

Income Tax Reference No. 15 of 1992
Commissioner of Income Tax, Meerut.....Petitioner
Vs.
Mool Chand Sharbati Devi Hospital Trust, W.K. Road,
Meerut.....Respondent

Hon'ble Rajes Kumar, J.
Hon'ble Bala Krishna Narayana, J.

(Delivered by Hon'ble Rajes Kumar, J.)

At the instance of the Commissioner of Income Tax the Tribunal has referred the following question under Section 256 (1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for consideration and opinion by this Court.

"Whether on the facts and in the circumstances of the case, the ITAT is right in holding that the income of the assessee for assessment year 1985-86 was entitled to exemption under Section 11 of the Act.?"

The brief facts of the case as found by the Tribunal are as follows:

The assessee claims to be a charitable trust which came into existence through a Trust deed dated 11.7.1985 executed by one Shri Anand Prakash, whereby he settled a sum of Rs.2,000/- on the trustees to hold the same as corpus of the trust. The objects of the trust have been stated in the trust deed as follows:

- a) "To establish, run, maintain, promote, aid and help hospitals, Nursing Homes, Clinics, dispensaries, sanatoriums, maternity homes, pathological laboratories, other diagnosis institutions and other institutions of medical relief to the general public.
- b) To help the poor patients with blood, natural and artificial limbs, medicine, food, nutrition, resettlement and other aids.
- c) To help poor, needy or helpless families, individuals and persons and those displaced and victims of natural calamities.
- d) To donate, subscribe, contribute, aid and help persons, associations, institutions and bodies engaged in charitable activities or objects similar to the objects of the Trust."

During the year under consideration the assessee trust spent a sum of Rs.5,62,917. 77 Paise towards the construction of a building and the question was whether this account could be said to have been spent by the assessee for charitable purposes within the meaning of Section 11 (1) (a) of the Act. The Income Tax Officer held that the said amount was not spent for charitable purposes. This finding has been upheld by the learned CIT (A).

It may be mentioned here that the assessee has its prime object of running hospitals, nursing homes etc. for medical relief to the general public. For running a hospital or dispensary a building is a basic necessity. There is another society known as Pt. Pyare Lal Sharma Memorial Trust Society (hereinafter referred to as "PMT Society"), which owned prime commercial land situate at Hapur Road in the town of Meerut. The assessee approached the said society for the purpose of acquiring a building and a Memorandum of Understanding was arrived at between the assessee and the said society. A copy of memorandum of understanding is part of the record. This states that the PMT Society was also established for the purposes of establishing a hall, library, hospital etc., but was unable to fulfil its objects for want of funds and the assessee wanted to help it by giving a donation by constructing a building on the front portion of the PMT Society's land, known as Pyare Lal Sharma Memorial land. According to this Memorandum, the assessee was to construct at its own cost on the aforesaid land belonging to PMT Society, seven shops and a main gate alongwith staircase, basement, hospital and examination rooms etc. The plans of the building were to be as desired by the present assessee and the constructions were to be raised in the ground floor and first floor and after 10 years the assessee was also permitted to raise a second floor at its own cost. The entire construction so raised was to be in the ownership of the PMT Society. The main gate was proposed to be used for approaching the rest of the land of the PMT Society and the 7 shops that were to be constructed and provided with all facilities, like electric connections etc. were to remain in the occupation of PMT Society to be used by it in its absolute discretion or to let them out on rent. The only restriction was that they would not be used or allowed to be used for a purpose which may create obstruction in the use of the rest of the building as a hospital. The assessee was entitled to put a tableau on the first and second floors of the proposed building to indicate that the construction was raised by the assessee at its own cost and under its own supervision. Lastly, it was agreed that in case the PMT Society wanted to transfer the ownership of such constructions in that case, in order to safeguard the rights of the assessee, the constructions shall automatically vest in the assessee.

After the aforesaid Memorandum of Agreement, which is an unregistered document, a deed of perpetual lease was executed between the owner of the land, i.e., the PMT Society on the one hand and the assessee, on the other. This document states that the assessee is a charitable trust established for the purposes of running hospitals, nursing homes etc. and for that purpose it requires building and it is for that purpose that it has agreed to take the building to be constructed on lease. Under this document the building that was to be raised by

the assessee on the land granted by the PMT Society was to be with the assessee on perpetual lease. Under the terms of this document the assessee was to pay a sum of Rs.525/- p.m. as rent for the constructions in the ground floor and the first floor. The rent for the second floor that was to be constructed after 10 years was agreed to be Rs.500/- p.m.

In pursuance of the aforesaid Memorandum of Agreement and the lease deed, the assessee raised a building on the aforesaid land and spent the following amounts on construction thereof:-

Financial year 193-84 - Rs. 3,13,241.90
 Financial year 1984-85 -Rs. 5,62,917.77
 Financial year 1985-86 -Rs. 5,73,767.26

It is admitted that this entire expenditure was possible only out of donations received by the assessee. The Income Tax Officer has taken the view that the sum of Rs.5,62,917.77 spent during the previous year relevant to assessment year 1985-86 was not spent by the assessee for charitable purposes. He, therefore, held that donation of Rs.5,62,917.77 spent in construction of building is not being treated as having been applied for charitable purposes and, therefore, this amount was added to the income of the assessee-trust. In doing so he has observed that a detailed discussion on the various aspects of construction and donation to PMT Society has been made in the assessment order for 1986-87. A copy of the assessment order for assessment year 1986-87 in case of PMT Society is part of the record. Perusal of the assessment order reveals that Income Tax Officer had laid stress mainly on the following points:

- 1) Construction cost is borne by the assessee trust.
- 2) Ownership of the constructed building vests with the Pt. Pyare Lal Sharma Trust Society.
- 3) The transfer by the assessee trust to the society is not irrecoverable.
- 4) A direct outcome of the revocable transfer is that all income arising to Pt. Pyare Lal Sharma Trust Society by instance of the transfer of assets by this arrangement is to be deemed to be income of the transferor, i.e., the Assessee trust and is to be taxed in its hands. As such, the same will be determined while taking assessment of Pt. Pyare Lal Sharma Memorial Trust Society and suitable decision taken. In the meantime, let us revert to the main issue which has already been decided in the Assessment Order for A.Y. 1985-86 for the assessee trust, i.e. whether the donation by the assessee to Pt. Pyare Lal Sharma Trust Society is to be considered as application of income for charitable purposes or for the purchase of the Trust?
- 5) Pt. Pyare Lal Sharma Trust Society is a society registered under Society Registration Act and its objects are given in the Memorandum of Association & are quoted below:-

“2. OBJECTS.

(a) To perpetuate the memory of the great Indian Patriot, Pt. Pyare Lal Sharma, Meerut.

(b) To educate the Indian public on all subjects of and national interest and generally to create and foster sound public opinion on all subjects of Indian importance on non-communal basis.

(c) To provide a hall, a Library, A dispensary, Public Workers Room and such other amenities as may be desirable ad feasible.

(d) To provide facilities for close social and political inter-course and mean for promotion of physical and intellectual culture.

(e) To provide for and promote such other activities and objects as may be thought to be feasible and desirable from time to time.

The Income-tax Officer considered in detail the objects and the constitution of PMT Society and took the view that it was a society of a political nature and that through the transaction in question the assessee had transferred its funds to the said society.

On appeal the learned Commissioner of Income-tax (Appeals) has also proceeded on the same lines and has opined that the assessee trust's activities in collecting funds for PMT Society and constructing a building for PMT Society cannot by any stretch of imagination be termed as a charitable activity and the appellant firm has actually acted as an agent and a conduit pipe for the PMT Society. He also held that right from its inception it had collected funds from the public in the garb of charitable activities but major portion thereof has been siphoned of to the PMT Society for construction of a building on the land of PMT Society and by vesting the ownership in the society, which is not recognised to be charitable society. On this approach the learned CIT (A) has upheld the assessment as framed by the ITO.

Aggrieved by the order of the Commissioner (Appeal) the assessee filed appeal before the Tribunal. The Tribunal vide order dated 11.8.1989 allowed the appeal and held that the sum of Rs.5,62,917.77 paise spent by the assessee on the construction of the building in question was an expenditure incurred by it for the purposes of carrying out the charitable objects of the assessee-society and was an application of income for charitable purposes within the meaning of Section 11 (1) (a) of the Act. Therefore, the assessee's income was exempt under Section 11 of the Act.

The Tribunal held as follows:

We have given the details of the transaction entered into by the assessee with the PMT Society and we are unable to appreciate the line of approach taken by the authorities below that the PMT Society is the sole beneficiary of these

transactions and the funds collected by the assessee have been siphoned off to the PMT Society. The learned counsel for the assessee pointed out that the assessee trust is registered with the CIT under sec. 12-A of the Act and the Commissioner had also authorised grant of exemption under sec. 80-G in respect of donations made to the assessee trust. These facts were not disputed. None of the authorities below has held either that the assessee is a fictitious trust or that it is not engaged in any charitable activity whatsoever. It is not disputed that the PMT Society had a piece of land situate at a prime location and it is a portion of that land that the said Society granted to the assessee for raising constructions thereon. It has also not been disputed that the assessee has spent about Rs.15 lacs in three years on the construction of buildings as per agreements mentioned above, and out of the constructions so raised only the shops, as agreed, have been given to the PMT Society and the rest of the constructions are in the actual physical occupation of the assessee in which it is running an eye hospital. Under the terms of the agreement, only a very paltry amount of Rs.525/- p.m. is payable as rent of the buildings to the PMT Society. The entire construction which the assessee has raised on its own cost, is with the assessee on perpetual lease. The result is that by raising construction on the land belonging to the PMT Society, the assessee has acquired a building at a nominal rent. In case the assessee had to purchase such land for raising constructions the cost of the land itself would have been much more. It cannot, therefore, be said that by the transaction in question the assessee has siphoned off its funds to the PMT Society. The said Society is deprived of a substantial portion of its valuable land and is receiving only the rent of the 7 shops plus the rent of Rs.525/- p.m. from the assessee. We do not know how in such circumstances it can be said that it was not a transaction which is favourable to both the parties and results in exclusive benefits to the PMT Society with no obligation on it and no corresponding benefits to the assessee society. Instead of selling the land the PMT Society has granted a perpetual lease of the land and building to the assessee trust and since the assessee has raised the construction at its own cost and had also given some constructed area to the PMT Society. The rent to be paid is just nominal. Therefore, by constructing the building at its own cost the assessee has acquired the building at a nominal rent. The cost to the assessee would have been much more if it had purchased the land also or if the PMT Society had constructed the building at its own cost and then let out the same to the assessee. None of the authorities below has held that such a large area of building could have otherwise been acquired by the assessee on a perpetual lease on a rent of Rs.525/-p.m. or that if the buildings had been raised by PMT Society at its own cost, even then the rent that they could have fetched, would have been only about Rs.525/- p.m. Such an assertion would have been absurd and, therefore, neither the authorities below have advanced the same nor the learned Departmental Representative said so before us. A copy of the building plan has been placed at page 6 of the paper book which shows that the covered area in the ground floor is 5957 sq.ft and that in the first floor it is 5,733 sq. ft. Out of this the area of the shops given to the PMT Society is only about 1800 sq.ft. Can it be said that an area of about 10,000 sq. ft. could have been acquired by the assessee at a negligible rent of Rs.500 p.m.

Before entering into the lease agreement with the assessee, the PMT Society sought the approval of the District Judge, Meerut and vide order dated 21.7.1983 the District Judge granted permission to the PMT Society. The learned CIT (A) has reproduced the relevant part of the District Judge's order as below:

“After going through these documents, I feel that the proposal that has emanated from Mool Chand Sharbati Devi Hospital Trust of Meerut and which has been accepted by Pandit Pyare Lal Sharma Memorial Trust Society, Meerut the present petitioners, is a laudable proposal and if it is carried out in its letter and spirit, the petitioner society will be immensely benefited. For the present it is pining for want of funds. If this proposal is put to action, the trust will have extensive construction in addition to income from rents, and will be able to perform some of the objects, for which it was created. I am satisfied after going through all these documents that by putting this proposal into action, Pandit Pyare Lal Sharma Memorial Trust Society, Meerut will not suffer at all. It will not result in alienation of its properties. On the contrary it will continue to be the owner not only of the land but also the constructions over it, of course in return of certain grants that it is going to allow to the hospital Trust.”

In para 4(v) of his order the learned Commissioner of Income-tax (A) has stated that the District Judge's order shows that the transaction will benefit the PMT Society. The learned CIT (A)'s impression appears to be that the transaction was to the detriment of the assessee trust. This is not so. It is patently a transaction entered into by two persons across the table and it is patently for the benefit of both as any other proper transaction has to be. While the PMT Society got 7 shops constructed free of cost and rental income therefrom plus the small amount of rent from the assessee, the assessee in its turn got a large built-up area in a prime locality suitable for its purpose on a negligible rent of Rs.525/- only and the lease is perpetual.

It cannot be doubted that the acquisition of a suitable building was necessary for the assessee-trust to be able to carry out its objects of providing medical relief etc. and it is nobody's case that the building so constructed by the assessee is not in its actual use and occupation. Thus, the expenditure in question was incurred by the assessee in acquiring a building for carrying out its purposes and such an expenditure would necessarily be an expenditure incurred for the carrying out of the objects of the assessee trust. It is settled law that even capital expenditure incurred by an assessee in acquiring assets which are necessary for carrying out its objects amounts to application of income of the trust for charitable objects. In *Satya Vijay Patel Hindu Dharam Shala Trust Vs. CIT*, 86 I.T.R. 683 (Guj.) it was held that expenditure incurred in acquiring a capital asset for carrying out the dominant purpose of the trust was an expenditure within the meaning of sec. 11(1)(a) of the Income-tax Act, 1961.

In this case assessment for the immediately preceding year, i.e., assessment year 1984-85 was made on 7.2.1987. The previous year was the financial year 1983-84, during which the assessee had spent Rs.3,13,241.90 for the construction of the same building. A copy of the assessment order is at page 41 of the paper book and shows that the assessee's income was held to be exempt under sec.11. We have already stated that the assessee was registered with the CIT, Meerut under sec.

21-A of the Act and the Commissioner had also authorise exemption of donations made to the assessee under sec. 80-G. The assessment order for assessment year 1986-87 shows that it was stated before the ITO that the assessee's hospital started working from 2.10.1985. The ITO who has made the assessment order for 1986-87 as the basis for the assessment order for assessment year 1985-86 has not disputed that fact. There is not a word in the assessment orders for assessment years 1985-86 and 1986-87 that the buildings raised by the assessee in terms of the lease deed are not in its occupation or are not being used for the purposes of running a hospital. There is also not a single word saying that in the actual carrying out of the objects of the assessee society, i.e., of providing medical facilities to the public on charitable lines the assessee is not actually functioning as a charitable institution.

The learned Departmental Representative merely toed the line of the authorities below which, as depicted above, was entirely untenable. The authorities below have laid stress on the objects as well as the constitution of the PMT Society to conclude that it is of a political nature. The learned counsel for the assessee has filed in the paper book a copy of the assessment order of the said Society to show that it has been recognized as a charitable institution. A copy of the assessment order and the appellate order are at pages 7 and 9 of the paper book and support the assessee's contention. However, in our view, the question about the nature of the PMT Society was entirely irrelevant. It is not a case in which the assessee donated anything to the PMT Society so that a question may arise whether donation to an institution, which is not a charitable one, amounts to application of income for charitable purposes or not. As demonstrated above, it is a case of two parties contracting with each other for their respective benefits. The assessee on its side has acquired a decent building built according to its own needs and specifications on a paltry or rather negligible rent, the building having been built on land that was even more costly than the cost of the construction raised. The PMT Society, on the other hand, has acquired the whole building as owner, out of which it got 7 shops which it could let out at fair rent and was to get some more rent from the assessee society. In the process it did not lose the ownership of the land though it did get deprived of the use of a portion of its land, which it was not being able to put to any good use for want of funds. The rental income generated in the process would certainly help the PMT Society in carrying out its objects and it was in this sense that the District Judge, Meerut permitted the transaction holding that it was for the benefit of the PMT Society to enter into such a transaction. In view of the above discussion, we hold that the sum of Rs.5,62,917/77 paise spent by the assessee on the construction of the building in question was an expenditure incurred by it for the purposes of carrying out the charitable objects of the assessee-society and was an application of income for charitable purposes within the meaning of sec. 11(1)(a) of the Act. Therefore, the assessee's income was exempt under sec. 11 and the amount in question could not be taxed. Accordingly we allow the assessee's appeal and delete the addition in question, with the result that the assessee has no taxable income whatsoever."

Heard Sri Shambhoo Chopra, learned Standing Counsel and Sri R.R. Agrawal, learned counsel appearing on behalf of assessee opposite party.

Learned Standing Counsel submitted that the object and constitution of the PMT Society are of political nature. The present assessee entered into an agreement with the PMT Society and spent a sum of Rs.5,62,917.77 paise in the year under consideration in the construction of the building for the benefit of PMT Society. The amount which had been received as a donation had been utilized in the construction of the building. Therefore, the income received by the Society was not applied for charitable purposes and such income was not exempted from tax under Section 11 of the Act. In support of the contention he relied upon the following decisions:

1- In the case of Abdul Sathar Haji Moosa Sait Dharmastapanam v. Commissioner of Agricultural Income-Tax, Kerala, reported in 91 ITR-5 (SC).

2-In the case of Sri Agasthyar Trust commissioner of Income-Tax, reported in 236 ITR-23 (SC).

3- In the case of Commissioner of Income-Tax v. P. Iyya Nadar Charitable Trust, reported in (2006) 284 ITR-404 (Mad).

4-In the case of Assistant Commissioner of Income-Tax v. Thanthi Trust, reported in 247 ITR-785 (SC).

Learned counsel for the assessee submitted that the object of the assessee trust is the relevant consideration for the claim of exemption under Section 11 of the Act and the object of other Society is wholly irrelevant. He submitted that the object of the assessee is to establish, run, maintain, promote, aid to hospitals and to donate, subscribe, contribute, aid and help persons, associations, institutions and bodies engaged in charitable activities. For running a hospital or dispensary a building is a basic necessity and, therefore, a piece of land has been taken on lease from the Society known as Pt. Pyare Lal Sharma Memorial Trust Society. He submitted that the assessee's trust is registered as charitable trust under Section 12-A of the Act. After the construction of the building the assessee trust is running hospital for the benefit of general public. He submitted that the object of the PMT Society was also found charitable by the appellate authority in their assessment case and the said order is valid till date. He submitted that on these facts the amount received towards donation and spent for the construction of building required for running the hospital was the application of such money for charitable purposes. He submitted that the Tribunal having regard to the entire facts and circumstances has recorded a categorical finding that the income was spent in the construction of building in question for the purposes of running hospital was an expenditure incurred for the purposes of carrying out the charitable objects and was an application of the income for charitable purposes within the meaning of Section 11 (1) (a) of the Act. He submitted that if any amount is incurred to achieve the object which is in the charitable nature, the amount incurred will be considered to be an expenditure and application of amount for charitable purposes within the

meaning of Section 11 (1) (a) of the Act. In support of the contention he relied upon the following decisions:

- 1- In the case of **Bar Council of Uttar Pradesh v. Commissioner of Income-Tax, Lucknow, reported in 143 ITR-584.**
- 2- In the case of **Commissioner of Income Tax v. Banaras Brass Merchant and Manufacturers Association, reported in 241 ITR-70.**
- 3- In the case of **S. RM. M. CT. M. Tiruppani Trust v. Commissioner of Income-Tax, reported in 230 ITR-636.**
- 4- In the case of **Commissioner of Income-Tax v. Shri Ram Memorial Foundation, reported in 269 ITR-35.**

Having heard learned counsel for the parties, we have gone through the impugned orders and given our anxious consideration to the rival submissions.

Section 2 (15) of the Act defines charitable purpose and Section Section 11 (1) of the Act provides exemption to the income derived by the trust applied for the charitable purposes. Section 2 (15), Section 11 (1) and Section 12-A of the Act read as follows:

Section 2 (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 of fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

Section 11 (1) Subject to the provisions of sections 60 to 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 percent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(c) income derived from property held under trust-

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in

- which India is interested, to the extent to which such income is applied to such purposes outside India, and
- (ii) for charitable or religious purposes, created before the 1st day of April, 1952 to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

- (d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Section 12A. (1) The provisions of Section 11 and Section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

- (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under Section 12AA:

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of Sections 11 and 12 shall apply in relation to the income of such trust or institution,-

- (i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;
- (ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied:

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

- (aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered under Section 12AA;

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

- (c) [*****]

(2) Where an application has been made on or after the 1st day of June, 2007 the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made.”

According to Section 2 (15) of the Act “expression charitable purpose has been defined by way of inclusive definition so as to include relief to the poor, education, medical relief and advancement of any other object of general public utility. Under Section 11 of the Act, income derived from property held under trust only for religious purposes to the extent to which such income is applied to such purposes is exempt from tax. Section 12A of the Act contemplates the registration of the trust for the purposes of Section 11 of the Act.

Admittedly the assessee trust is registered under Section 12A of the Act. The genuineness of its existence is undisputed. The object of the assessee trust is primarily to run the hospital, nursing home etc. for medical aid to the general public. We are of the view that such object falls within the purview of charitable purposes defined under Section 2 (15) of the Act. Construction of building for running the hospital or dispensary is the basic necessity. Without the building hospital cannot run and the medical facility cannot be provided to the public at large. Therefore, any expenditure incurred for the construction of the building is the expenditure incurred for charitable purposes. For the construction of the building if the land is taken on lease from PMT Society on which hospital was constructed and is being run, it cannot be said that the amount incurred in the construction of the hospital building on the land taken on lease from PMT Society was not for charitable purposes. We are of the view that the object of the PMT Society is wholly irrelevant to judge the object of the present assessee. However, the fact is that the object of PMT Society has also been treated as charitable object by the appellate authority which is valid till date. The Apex Court in the case of **Commissioner of Income Tax v. Gujarat Maritime Board, reported in 295 ITR-561** has interpreted the words “any other object of generally public utility” of Section 2 (15) of the Act. It has been held that the said expression is of the widest connotation. The word 'general' in the said expression means pertaining to a whole class. Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose.

In the case of **CIT v. Ahmedabad Rana Caste Association, reported in (1983) 140 ITR 1 (SC)**, the Apex Court has held that the expression any other object of general public utility would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the general

public the purpose would be charitable purpose.

In the case of **CIT v. Andhra Chamber of Commerce, reported in (1965) 55 ITR-722 (SC)**, the Apex Court held that when an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry.

In the case of **Additional CIT v. Surat Art Silk Cloth Mfrs. Association, reported in (1980) 121 ITR-1 (SC)**, it has been held by the Apex Court that if the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charity.

In the case of **Bar Council of Uttar Pradesh v. Commissioner of Income-Tax, Lucknow** (Supra), the Division Bench of the Allahabad High Court has held that the object of the Bar Council to safeguard the interests of its advocates, to assist disabled advocates, to see that advocates who misbehave are taken to task, to promote law reform etc.; a Bar Council constituted under Section 6 of the Advocates Act, 1961 to benefit the public at large by having on its roll, advocates who are not only competent in law but who are respectable and proper persons to belong to the noble profession of lawyers; the said activities have been held for the advancement of general public utility within the meaning of Section 2 (15) of the Act.

In the case of **Commissioner of Income Tax v. Banaras Brass Merchant and Manufacturers Association** (Supra), the object of the association to promote and protect the trade, commerce, industry of the mercantile community has been held as the object of the general public utility and its income has been held exempted under Section 11 of the Act.

In the case of **S. RM. M. CT. M. Tiruppani Trust v. Commissioner of Income-Tax** (Supra), the assessee was a charitable trust. Its objects were to carry out Thiruppani or repairs to old Hindu temples, building new ones, giving aid to or establishing hostels, educational and industrial institutions, etc. A trust has utilized a sum of Rs.8 lakhs in purchasing building to be utilized as a hospital. Such investment has been treated to have been made for charitable purposes.

In the case of **Commissioner of Income-Tax v. Shri Ram Memorial Foundation** (Supra), the Division Bench of Delhi High Court has held that the donation of income to another charitable trust amounts to application of income for charitable purposes.

Let us examine the judgements cited by the learned Standing Counsel.

In the case of **Abdul Sathar Haji Moosa Sait Dharmastapanam v. Commissioner of Agricultural Income-Tax, Kerala** (Supra), the Apex Court

has held that 3/4th income from property was primarily earmarked for the benefit of the relatives of the testator and that part of the trust is not a public charitable trust. This decision of the Apex Court has no relevance to the present case. In the said case having regard to the facts it has been held that 3/4th of the income from property was primarily earmarked for the benefit of the relatives of the testator and that part of the trust is not a public charitable trust. No such situation is present in the present case.

In the case of **Sri Agasthyar Trust commissioner of Income-Tax** (Supra), the Apex Court after examining the object of the trust as contained in the deed dated 28.11.1941 has held that it has been examined by the Tribunal and the Tribunal concluded that the assessee was a public charitable trust. In this view of the matter, this decision does not help to the revenue.

In the case of **Commissioner of Income-Tax v. P. Iyya Nadar Charitable Trust** (Supra) , the business of manufacture of safety matches was being carried on. It has been held that the said business was not carried on in the course of accomplishing primary object of the trust and, therefore, exemption on the income earned from the aforesaid business has been held not exempted from tax. This decision also does not help to the revenue as it does not apply to present case as it is distinguishable on the facts.

In the case of **Assistant Commissioner of Income-Tax v. Thanthi Trust** (Supra), a trust was initially created on 1st March, 1954 to carry on the business of newspaper. On July 9, 1957, the founder executed a supplementary deed making the trust irrevocable and again on July 28, 1961, he executed another supplementary deed directing that the surplus income of the trust shall be devoted, namely, establishing and running a school or college for teaching journalism; establishing and or running or helping to run schools, colleges or other educational institutions for teaching arts and science; establishing and or running or helping to run hostels for students or orphanages; and other educational purposes. The question was whether the income of the trust was exempt from income-tax under the Income Tax Act, 1961. Having regard to section 13 (1) (bb) and Section 11 (4A) it has been held that in the assessment years where the income of the newspaper business had been employed to achieve its objectives of education and relief to the poor and the business of the trust was incidental to the attainment of the objectives of the trust such income would be exempted and for the year under consideration where the business of the trust was for running of the newspaper and the business did not directly accomplish, wholly or in part, the trust's objects of relief of the poor and education has been held taxable. This judgement also does not help to the department.

For the reasons stated above, the question referred is answered in affirmative in favour of the assessee and against the revenue.

Dated: 4th February, 2010

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