a benefit obtained, performing on behalf of the state this licensing function is not the carrying on of a business.
>
> In relation to the Directive, the tribunal said:
> "Any regulatory activity carried out under a statutory power for the purpose of protecting the public by supervising and maintaining the standard of practitioners in, for example, the Financial Services field fall on the other side of the line from economic activities.
>
> In the present case, I agree that that is entirely right and the same goes for "business" in the context of these three Statutes."

31. In the said decision reference was made to an earlier decision in the case ***Customs and Excise Commissioner vs. Lord Fisher***, [1981] S.T.C. 238, and it was observed as under:

> "In regard to "business" for the purpose of the Act. Ralph Gibson J. held in ***Customs and Excise Commissioners v. Lord Fisher*** on earlier authority "that 'business' is or may be in particular contexts a word of very wide meaning," but that "the ordinary meaning of the word 'business' in the context of this Act excludes, in my judgment, any activity which is *no more than* an activity for pleasure and social enjoyment", though the fact

> that the pursuit of profit or earnings was not the motive did not prevent an activity from being a business if in any other respect it plainly was. He referred, at p. 245, to six indicia listed by the counsel for the commissioners as the test as to weather an activity was a business- was it- (a) a "serious undertaking earnestly pursued;" (b) pursued with reasonable continuity; (c) substantial in amount; (d) conducted regularly on sound and recognized business principles; (e) predominantly concerned with the making of taxable supplies to consumers for a consideration; (f) such as consisted of taxable supplies of a kind commonly made by those who seek to make profit from them."

32. In ***Commissioner of Sales Tax v. Sai Publication Fund,*** (2002) 4 SCC 57 the Supreme Court interpreted the word "business" under section 2(5-A) of the Bombay Sales Tax Act, 1959. It opined:-

> **"11.** No doubt, the definition of "business" given in Section 2(5-A) of the Act even without profit motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern. If the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on "business" connected with or incidental or ancillary sales will rest on the Department. Thus, if the main activity of a

person is not trade, commerce etc., ordinarily incidental or ancillary activity may not come within the meaning of "business". To put it differently, the inclusion of incidental or ancillary activity in the definition of "business" presupposes the existence of trade, commerce etc. The definition of "dealer" contained in Section 2(11) of the Act clearly indicates that in order to hold a person to be a "dealer", he must "carry on business" and then only he may also be deemed to be carrying on business in respect of transaction incidental or ancillary thereto. We have stated above that the main and dominant activity of the Trust in furtherance of its object is to spread message. Hence, such activity does not amount to "business". Publication for the purpose of spreading message is incidental to the main activity which the Trust does not carry on as business. In this view, the activity of the Trust in bringing out publications and selling them at cost price to spread message of Saibaba does not make it a dealer under Section 2(11) of the Act.

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15. This Court in the aforementioned judgment further examined the cases to find out if the main activity was not "business". In para 32, reference is made to the case of the Bombay High Court in *State of Bombay* v. *Ahmedabad Education Society*. In that case, the educational society was entrusted with the task of founding a college and for that purpose it was to construct buildings therefor. It was held that it could not be said to be "carrying on business" merely because for the above purposes, it established a brick kiln and sold surplus bricks and scrap at cost price without intending to make profit or gain. Having regard to main activities and its objects, it was held that the educational

society was not established "to carry on business" and the sale of bricks was held not excisable to sales tax. Chagla, C.J. pointed out that it was not merely the act of selling or buying etc. that constituted a person a "dealer" but the "object" of the person who carried on the activities was important. It was further stated that it was not every activity or any repeated activity resulting in sale or supply of goods that would attract sales tax. If the legislature intended to tax every sale or purchase irrespective of the object of the activities out of which the transaction arose, then it was unnecessary to state that the person must "carry on business" of selling, buying etc.

16. In para 33 of the same judgment, this Court has referred to various decisions to consider whether one is a "dealer" or carries on "business" and the nature and object of activity. The said para reads thus: (SCC pp. 648-50)

> "*33*. In *Girdharilal Jiwanlal* v. *CST*, relied on for the respondent-Port Trust, the Bombay High Court held *that an agriculturist did not necessarily fall within the definition of a 'dealer' under Section 2(c) of the C.P. & Berar Sales Tax Act (21 of 1967), merely because he sold or supplied commodities. It must be shown that he was carrying on a business. It was held that it must be established that his primary intention in engaging himself in such activities must be to carry on the business of sale or supply of agricultural produce*. This High Court held that there was 'nothing to show that the petitioner

> acquired these lands *with a view* to doing "the business of selling or supplying" agricultural produce. According to (the assessee), he (was) principally an agriculturist who also deals in cotton, coal, oilseeds and groundnuts'.
>
> (emphasis supplied)

He was having agriculture for the purpose of earning income from the fields but there was nothing to show that he acquired the lands with the *primary intention* of doing business of selling or buying agricultural produce. This decision was approved by this Court in *Dy. Commr. of Agricultural Income Tax & Sales Tax* v. *Travancore Rubber & Tea Co.* and it was held that where the only facts established were that the assessee converted latex tapped from rubber trees into sheets and effected a sale of those sheets to its customers, the conversion of latex into sheets being a process essential for transport and marketing of the produce, the Department had failed to prove that '*the assessee was formed*' with a commercial purpose. The Allahabad High Court in *Swadeshi Cotton Mills Co. Ltd.* v. *STO* was dealing with a batch of cases where different bodies were running canteens. One of the cases concerned Aligarh Muslim University which was maintaining dining halls where it was serving food and refreshments to its resident-students. *It was held, referring to observations of this Court in University of Delhi* v. *Ram Nath that it was incongruous to call educational activities of the University as amounting to 'carrying on business'. The activity of serving food in the dining hall was a minor part of the overall activity of the University*. Education was more a mission and avocation rather than a profession or

trade or business. The aim of education was the creation of a well-educated, healthy, young generation imbued with a rational and progressive outlook of life. On this reasoning, it was held that Aligarh University was not 'carrying on business' and the sale of food at the dining halls was not liable to tax. Likewise after the amendment of the definition of 'business' question arose in *Indian Institute of Technology* v. *State of U.P.* with respect to the visitors' hostel maintained by the Indian Institute of Technology where lodging and boarding facilities were provided to persons who would come to the Institute in connection with education and the academic activities of the Institute. It was observed that the statutory obligation of maintenance of the hostel which involved supply and sale of food was an integral part of the *objects* of the Institute. Nor could the running of the hostel be treated as the principal activity of the Institute. The Institute could not be held to be doing business. Similarly, in the case of a research organization, in *Dy. Commr. (C.T.)* v. *South India Textile Research Assn*. *which was purchasing cotton and selling the cotton yarn/cotton waste resulting from the research activities, it was held that the Institute was solely and exclusively constituted for the purposes of research and was not carrying on 'business' and these sales and purchases abovementioned could not be subjected to sales tax*. Likewise, in *State of T.N.* v. *Cement Research Institute of India* it was held that the Institute was an organisation, the *objects* of which were to promote research and other scientific work, that the laboratories and workshops were maintained by the organization for conducting experiments, and that though the cement manufactured as a result of research was sold, it could not be considered to be a trading activity within Section 2(*d*) of the

Tamil Nadu General Sales Tax Act, 1959. Again in *Tirumala Tirupati Devasthanam* v. *State of Madras* the dispute arose with regard to the sales of silverware etc. which are customarily deposited in the hundis by devotees. It was held by the Madras High Court that the Devasthanam's main activities were religious in nature and these sales were not liable to tax. (*No doubt, the case related to a period where the profit motive was not excluded by statute.) We are of the view that all these decisions involve the general principle that the main activity must be 'business' and these rulings do support the case of the respondent-Port Trust.*"

(emphasis supplied)

17. This decision is directly on the point supporting the case of the respondent after noticing number of decisions on the point including the decisions cited by the learned counsel before us. It may be stated that the question of profit motive or no-profit motive would be relevant only where a person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce etc. On the facts and in the circumstances of the present case irrespective of the profit motive, it could not be said that the Trust either was "dealer" or was carrying on trade, commerce etc. The Trust is not carrying on trade, commerce etc., in the sense of occupation to be a "dealer" as its main object is to spread message of Saibaba of Shirdi as already noticed above. Having regard to all aspects of the matter, the High Court was right in answering the question referred by the Tribunal in the affirmative and in favour of the respondent-assessee. We must however add here that whether a particular person is a "dealer" and whether he carries on

> "business", are the matters to be decided on facts and in the circumstances of each case."

33. Section 2(15) defines the term 'charitable purpose'. Therefore, while construing the term 'business' for the said Section, the object and purpose of the Section has to be kept in mind. We do not think that a very broad and extended definition of the term 'business' is intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not be determinative. Normally the profit motive test should be satisfied but in a given case activity may be regarded as business even when profit motive cannot be established/proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is infact in the nature of business. The test as prescribe in ***Raipur Manufacturing Company*** (supra) and ***Sai Publications Fund*** (supra) can be applied. The six indicia

stipulated in ***Lord Fisher*** (supra) are also relevant. Each case, therefore, has to be examined on its own facts.

34. In view of the aforesaid enunciation, the real issue and question is that whether the petitioner-institute pursues the activity of business, trade or commerce. To our mind, the respondent while dealing with the said question has not applied their mind to the legal principles enunciated above and have taken a rather narrow and myopic view by holding that the petitioner institute is holding coaching classes and that this amounts to business. This is apparent from a reading of paragraph 4 and a part of paragraph 5 of the impugned order, which are as under:

> "4. Thus, the word 'education' used in the above sections is the process of training and developing of knowledge, skill, mind and character of students by normal schooling. The coaching cannot be treated at par with normal schooling. In normal schooling the education culminates in some certificate, degree etc. but in coaching this does not take place. The issue of coaching classes also came up before Hon'ble High Court in the case of Bihar Institute of Mining and Mine Surveying Vs. CIT (1994) 208 ITR 608 (Patna). It was held that coaching of the students in an institution could not be held as education as it was not a process of training and development of students in normal schooling. Thus, coaching of the students can not be treated as education for the purpose of Section 2(15) of the I.T. Act.

> 5. …..In other words, if an institution conduct any activity in the nature of business or charges fee for services then it will not be considered as charitable w.e.f. 01.04.2009. As applicant is charging fee for coaching the students, its activities are squarely covered under the proviso of the Section 2(15). It is also seen that such activities are resulting into huge profit year after year. The summary of fee charged, expenditure and profit earned is given below:

Asstt. Year	Fess charged for providing coaching (Rs. in lacs)	Expenditure incurred on coaching (Rs. in lacs)	Profit earned through providing coaching (Rs. in lacs)
2002-03	115.36	68.03	47.33
2003-04	178.51	96.63	81.88
2004-05	192.08	110.46	81.62
2005-06	237.11	133.14	103.97
2006-07	228.40	139.95	88.45
2007-08	301.90	164.75	137.15
2008-09	385.99	172.18	213.81”

35. The aforesaid view in our opinion is clearly laconic, cryptic and does not examine and consider the legal concept of the term “business” and apply the law to the given facts. Section 15 of the CA Act prescribes the object and purpose of the Council under whose supervision the institute is to act and has been

given the duty of carrying out the provisions of the CA Act. This section has been quoted above and clearly reflects that the institute has been given the duty and function to approve academic courses, conduct examinations for enrolment, prescribe fee, make regulations for encouragement, training of articled and audit clerks, prescribe qualification for registration, grant or refuse to grant certificate of practice and regulate and maintain the standards of members. Further, Section 30-A of the CA Act empowers the Central Government to give such direction or special directions to the Council constituted under Section 9 to ensure compliance and the Council in discharge of their functions is required to comply with the said directions. Section 30 of the CA Act empowers the Council to make regulations for carrying out the provisions of the Act, including the standard and conduct of examination, the qualifications for entry of any person in the register as a member of the institute, the conditions under which any examination or training may be treated as equivalent to the examination and training prescribed for members of the Institute, the training of articled and audit clerks and the regulation and maintenance of status and standards of professional qualifications. The Institute has framed the Chartered Accountants Regulations, 1988 and the said

Regulations provide for training of students, their examination, award of degrees and membership of the Institute.

36. It may be noted that the petitioner institute provides education and training in their post qualification courses, corporate management, tax management and information system audit. It awards certificates to members of the institute who successfully complete the said courses. Post qualification diploma courses are also conducted in several fields. The examination conducted by the petitioner institute consists of Common Proficiency Test, Professional Education Examination, Professional Competence Examination, Accounting Technician Course, Integrated Professional Competence Course, final and post qualification courses. The conduct of these courses cannot be equated and categorized as mere coaching classes which are conducted by private institutes to prepare students to appear for entrance examination or for pre-admission or examinations being conducted by the universities, school-boards or other professional examinations. The courses of the institute, per se, it does appears cannot be equated to a private coaching institute. There is a clear distinction between coaching classes conducted by private coaching institutions and the courses and examinations which are held by the petitioner institute. The

decision, in the case of ***Bihar Institute of Mining and Mine Surveying*** (supra) is not applicable. A private coaching institute has no statutory or regulatory duty to perform. It cannot award degrees or enroll members as Chartered Accountants. These activities undertaken by the petitioner- institute satisfies the requirement of the term "education" as defined by the Supreme Court in ***Sole Trustee, Loka Shikshana Trust*** (supra) wherein it has been held as under:

> **"5.** The sense in which the word "education" has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your

> knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

37. In this regard we may also refer to the decision of Gujarat High Court in ***Saurashtra Education Foundation versus CIT***, (2005) 273 ITR 139 (Guj) wherein it has been held as under:

> "The exemption is granted to the income of a university or other educational institution. The expression, "educational institution" would, therefore, take colour from the preceding word, "university". Noscitur a sociio (a word is known by the company its keeps) is a well settled rule of interpretation of a statute. A university is admittedly an educational institution set up for imparting formal education. Hence, applying the aforesaid rule of interpretation the expression, "other educational institution" would mean an institution imparting formal education in an organised and systematic training where the institution would be accountable to some authority and where there would be teachers and the taught the former having some degree of control over the latter."

38. The aforesaid ratio was expounded in the ***Sole Trustee, Loka Shikshana Trust*** (supra) has been rightly interpreted by the Gujarat High Court in ***Gujarat State Co-Operative Union***

versus CIT, (1992) 195 ITR 279 (Guj) wherein it has been held as under:

> “The Supreme Court, in the above observations, by referring to the systematic instruction, schooling or training given to the young has only cited an instance in order to indicate as to what the word "education" appearing in section 2(15) of the Act which defines "charitable purposes" is intended to mean. We are certain that these observations were not intended to keep out of the meaning of the word "education", persons other than "young". The expression "schooling" also means "that schools, instructs or educates" (The Oxford English Dictionary, Vol. IX, page 217). The Supreme Court has observed that the word "education" also connotes the whole course of scholastic instruction which a person has received.
>
> This clearly indicates that the observations of the Supreme Court were not intended to give a narrow or pedantic sense to the word “education".
>
> By giving further illustrations of a traveller gaining knowledge, victims of swindlers and thieves becoming wiser, the visitors to night clubs adding to their knowledge the hidden mysteries of life, the Supreme Court has indicated that the word "education" is not used in a loose sense so as to include acquisition of even such knowledge. The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of section 2(15) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the Tribunal when it infers from these observations, in para 17 of its judgment, that the word "education" is limited to schools colleges and similar institutions and does not extend to any other media for such acquisition

> of knowledge. The observations of the Supreme Court do not confine the word "education" only to scholastic instructions but other forms of education also are included in the word "education". As noticed above, the word "schooling" also means instructing or educating. It, therefore, cannot be said that the word "education" has been given an unduly restricted meaning by the Supreme Court in the said decision.
>
> Though, in the context of the provision of section 10(22), the concept of education need not be given any wide or extended meaning, it surely would encompass systematic dissemination of knowledge and training in specialised subjects as is done by the assessee. The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching and a shift for the better in the institutional set-up. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to the recipients."

39. The petitioner institute cannot be equated with and the ratio of ***Oxford University Press versus CIT***, (2001) 247 ITR 658 (SC) is not applicable. The said institute was publishing books and was not carrying on any educational or teaching

activities in India. In such context it was held by D.P. Mohapatra, J. as under:

> "…….Therefore, even a university or other educational institution established or incorporated outside India can be eligible for the exemption from tax under the provision provided that it exists solely for educational purposes and not for purposes of profit. On a closer examination of the provision it becomes clear that in using the expression "existing solely for educational purposes and not for purposes of profit" the Legislature has made it clear that it intends to exempt the income of institutions established solely for the educational purposes and not for commercial activities. Such a provision is meant to encourage institutions (including universities) engaged in educational activities and it is not intended to benefit institutions engaged in commercial activities with the intention of earning profit. In my view this interpretation will not only serve the intent and purpose of the statutory provision but will also help in avoiding the criticism of want of rationale in granting the exemption."

> "……..This question assumes importance in a case like the one in hand where the assessee is nothing more than a commercial establishment/business enterprise engaged in the business of printing, publishing and selling of books in this country. The label "university press" is not sufficient to establish that it is engaged in any educational activity. The purpose of the existence of the assessee in this country as appears from the material on record, is possibly to earn profit. If the interpretation of the provision in section 10(22) of the Act as urged on behalf of the assessee is accepted the provision will be exposed to challenge on the ground of being

> irrational and therefore arbitrary. Then the question will arise for what purpose is this exemption from tax extended to the assessee? How is it different from the large number of such establishments engaged in the business of printing, publishing and selling of books?"

40. Y.K. Sabharwal, J. (as his lordship then was) has held as under:

> "I have no difficulty in accepting the contention of Mr. Dastur, learned counsel for the appellant, that for the purpose of claiming exemption under clause (22) of section 10, the source of income is not relevant and, therefore, the question whether the income of the press is from sale and printing of books, is of no consequence and on that ground exemption cannot be denied to the appellant……."
>
> "The imparting of education is service to the society. From the language of section 10(22), it does not appear that without any such service in India, the Legislature intended to exempt the total income of the assessee. I do not think that from the language of section 10(22), it can be said that the hands of the court are so tied that it cannot read into this provision, the requirement of imparting education or some other educational activity in this country. A university or other educational institution which exists solely for educational purposes and not for purposes of profit though not established in India but having some educational activity in this country alone would be entitled to claim exemption. Such a university or educational institution having educational activity in India but being established or constituted in some other country would not be denied the benefit of

> exemption only on the ground it has not been established or constituted in India. The imparting of education or existence of educational activity in India is the basis assumption of section 10(22) and the place of the establishment or constitution of a University or other educational institution is of no consequence…….
>
> "Thus, it is evident that for the purposes of granting exemption the Legislature assumed the existence of educational activity in India by a University or other educational institution but did not want to restrict the exemption only to such university or educational institution which is established or constituted or set up in India. That seems to be the reason for not placing limitation as to the setting up of such a body in India. In this view a foreign university would also be entitled to claim exemption so long as it was imparting education in India. The basic requirement of the section is the existence of "education purpose" which, in other words, means the imparting of education which has to be in India. A university established in a foreign country is not excluded from the ambit of section 10(22) in case it is imparting education in India or has some educational activity in India. It is not the case of the assessee nor is there any such finding that the assesse is imparting any education or has any educational activity in India. In this view the assesssee is not entitled to claim exemption……."

41. The question, which remains unanswered in spite of the aforesaid finding that the petitioner institute also undertakes educational activity, is whether the petitioner was carrying on any business, trade or commerce. This question requires an

answer but remains unanswered as it was not addressed and examined in the impugned order dated 19th May, 2009 in proper perspective. The reasoning given in the order is with reference to the fee charged, expenditure and profit earned which is mentioned in paragraph 5 of the impugned order. We have already held that the impugned order is cryptic and a myopic view has been taken without examining the legal principles. The aforesaid figures have been disputed and denied by the petitioner-institute on various grounds including the fact that it takes into account only direct expenses and does not include several expenses like common expenditure, cost of free study material given to the students for the purpose of coaching and depreciation of assets, salary paid to the staff employed by the branches etc. In this regard the petitioner-institute in the written submissions has pointed out as under:

> "31. The Assessee Institute does not get any grant from any source and the only source of its income is fees received from its members and students. For providing quality education to its students, the Assessee Institute charges very nominal fees from its students and in turn provides them with the study material, course modules, infrastructural facilities, library services, books/reading material, web based teaching e-learning, facility of interaction with faculty etc. This is done purely on a charitable basis, without any profit motive, and in terms of its statutory

duties and obligations under the Chartered Accountants Act, 1949 and the Regulations made there under:

32. The receipts from holding such coaching/revisionary classes are also accompanied with various expenses, which are shown as Coaching/revisionary Expenses in the Financial Statements. These expenses are in the nature of Rental of premises, payment of faculties, hiring charges of projectors etc., printing and stationery, cost of study material, entertainment expenses etc. Further, the amount of expenditure incurred for these classes are not inclusive of other common expenditure, which includes the cost of free study material issued to the students for the purpose of coaching/revisionary classes.

33. Such common administrative expenses also include inter alia Depreciation on assets installed and Salaries paid to the staff employed by the Branches of the Institute, which are the main centres for holding coaching and revisionary classes for the students enrolled for the Chartered Accountancy Course throughout the Country, as per details given in paragraph 4 of the Supplementary Affidavit sworn on behalf of the Institute on 17th March, 2010 and already filed in this Hon'ble Court earlier, which details are again set out hereunder for ready reference:

Financial Years	**Salaries**	**(Rs. In lacs) Depreciation**	**Total**
2003-04	55.27	51.64	106.91
2004-05	66.38	54.32	120.70
2005-06	85.96	73.04	159.00

2006-07	81.51	118.77	200.28
2007-08	98.40	226.54	324.94
2008-09	136.94	467.48	604.42

34. The common administrative expenses referred to hereinabove are far more than the so called surplus directly arising in providing the coaching facilities to the students, as set out in the Table appearing under paragraph 5 of the impugned order dated 19th May, 2009 passed by the Respondent No. 1 herein under section 10(23C)(iv) of the Income-Tax Act, 1961 (kindly see pages 76-83 of the instant WP, and in particular at page 80 thereof. The said Table is also set out hereunder for ready reference:

Assessment Year	**Fees charged for providing coaching (Rs. In lacs)**	**Direct Expenditure incurred in coaching (Rs. In lacs)**	**Direct Surplus arising in providing coaching* (Rs. In lacs)**
2002-03	115.36	68.03	47.33
2003-04	178.51	96.63	81.88
2004-05	192.08	110.46	81.62
2005-06	237.11	133.14	103.97
2006-07	228.40	139.95	88.45
2007-08	301.90	164.75	137.15
2008-09	385.99	172.18	213.81

* Direct surplus before charging common administrative expenses referred to in the Table appearing under paragraph 33 above.

35. The surplus generated out of the activities of the Institute is utilized towards the infrastructure development and other students/members related activities. It is not a

> commercial or business income and no part of the surplus is being utilized for the purposes other than the purposes specified in the Chartered Accountants Act. The whole of the income is utilized directly or indirectly for the development & benefits of the persons pursuing and who have already pursued the Chartered Accountancy Course.
>
> 36. No amount of the surplus, in any manner, can be distributed or utilized for any activity other than the activities specified within the Charter of the Assessee Institute.
>
> 37. In the facts and circumstances stated hereinabove, holding of these coaching and revisional classes is not a business or commercial activity; it is wholly incidental and ancillary to the objects of the Assessee Institute for providing education and conducting examinations of the candidates enrolled for chartered accountancy course, so as to bring out the true professionals, as part of its main objectives."

42. These are factors which require detailed consideration and examination by the respondent. We do not intend to go into and examine the said aspects on merits in the present writ petition as these are issues which require adjudication and decision at the first level, i.e., when the issue and question of exemption under Section 10(23C)(vi) is examined by the respondent. These are also questions of facts. Accordingly, while setting aside the impugned order dated 19th May, 2009, we

direct the respondent to examine the said aspect in the light of the observations and findings made above.

43. We are conscious of the fact that we are dismissing ITA No. 869/2010 relating to the assessment year 2005-2006. In the said case, we are concerned with the order under Section 263 of the Act and a limited issue has arisen for consideration as to whether the said order under section 263, dated 29th March 2010, on merits, can be sustained for the reasons stated therein. The order dated 29th March 2010 was not an order of mere remit but an order of remit with specific finding on merits and with conclusive directions. An order under Section 263 has to be sustained or rejected for the reasons mentioned therein. However, in the present case, we are concerned with the order under Section 10(23C)(iv) of the Act which casts an onus both on the assessee and the department to reach a fair and just conclusion. Moreover, the first proviso to section 2(15) is not applicable to the assessment year 2005-06.

44. With regard to the third reasoning that section 11(5) has been violated, it has been recorded in the order dated 19th May 2009 as under:-

> "9. The other issue involved is that the applicant has advanced the interest free loan to its sister concern namely 'ICAI Accounting

> Research Foundation'. On examining the balance sheet as on 31.03.2008, it is seen that there is outstanding balance of Rs.565.20 lakhs made as interest free advance to ICAI Accounting Research Foundation. Thus, this amount has not been invested in prescribed securities. As per 3rd proviso of Section 10(23C), the accumulated fund should be invested in one or more of the form or modes specified in sub-section (5) of Section 11. The applicant has advanced an amount of Rs.565.20 lakhs to ICAI Accounting Research Foundation which is not the prescribed mode u/s 11(5). Thus the applicant has also violated the 3rd proviso of Section 10(23C)."

45. ICAI Accounting Research Foundation (ICAI-ARF, for short) has been incorporated by the petitioner institute with an objective to impart training, to promote knowledge, learning and education, and to understand various fields relating to the profession of accountancy. It has been stated that ICAI-ARF is a company and an institution enjoying exemption under Section 10(23C)(iv) read with Section 11 of the Act. Reliance has been placed on decision of this Court in ***ICAI Accounting Research Foundation and Another vs. Director General of Income-tax (Exemptions) & Ors.***, (2010) 321 ITR 73 (Del.). Special Leave Petition filed by the Revenue against the said judgment has been dismissed. All the factual aspects, the manner, the mode and why the payments were made have been set out. It is

pointed out that the Executive Committee of the petitioner institute had considered the proposal for formation of ICAI University in February, 2004 and felt the need for formation of the said university. This was approved in principle in the meeting of the Council of the petitioner institute in March, 2004. On the basis of legal opinion, ICAI ARF was incorporated under Section 25 of the Companies Act, 1956. Reference is made to Section 15(2)(j) of the CA, Act. Thereafter, the Executive Committee of the petitioner institute in November, 2004 approved the action for creation of ICAI ARF. The reason why payments were made to Jaipur Development Authority and Govt. of Rajasthan have been explained in the written arguments by the petitioner- institute. It is stated that substantial payments have been refunded. The petitioner- institute maintains that it never granted any loan and/or advance to ICA-ARF. The monies in question were paid directly to the Jaipur Development Authority and the Government of Rajasthan and the ICAI- ARF used no portion for its own purpose, at anytime, whatsoever. Accordingly, the petitioner- institute maintains that there has been no violation of Section 13, Section 11(5) or the third proviso to Section 10(23C)(iv) of the Act. Reliance is also placed on assessment order dated 27th December, 2010, for the

assessment year 2008-09 passed in the case of the petitioner institute. Reference is also made to some circulars issued by CBDT.

46. These facts and aspects have not been examined and considered in the impugned order dated 19th May, 2009. There have been subsequent developments, which are material and relevant. As we are setting aside the order, the Competent Authority will go into the said aspect afresh and examine the contentions raised by the assessee.

47. In view of the aforesaid, the present writ petition is allowed and a writ of certiorari is issued quashing the impugned order dated 19th May, 2009 passed by the Director General of Income Tax (Exemptions) with a direction to reconsider the application filed by the petitioner institute under Section 10(23C)(iv) of the Act, in the light of the findings and observations made above.

48. Directions are also issued to the Director General of Income Tax (Exemptions), Delhi to consider the application of the petitioner institute under Section 10(23C)(iv) for the assessment years 2006-07 to 2008-09.

49. To cut short any delay, it is directed that the petitioner institute shall appear before the Director General of Income Tax

(Exemptions) on 17th October, 2011 at 2.00 when a date of hearing will be fixed. The hearing will be expedited and every endeavor should be made to complete the proceedings within six months w.e.f. 17th October, 2011.

50. In the facts and circumstances of the case, there will be no orders as to costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

SEPTEMBER 19th , 2011
VKR