आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता

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

श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र) एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

[Before Shri RajpalYadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. Nos. 933 & 934/Kol/2023

Assessment Years : 2013-14 & 2014-15

Indian Chamber of Commerce (PAN: AAATI 1141 G)	Vs.	DCIT, Circle-1(1), Exemption, Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	06.12.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.12.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. K. Tulsiyan, Advocate Smt. Lata Goyal, A.R
For the Respondent/ राजस्व की ओर से	Shri Abhijit Kundu, CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as 'Ld. CIT(A)'] even dated 23.08.2023 for the assessment years2013-14 & 2014-15.

2. First we shall adjudicate in ITA No. 933/Kol/2023 for AY 2013-14. The issue raised in ground nos. 1 to 5 is against the order of Ld. CIT(A) wherein the Ld. CIT(A) has treated activities of meetings, conferences and seminars of the assessee not for charitable purpose and thus denying exemption u/s 11 of the Act in respect of entire

receipts of the assessee. The grounds no. 1 to 5 are reproduced below for sake of ready reference:-

1. *That the action of the Ld. CIT(A) holding that the Appellant Association's activities amount to Trade, Commerce or business based on its receipts and income is arbitrary, contrary to the facts on record, directly in conflict with the judgment of the Hon'ble Supreme Court in the case of Asstt. Commissioner of Income tax (E) vs. Ahmedabad Urban Development Authority and hence not sustainable.*

2. *That the Appellant Association being engaged in the . advancement of object of general public utility was entitled to claim exemption since the amount charged by it for rendering services to its members and non-members were on cost to cost basis and was not significantly higher as stated in the judgement of the Supreme Court (supra) and hence the CIT(A) erred in not having appreciated such entitlement of exemption.*

3. *That the CIT(A) and the A.O. erred in not appreciating that out of the total revenue of Rs. 16,09,69,613/-, the revenue of Rs.2,06,23,114/- was the receipt from the members of the Appellant Association, which is not chargeable to tax on the ground of mutuality.*

4. *That the major part of the income/receipt by way of rent and interest are being the revenues coming from the permitted accumulations of past and, therefore, do not amount to trade, commerce and business of the Appellant Association calling for invoking of proviso to section 2(15) of the I.T. Act, 1961.*

5. *That the activities of the appellant in holding meetings, conferences and seminars resulting into revenue, the expenditure thereof was far in excess of the receipt and therefore, do not fall w the nature of trade, commerce or business and, therefore, the action of the GIT(A) in upholding the order of the Assessing Officer and further enhancing the income/surplus by Rs. 1,90,76,680/- by invoking his power of enhancement is bad in law.*

3. Facts in brief are that the assessee filed return of income on 17.09.2013 declaring total income at NIL. The assessee the Indian Chamber of Commerce (in short ICC) is an association of industrialist, being a company registered u/s 25 of Companies Act as non-profit making company and does not distribute any dividends to its members. Its entire receipts/revenue are being spent for the fulfillment of its objectives as per its Memorandum and Articles of Association(hereinafter referred to

as MAA). The assessee is formed as association of various industrialists, organizations and other commercial entities for the development of trade, commerce and industry. The membership of ICC comprises of business houses, corporate houses within country and abroad. The ICC was set up with the sole purpose of promotion and protection of Indian business and industry and was duly registered u/s 12A of the Act as a charitable association with the main objects as set out in Clause 3 of MAA of the assessee company as *"to promote and protect the trade, commerce and industries and in particular the trade, commerce and industries in or with which Indians are engaged or concerned"*. The object of ICC being the advancement of trade, commerce and Industry and thus falls within the ambit of advancement of any other general public utility u/s 2(15) of the Act defining the charitable purpose. The assessee company is deriving income from organizing meetings, conferences and seminars for members and non-members with the object of promoting trade, commerce and industries on cost to cost basis and thus charges very meager amount and it also receives by way of membership fee from members besides earning/accruing interest on deposits pursuant to Section 11(5)(b) of the Act and receiving rentals from properties held by the assessee company. The assessee claimed exemption u/s 11 of the Act thereby claiming exemption of income arising out its activities on the ground that trust i.e. the assessee company was not involved in carrying out any activities in the nature of rendering service in relation to trade, commerce and industry for cess or fee or any other consideration. The AO during the course of assessment proceedings observed that the activities of the trust are hit by proviso to section 2(15) read with Section 13(8) of the Act and therefore the exemption u/s 11 of the Act would not be available to the assessee as the activities of organizing meetings, conferences and various seminars constituted business activity and also the fact that the receipt of assessee from these activities exceeded Rs. 25.00Lacs in terms of proviso to Section 2(15) of the Act. Accordingly, exemption u/s 11 of the Act was denied on the impugned activities by the AO by dichotomizing and bifurcating the total receipt into two components namely business income and charitable receipts/income u/s 11 of the Act and computed the income accordingly.

The AO brought to tax the business income whereas the deduction was allowed u/a 11 of the Act in respect of charitable income. Accordingly the AO added Rs. 2,00,75,470/- as net business income by apportioning the administrative expenditure proportionately between the business and charitable receipts/income based on the gross quantum of receipts under these heads vide order dated 17.03.2016 passed u/s 143(3) of the Act.

4. The said order of the AO was assailed before the Ld. CIT(A) and the Ld. CIT(A) after taking into account the contentions and submissions of the assessee enhanced the income after issuing notice u/s 251(2) of the Act on the ground that the AO has wrongly bifurcated the income into business and charitable segment thereby rejecting the exemption u/s 11 of the Act in respect of charitable income as allowed by the AO. The Ld. CIT(A) while making the enhancement relied on the decision of Hon'ble Apex Court in the case of ACIT(Exemption) vs. Ahmedabad Urban Development Authority [2022] 144 taxmann.com 78 (SC) by observing that the Hon'ble Apex Court has confirmed the legislative intent behind various amendments and accordingly held that test of charity being driven by the predominant object would not be determining factor for charitable purpose. The Ld. CIT(A) further held that the assessee company/(ICC) was not eligible for exemption under section 11 of the Act because it has exceeded the monetary limit as prescribed in second proviso to Section 2(15) read with section 13(8) of the Act and therefore the provisions of section 11 of the Act are not applicable to the assessee.

5. The Ld. A.R vehemently argued before us that the ICC was incorporated as a non-profit making company u/s 25 of the Companies Act, 1956 in the year 1925 for development of trade, commerce and industry and its members are corporate houses/commercial groups in India and abroad. The Ld. A.R submitted that the ICC was set up for the purpose of promotion and protection of the Indian business and industry and duly registered u/s 12A of the Act as a charitable body with the main object as set out in clause 3 of the MAA i.e "to promote and protect the trade, commerce and industries and in particular the trade, commerce and industries in or

with which Indians are engaged or concerned". The Ld. A.R assailed the order of First Appellate authority for rejecting the claim of the assessee u/s 11 of the Act on the ground that the activity of organization i.e. by holding that organizing the meetings, conferences and seminars are business activities and not charitable ones. The Ld. A.R ,while referring to the provisions of Section 2(15) of the Act, argued that the activities of the assessee certainly fall within the ambit of advancement of any other general public utility and is not effect by proviso to Section 2(15) of the Act mainly for the reason that the receipts from the said activities exceeded 25.00 Lakhs during the impugned year. The Ld. A.R contended that the activities of the ICC are incidental to the attaining of its principal object i.e. to promote and protect the trade, commerce and industry in or with which Indians are engaged or concerned. The Ld. A.R stated that the assessee is not carrying on any of the activities which can be treated as rendering of any service or services in relation to trade, commerce or industry for cess or fee or any other consideration by distinguishing the decision relied upon by the ld CIT(A) of the Hon'ble Apex Court in the case of ACIT (Exemption) vs. Ahmedabad urban Development Authority (supra). The Ld. A.R submitted that the AO ,after discussing the provision of Section 2(15) Section 11(4), 11(4A), 13(8) and Circular No. 11 of 2008, alleged that the meetings, conferences and seminars held by the assessee were in the nature of business and the assessee has rendered services in relation to trade, commerce and business for a cess, fee or any other consideration and thus has earned profit from these activities. The Ld. A.R submitted that, while disallowing exemption u/s 11 of the Act ,the AO observed that the assessee has received sponsorship fees from the sponsors for the purpose of holding meetings, conferences and seminars and in exchange they were allowed to display their banners and promote their business and brand names on its platforms and also for taking part in the deliberation of the said meetings, seminars etc. The Ld. A.R also referred to AO's reference in the assessment order to the decision of Co-ordinate Bench of Kolkata in the assessee's very case earlier years for AY 2008-09 and 2009-10 wherein the activities of the assessee of holding meetings, conferences and seminar were held to be non business in nature and were only incidental to the main object of the ICC. The ld AR contended

that however the main contention of the AO was that the insertion of Section 13(8) on the Statute book w.e.f AY 2008-09 and CBDT Circular No. 387 dated 06.07.1984 were neither mentioned in the assessment orders for the said assessment years nor the same was brought to notice of Hon'ble Tribunal. The Ld. A.R also contended that the AO issued notice u/s 133(6) of the Act to the some of the sponsors seeking some information about such sponsorships paid by them and upon perusal of the same the AO observed that the payments were debited to their Profit and Loss Account and no deduction was claimed u/s 80G of the Act on the payments made to ICC. On the said basis, the AO observed that the assessee has rendered services in relation to trade, commerce or business for a consideration and therefore the part of its activities such as holding of meetings, conferences and seminars have been treated as business activities. The Ld. A.R submitted that the AO treated the receipts of Rs. 9,48,14,435/- during AY 2013-14 and Rs. 12,09,92,730/- during AY 2014-15 on account of meetings, conferences and seminars as business income and calculated the profit at Rs. 21,99,772/- and taxed at the rate applicable to the companies whereas in AY 2014-15 a loss of Rs. 77,87,698/- was computed.

6. The ld AR argued that similarly the Ld. CIT(A) enhanced the assessment by issuing show cause notice u/s 251(2) of the Act alleging that the entire activity of the assessee has to be considered as business and the total surplus appearing in income and expenditure account shall be taxable as business income thereby rejecting the bifurcation by the AO into business and charitable receipts and thus rejected the exemption u/s 11 of the Act. The Ld. A.R therefore submitted that according to Ld. CIT(A) the said bifurcation total receipts into business income and charitable income is not as per the provisions of Act and therefore liable to be taxed as a normal business income. In doing so, the Ld. CIT(A) relied on the decision of Hon'ble Apex Court in the case of ACIT (Exemption) vs. Ahmedabad Urban Development Authority (supra). The Ld. A.R contended that both the authorities below i.e. the AO as well as Ld. CIT(A) have completely gone on the wrong footings by treating the activities of the assessee qua holding meetings , conferences and seminars simply to be business

activities and further holding that the assessee is rendering these services relation to trade, commerce and business for consideration and has earned profit thereon. The Ld. A.R emphasized that on perusal of the assessment order at page 19 for AY 2013-14 it is evident that the business income as computed was only Rs. 21,99,772/- which is equal to 2% of the total receipt from the meetings, conferences and seminars which is very nominal whereas in the subsequent assessment year in AY 2014-15 it was a substantial loss. The Ld. A.R submitted that there should not be any bifurcation of income into business and charitable as the activities of the ICC are squarely covered by the provisions of Section 2(15), section 11 and 13(8) of the Act. Without prejudice, the Ld. A.R submitted that had the expenses been allocated on some rational and scientific basis in both the assessment years, they would have been considerable loss from the business which proved beyond doubt that the consideration received by the assessee by way of sponsorships for meetings, conferences and seminars were even below the cost incurred by the ICC of holding such events and part of the expenditure were met out of the income arising out of interest and from rental from the properties. Therefore Ld. A.R prayed that on this count along ,the order of Ld. CIT(A) may be reversed and the AO may be directed to allow the claim u/s 11 of the Act. The Ld. A.R. stated that where such meetings, conferences and seminars are organized , highly qualified personnel, eminent personalities with having having expertise and specialized knowledge of the subject matter are invited to deliberate their knowledge and share their views regarding such subject matters and after addressing all the issues/views on the same, there are sessions wherein queries of the delegates are addressed. Such deliberations by the experts are of the nature of expert advice. Such expertise/knowledge in such meetings, seminars and conferencesare shared with the mass and not with any individual industry or not only with sponsors. The Ld. A.R submitted while summarizing the arguments that it is evident that the sole object of organizing meetings, seminars and conferences is to promote the trade, commerce and industry and does not involve any activity or services of the nature of business. Therefore, the activities of the assessee in holding meetings, seminars cannot be treated as commercial activity. In defense of arguments, the Ld. A.R referred to the

decision of Hon'ble Apex Court in the case of ACIT (Exemption) vs. Ahmedabad Urban Development Authority (supra). The Ld. A.R. further submitted that sponsorships received by them by conducting seminars, meetings and conferences are to promote and protect trade, commerce and industries and not to carry out any business as has been held by the Hon'ble Apex Court. The Ld. A.R vehemently argued that since the activities of the assessee as are carried out are only and only incidental and subservient to the attainment of main object of the assessee ,therefore the assessee has been is eligible and entitled to exemption u/s 11 of the Act as the same falls under proviso to section 2(15) of the Act. In defense of his arguments, the ld counsel relied on the decision of Co-ordinate Bench in the case of ITO (Exemption) vs. Escorts Cardiac Disease Hospital Society, Escorts Heart Institute and Research ITA NO. 6439/Del/2015. The Ld. A.R while reiterating his arguments referred to decision of Hon'ble Apex Court in the Case of ACIT (E) vs. Ahmedabad Urban Development Authority(supra) and submitted that the Hon'ble Apex Court has discussed the provisions of Section 2(15) of the Act in number of trusts and differentiated the GPU activity and business activity and provided general test u/s 2(15) of the Act. The Ld. A.R submitted that the Hon'ble Apex Court has also dealt with the trade promotion activities in the case of Apparel Export Promotion Council and has observed that organizing meetings, disseminating information through publications holding awareness camps and events, would be broadly covered by trade promotion however when the trade promotion body provides individualized or specialized service such as conducting paid workshops, training courses, skill development courses certified by it and hires venues which then let out to industrial, trading or business organizations, to promote and advertise their respective businesses, the claim for GPU status needs to be scrutinized more closely and scrupulously. Such activities are in relation to trade, commerce or business. These activities and the facility of consultations or skill development courses, are meant to improve business activities and make them more efficient. The Hon'ble Court held that receipts from such activities clearly are fee or other consideration for providing services in relation to trade, commerce or business. The Ld. A.R therefore submitted that the Hon'ble

Apex Court has also differentiated the activities which are of the nature of services in relation to trade, commerce or business in the case of trade promotion bodies. The ld. A.R submitted that in terms of above decision of Hon'ble Apex Court ,the activities shall be treated as service in relation to trade, commerce or business in the following cases:

i) If the service is individualized i.e if the service is provided at personal level

ii) If the trust is conducting paid workshops, training courses, skill development courses certified by it and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective businesses.

7. The Ld. A.R submitted that it is not the case where activity can be treated as service in relation to trade, commerce or business as the assessee(ICC) has not conducted any meetings, seminars or conferences at personal level/individualized level. However the meeting, seminars or conferences were organized into general meetings and conferences wherein there was no restriction to any industrial, trading or business organizations to participate. In other words, all types of industrial, trading or business organizations are allowed to participate depending upon their needs and place of interests. The Ld. A.R also submitted that the assessee has neither conducted any such paid workshops, training courses or skill development courses certified by it. The assessee has only organized meetings, seminars and conferences on particular subject matter which is required to be discussed for awareness amongst the organizations on the topics/subject matter of the meetings, seminars which are MSME amendments, foreign trade policy and others. The Ld. A.R submitted that the assessee has not received any rental income or any other consideration for letting out or to advertise the businesses of the organizations participating in the meetings, seminars or conferences.

8. The second limb of argument of A.R is that the issue involved in the present year is squarely covered by the decision of Co-ordinate Bench in assessee's own case for AY 2008-09 and 2009-10 in ITA No. 1491/Kol/2012 & 1284/Kol/2012 wherein

the Co-ordinate Bench has decided the issue in favour of the assessee by observing and holding that the assessee is a body with primary purpose of advancement of object of general public utility which is charitable and the meetings ,conferences and seminars are only supportive activity carried on to achieve the main object of the ICC and is ,therefore, charitable in nature. Hence the Co-ordinate Bench has held that the assessee is not falling under proviso to Section 2(15) of the Act. The Ld. A.R submitted that in the present case income as computed by the AO was Rs. 21,99,772/- in AY 2013-14 and (-)Rs. 77,87,698/- in AY 2014-15 after apportioning the administrative expenditure on the basis of turnover/gross receipts of business and charitable segment as is held by the AO. Had the correct allocation of expenses been made on a more rational and scientific basis ,thenin both the years there would have been substantial losses from the activity of holding meetings, seminars and conferences. The Ld. A.R therefore submitted that the order of authorities below in not following the decision of Co-ordinate Bench in assessee own case which is a binding decision in violation of judicial discipline which the AO and Ld. CIT(A) are supposed to observe as the revenue has not challenged the said decision before the Hon'ble High Court. The Ld. A.R further submitted that there is no change in facts and law in the instant assessment year vis-à-vis AY 2009-10 and therefore in view of ratio laid down by Hon'ble Apex Court in the cases of CIT vs. Radhasoami Satsang [1993] 201 ITR 493 (SC) and CIT vs. M/s PFH Mall & amp; Retail Management pvt. Ltd. (4.9.2012-SC) [Petition(s) for Special Leave to Appeal C No. 6756/2009 (from the judgment and order dated 29.01.2008 in ITA NO. 763/2007 of High Court of Calcutta).In the case of DCIT vs. Kolkata Port Trust in ITA No. 453/Kol/2018, CO No. 60/KOl/2018, the coordinate has also decided the issue in the same manner after following the above decisions.

9. The Ld. A.R also submitted by referring to the decision of the Hon'ble Apex court in the case of ACIT (Exemption) vs. Ahmedabad Urban Development Authority (supra) that in page 83 Para D under Trade Promotion Bodies , the Hon'ble Court has held that the bodies involved in trade promotion such as AEPC, or set up with the

objects of purely advocating for, coordinating and assisting trading organizations can be said to be involved in advancement of objects of general public utility. However, if such organizations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc., then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to Section 2(15) of the Act. The Ld. A.R vehemently submitted that this is not a scenario in the case of assessee as main object of the assessee has been to promote and protect the trade, commerce and industries and the assessee has not provided additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. and therefore since no such business activity is carried on by the assessee ,the proviso to Section 2(15) of the Act is not applicable to the assessee.

10. The Ld. A.R further submitted that members subscription fees is also part of the receipts which has been treated as business income. The Ld. A.R submitted that members subscription fee is received every year on annual basis and also in case of new person becomes a member of association then it becomes an admission during the year and entrance fee is received which is followed by annual subscription fee to be paid every year. The Ld. A.R submitted that it is settled law during subscription fee is not an income and therefore is not taxable by virtue of principle of mutuality. There exists no difference between two persons (i.e. they are one and the same) and a person cannot make profit from himself. The Ld .Counsel for the assessee relied on the decision of Hon'ble Apex Court in the case of Secunderabad Club vs. CIT [2023] 457 ITR 263 (SC) which has dealt with the principle of mutuality . The Ld. A.R also relied on a series of decision passed by other judicial forums such as CIT vs. Deloitte Touche Tohmasu in ITA NO. 399 & 402/2022 vide order dated 18.10.2023 and Grant Thornton Advisory Pvt. Ltd. vs. DCIT in ITA No. 3259/Del/2017 dated 29.04.2022.

11. As regards other income comprising of the interest income, rental income and miscellaneous income. The Ld. A.R argued that the interest is earned from the fixed

deposits made with bank as per provisions of Section 11(5)(iii) of the Act the details whereof i.e. fixed deposits are provided under Schedule J of the ITR and rental income and miscellaneous income are earned from the building held by the assessee. The Ld. A.R ,while referring to the provisions of Section 11(1) & (2) of the Act, submitted that in terms of Section 11(1) of the Act 15% of the gross receipts/income is retained /accumulated or set apart by a charitable organization without applying the same for charitable purposes in which the income/receipts was accrued and thus this accumulation is indefinite accumulation and the organization does not have to apply it for charitable purposes in subsequent years and the same is retained as a part of the corpus of organization. Similarly the Ld. Counsel for the assessee argued that in terms of Section 11(2) of the Act where application of income/gross receipts falls short of 85% of such income/gross receipts during the year, the assessee has to accumulate the said short fall by setting apart the same to be utilized for the charitable purposes within maximum period of 5 years. The Ld. A.R stated that fixed deposits were purchased out of funds accumulated under above sections and receipts therefrom are eligible and entitled to exemption u/s 11 of the Act.

12. The Ld. D.R on the other hand relied heavily on the order of Ld. CIT(A) and submitted that the activities of the ICC are in the nature of business or commerce as the ICC has been charging in the form of sponsorships for organizing the meetings, seminars and conferences and therefore constitute business activities specially post introduction of proviso to Section 2(15) of the Act. The Ld. D.R submitted that in the present case the condition as provided in the said proviso has been breached by the assessee as turnover from the receipts by ICC from organizing such meetings, conferences and seminars exceeded Rs. 25.00Lacs and therefore the exemption u/s 11 was rightly denied by the Ld. CIT(A). On the issue being covered by the decision of Co-ordinate Bench in the assessment year 2009-10, the Ld. D.R submitted that mere fact that the decision of Tribunal has attained finality and has not been challenged before the High Court would not be bar on the revenue from taking the subsequent appeals to the High Court. The ld DR argued that if the revenue has committed a

mistake in one year by not filing an appeal against the order of the tribunal, the same cannot be allowed to be continued in perpetuity and therefore the arguments of Ld. D.R that the issue attained finality and cannot be taken up in the present assessment is without any substance and may be dismissed. The Ld. D.R further contended that the assessee has realized/received the considerations or receipts from organizing the meetings, seminars and conferences which are hit by the proviso to Section 2(15) read with Section 13(8) of the Act and therefore the order of Ld. CIT(A) may kindly be upheld by dismissing the ground raised by the assessee.

13. After hearing the rival contentions and perusing the material on record, we note that the ICC is non-profit making company registered u/s 25 of the Companies Act, 1956 the main object of the assessee is to promote and protect the trade, commerce and industries and in particular the trade, commerce and industries in or with which Indians are engaged or associated with. We further find that the ICC with main object of promoting and protecting trade, commerce and industries carries on certain activities in the form of holding meetings, seminars and conferences to create awareness among its members and non members meaning thereby that it meetings/conferences/seminars are not confined to its members only. The ICC derives income by way of sponsorships of such seminars, conferences and meetings from various industrial houses/trading and commercial entities and this has been so in the instant year also. The assessee received sum of Rs. 9,48,14,435/- from holdings of such meetings/seminars and conferences. Besides during the impugned year the assessee has received incomes by way of interest on FDRs, rental income and miscellaneous income from the properties held by the assessee. We note the AO treated such activities of organizing conferences, meetings and seminars as business activities reasoning that the ICC was charging consideration in the form of sponsorships by invoking proviso to Section 2(15) of the Act read with Section 13(8) and thus denied exemption u/s 11 of the Act to that part of income of the assessee which is received in respect of the so called business activities by segregating and bifurcating the total/gross receipts into two segments namely business segment and

charitable segment. The AO apportioned and allocated the administrative expenses incurred by the ICC proportionately in the ratio of quantum of business income/receipts and charitable income/receipts. We also note that during the year the AO calculated the profit from business of Rs. 21,99,772/- in A.Y. 2013-14 and taxed accordingly whereas the AO computed loss of Rs. 77,87,698/- in A.Y.2014-15. Thus, the exemption claimed by the ICC u/s 11 of the Act was allowed to the assessee only in respect of interests , rental and miscellaneous income. In the appellate proceedings, the Ld. CIT(A) enhanced the income after issuing show cause notice u/s 251(2) of the Act to the ICC by treating the entire income/receipts of the ICC as business receipt and taxed the same at the rate applicable to the companies. The ld CIT(A) by doing so rejected the methodology adopted by the AO of bifurcating the total receipts into business and charitable one. Now the issue before us whether the assessee is hit by the proviso to Section 2(15) of the Act as amended w.e.f. A.Y. 2009-10 or the assessee is still eligible and entitled to exemption u/s 11 of the Act. In order to better understand the provisions section 2(15) of Act as applicable at relevant point of time, the same is reproduced as under:

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

*[**Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:*

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

13.1.A perusal of the above reveals that the 1st proviso provides that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying on of any activity in the nature of trade ,commerce or business or any activity of rendering service in relation to trade ,commerce or business for a fee or a cess or any other consideration irrespective of the nature of use or application or

retention of the income from such activity and the 2nd proviso provides that 1st proviso shall not be application if the receipts from the activities as referred to herein is Rs. 25.00 lacs or less in the previous year. In the present case before us undisputedly the assessee is engaged in advancement of promotion and protection of trade, commerce and industry which is duly covered in the ambit of charitable activities however the receipts from the activity of organizing seminars, conferences and meetings exceeds by more than Rs.25.00 lacs and therefore now the question is whether the assessee is covered under the provisions of Section 11 and 12 read with Section 2(15) of the Act and is entitled to exemption of its income u/s 11 of the Act. Undisputedly the trust is registered u/s 12A of the Act and up to AY 2009-10 even the Tribunal has accepted the activity of the trust has been charitable within the meaning of Section 2(15) of the Act as the activity of organizing meetings, conferences and seminars are only attainment of and in support of main object of the assessee. The assessee in order to protect and promote trade, commerce and industry has been organizing the activities of seminars, meetings and conferences in order to disseminate knowledgeon specialized issues to members and non members on the subject with specialized knowledge. During such events the experts on the subjects are invited to speak on the occasion and also participative discussion and interactions are held during such meetings, conference and seminars. So that the members and non-members are invited from such activities of the assessee. We also observe that the assessee is not organizing any trading programs to impart skill development courses by specialist and skilled knowledge and certified courses but general meetings, conferences and seminars are organized to discuss and debate, issues in current topics, amendments of Income Tax Act, MSME Act, Foreign Trade Policy and other issues having concerns for trade, commerce and industries. So that the interest of trade, commerce and industries are promoted and protected. The AO treated the receipts from organizing meetings, conferences and seminars as business activity whereas the Ld. CIT(A) treated the entire receipts of the ICC as business income by following the decision of Hon'ble Apex Court in the case of ACIT vs. Ahmedabad Urban Development Authority (supra) which too appears to be in correct.

14. We have minutely perused the decision of Hon'ble Apex Court in the case of ACIT vs. Ahmedabad Urban Development Authority (supra) and observed that the Hon'ble Apex Court has nowhere held that the activities carried on by the charitable entity which are supportive to the attainment of main object are to be treated as non-charitable activities. The Hon'ble Court has even held that activities of charging of any amounts towards consideration for any activity (advancing general public utility) which is on cost basis or nominally above cost, cannot be considered to be trade, commerce or business or any services in relation thereto in Para 253 page 82. The Hon'ble Court has held as under:

> *"A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be trade, commerce or business or any services in relation thereto, It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief or cess, or fee, or any other consideration towards trade, commerce or business. In this regard, the Court has clarified through illustrations wheat kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce or business, in the body of the judgment."*

15. In the present case also, the AO has computed business income at Rs. 21,99,772/- by allowing the administrative expenses proportionately on the basis of and in the ratio of business receipts and charitable receipts. We note that during the instant assessment year, the receipt form business activities of the assessee from the activities of holdings and organizing meetings, seminars and conferences were Rs. 9,48,14,435/- and the profit as computed by the AO constituted only 2% of such receipts. Therefore we are inclined to hold that the consideration charged by the ICC is just a cost basis and nominally above the cost. However if we allocate the administrative expenses on a rational and scientific basis between the activities of holding meetings, seminars and conferences on the one hand and other charitable receipts such as interest, rental and misc. income on the other , then there would be huge loss from these activities of organizing and holding meetings, seminars and meetings meaning thereby that the assessee has not been even charging from these sponsors, participants, members or non-members which are barely enough to cover the cost of the ICC and therefore it can be reasonable presumed that ICC has provided

these activities even below the cost. We note that in the subsequent assessment year 2014-15 , the AO has computed the loss of Rs. 77,87,698/-. In view of this factual matrix , we are inclined to hold that the ICC is not carrying on any activity of holding meetings, seminars and conferences for business purpose but only in support its main object and it charges from its participants, members and non-members the amount of fee which does not even covers the cost of holding such events. So much so that the administrative and other incidental expenses of holding and organizing such seminars, conferences and meetings are met out of other charitable income received form interest on FDRs, rental and miscellaneous income. Therefore we find force in the contentions of the Ld. AR that the decision of Hon'ble Apex Court has wrongly been interpreted and applied against the assessee. In our opinion, the decision is squarely applicable to the facts of the case and in view of that the ICC is entitled to exemption u/s 11 of the Act as the activities of the advancement of main object is not hit by the proviso to Section 2(15) of the Act even post amendments.

16. We also note that the assessee's case is squarely covered in its own case by the decision of Hon'ble Bench in ITA No. 1284/kol/2012 for A.Y. 2009-10 wherein the issue was decided by the coordinate bench in favour of the assessee and the revenue has not preferred any appeal against the decision of Co-ordinate Bench before the Hon'ble High Court and the issue has attained finality. The operative part of the decision in ITA No. 1284/Kol/ 2012 is extracted as under:

> *"32. We have already discussed the facts above in ITA No1491/Kol/2012 for AY 2008-09, which are unchanged in this appeal also i.e. for AY 2009-10 but in view of amendment in Section 2(15) of the Act vide Finance Act 2008, w.e.f. 01/04/2009, whereby new proviso was inserted and according to lower authorities the activities of assessee association of conducting Environment Management Centres, meetings, conferences & seminars and issuance of certificate of origin were all in the nature of "rendering of service in relation to business, for consideration" and falling under the last limb of charitable purpose, i.e. "advancement of any other object of general public utility", thus covered by the proviso to section 2(15) of the Act. In connection to the above it would be relevant to know the amended section 2(15) of the Act in view of legislative intent behind such amendment. We have gone through section 2(15) of the Act, which is relevant for assessment year 2009-10 year under consideration, which lays down the definition of "charitable purpose" as under:*
>
> > *"(15) "charitable purpose" includes relief of the poor, education, medical relief, 79 [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;"

The rationale for bringing this proviso can be understood by referring to the relevant portion of the Memorandum explaining the provisions in the Finance Bill, 2008 reported in 298 ITR (St) 2000-01 which reads as under: (Clause 3)

"It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under section 10(23C) or section 11 of the Act on the ground that they ware charitable institutions. This is based on the argument that they are engaged in the "advancement of an object of general public utility" as is included in the fourth limb of the current definition of "charitable purpose". Such a claim when made in respect of an activity carried out on commercial lines is contrary to the intention of the proviso. With a view to limiting the scope of the phrase "advancement of any other object of general public utility", it is proposed to amend section 2(15) so as to provide that "the advancement of any other object of general public utility" shall not a charitable purpose if it involves the carrying on of following activities:

(a) Any activity in the nature of trade, commerce or business or,

(b) Any activity or rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or the retention of such income, by the concerned entity."

Further CBDT explained this proviso vide its Circular No. 11 of 2008, dt. 19th Dec., 2008 (2009) 308 ITR (St) 5 on the issue which reads as under:

"CBDT Circular No. 11/2008 19th December, 2008 Subject:- Definition of 'Charitable purpose' under section 2(15) of the Income Tax Act, 1961-reg. Section 2(15) of the Income Tax Act, 1961 ('Act') defines "charitable purpose" to include the following:- i) Relief of the poor ii) Education iii) Medical relief, and iv) The advancement of any other object of general public utility. An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of 'charitable purpose'. Therefore, section 2(15) was amended vide Finance Act, 20008 by adding a proviso which states that the 'advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of –

a) Any activity in the nature of trade, commerce or business; or
b) 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.

2. The following implications arise from this amendment –

2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

2.2 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that

i) the business should be incidental to the attainment of the objectives of the entity, and
ii) separate books of account should be maintained in respect of such business. Similarly, entities whose object is 'education' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e, the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1 There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

3.2 In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessee, who claim that their object is 'charitable purpose' within the meaning of Section 2(15), would be well advised to eschew any activity

which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.

33. From the Memo Explaining the provisions of Finance Bill 2008 & CBDT Circular dated 19-12-2008, what will be position of an entity engaged in the 'advancement of any other object of general public utility', whether the same will be hit by commercial activities in view of the newly inserted proviso to section 2(15) of the Act or not? The proviso was introduced with the sole aim of bringing into ambit of taxation such entities which were engaged in commercial activities. Here, we need to appreciate the concept of an "entity engaged in commercial activities". In very simple words, any entity whose main or dominant object is commercial can only be said to be a commercial entity. An entity whose main purpose is undoubtedly charitable in nature without an iota of commerciality in it cannot be said to be engaged in commercial activity. Also we need to note that another point that emerges from the above is that whether an entity is carrying on an activity in the nature of trade, commerce or business always remains a question of fact which will have to be determined on the basis of the facts of the individual case. No generalization for such determination is possible. In view of the above, it is seen that the proviso can be applied to fact based on the facts and the past history of the assessee, which is discussed in detail above. From the above facts, we are clear that the assessee has never been dominantly engaged in any commercial activities and is a Charitable Institution registered as such u/s 12A of the Act, set up for the promotion and protection of Indian business and industry. The main purpose of this Institution is promotion and protection of trade and commerce in the country and not to conduct any commercial activities. Further, it has also never been the contention of the revenue that the assessee is engaged in commercial activities but it is hit by the proviso to section 2(15) of the act and thus will be deemed to be engaged in commercial activities. What will be the position to an institution engaged in advancement of any other object of general public utility, which lays down that such an institute will be deemed to be 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." According to us, part of the proviso being "any activity of rendering any service in relation to any trade, commerce or business" 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 in relation to the trade commerce or business must be for a cess or fee or any other consideration. From the proviso, it is seen that the most material and relevant words in the proviso are "trade, business or commerce". The activities which are undertaken by the institute 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. We will analyse the term "business" from the definition of the term 'business' as defined in section 2(13) of the act and whether assessee's activities falls within the terminology of "business". The term "Business" read as under:-

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

The word "Business" is of large and infinite 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 "includes" has been used. The legislature has deliberately departed from giving a definite import to the term "business" but has made reference to several other general terms like "trade", "commerce", "manufacture" and "adventure or concern in the nature of trade, commerce and manufacture". The term "business" has been explained by various judicial decisions and the landmark decision of the Hon'ble Supreme Court of India

in the case of CST v. Sai Publication Fund [2002] 258 ITR 70 interpreted the word 'business' under section 2(5-A) of the Bombay Sales Tax Act, 1959 as follows:-

"… 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.

Further Hon'ble Supreme Court in para16 elaborated the term 'business' as under:-

> *"16. The words 'carrying on business' require something more than merely selling or buying, etc. Whether a person 'carries on a business' in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive (Board of Revenue v. A. M. Ansari (1976) 38 STC 577 (Supreme Court); (1976) 3 scc 512). Such profit motive may, however, be statutorily excluded from the definition of 'business' but still the person may be 'carrying on business." Further in para 30 of the same judgment, it is stated thus: "30. In our view, if the main activity was not 'business', then the connected, incidental or ancillary activities of sales would not normally amount to 'business' unless an independent intention to conduct 'business' in these connected, incidental or ancillary activities is established by the Revenue. It will then be necessary to find out whether the transactions which are connected, incidental or ancillary are only an infinitesimal or small part of the main activities. In other words, the presumption will be that these connected, incidental or ancillary activities of sales are not 'business' and the onus of proof of an independent intention to do 'business' in these connected, incidental and ancillary sales will rest on the department. If, for example, these connected, incidental or ancillary transactions are so large as to render the main activity infinitesimal or very small, then of course the case would fall under the first category referred to earlier." (emphasis supplied."*

Further, Hon'ble Supreme Court in this very same case held as under:

> *"… … 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., n the sense of occupation to be a "dealer" as its main object is to spread message of Saibaba of Shirdias 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 mattes to be decided on facts and in the circumstances of each case."

34. Thus from the above, the logical corollary which inexorably flows from a careful perusal of the above laid decision is that in the cases of many institutions / associations whose main activity is not 'business' the connected incidental or ancillary activities of sales carried out in furtherance of and to accomplish their main objects would not, normally, amount to business, unless an independent intention to conduct 'business' in these connected, incidental or ancillary activities is established by the revenue. Therefore, the issue whether a professional institution is or is not hit by the proviso to section 2(15) of the Act will essentially depend upon the individual facts of the case of the institutions wherein discussing the nature of the individual activities it will have to be decided whether the same form incidental, ancillary and connected activities and whether the same were carried out predominantly with a profit motive. The AO and CIT(A) in their orders relied upon the following judicial decisions:

** Barendra Prasad Ray v. Income-tax Officer (129 ITR 295) SC*
** Commissioner of Income-tax v. Dharma Reddy (A) (73 ITR 751) SC*
** Sole Trustee, LokaShikshana Trust v. Commissioner of Income-tax (101 ITR 234 SC)*

We have already discussed the case law of Hon'ble Delhi High Court in the case of PHD Chamber of Commerce &Industry(Supra), wherein very categorically held that activities and services performed for a fee or against a payment, by a trade, professional or similar association, such as a chamber of commerce and industry could not be held to be "business" in nature carried out with a profit motive. From all the above what thus transpires is that it is the primary or dominant purpose of the institution, which must be charitable. Where the main activity is "charitable" then the activities which are incidental or ancillary to the main activity, even if carried out for profit, would not mitigate or change the "charitable" character of the institution. Thus in the cases of many professional institution whose main activity is not "business", the connected incidental or ancillary activities of sales carried out in furtherance of and to accomplish their main objects would not, normally, amount to business, unless an independent intention to conduct 'business' in these connected, incidental or ancillary activities is established by the revenue. The test, therefore, to be applied is whether the activity which is pursued is ancillary to a dominant object or is independent to the main object and forms a separate object in itself. The issue whether a professional institution is not hit by the proviso to section 2(15) of the Act will essentially depend upon the individual facts of the case of the institutions wherein discussing the nature of the individual activities it will have to be decided whether the same form incidental, ancillary and connected activities and whether the same were carried out predominantly with a profit motive.

35. In view of the above, we thus now turn to examine and analyse in full details the particular facts of the present case. That the assessee association is a Charitable Institution, duly registered as such u/s. 12A of the Act, carrying on its main object of development of trade, industries and commerce. The main objects for which the association came into

existence, are clearly set out in clause 3 of the Memorandum of Association which duly records and reads as under:

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

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

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

Facts relating to these activities are discussed in detail in para 23 to 25 of this order above, which need not be repeated.

36. From facts in entirety, now the question arises is whether principle of consistency will apply or not? From AY 1985-86 to 2007-08 exemption u/s 11 of the Act was allowed. Now, having extensively with the newly amended section 2(15) of the Act and its absolute inapplicability to the case of assessee supported by various judicial decisions, we will discuss this issue. We find that CIT(A) without appreciating that the basis principle underlying the definition of "charitable purpose" remained unaltered, and on amendment in the section 2(15) of the Act w.e.f. 01/04/2009, whereby the restrictive first proviso was inserted therein, lower authorities held that the same substantially changed the position of law and thus the principle of consistency did not apply. But we are of the view that a detailed reading of the various judicial decisions through the years, interpreting the definition of "charitable purpose" as laid out in section 2(15) of the Act and also the definition of "business" in relation to the said section amply revels that the theory of dominant purpose has always, all through the years, been upheld to be the determining factor laying down whether the Institution is Charitable in nature or not. Where the main object of the Institution was "charitable" in nature, then the activities carried out towards the achievement of the said,

being incidental or ancillary to the main object, even if resulting in profit and even if carried out with non members, were all held to be "charitable" in nature. Hon'ble Apex Court in the earliest case of Andhra Chamber of Commerce (supra) had clearly laid out the principle that if the primary purpose of an Institution was advancement of objects of general public utility, it would remain charitable even if an incidental or ancillary activity or purpose, for achieving the main purpose, was profitable in nature. It was laid out by the Court that,

"That if the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose, e.g. promotion of or opposition to legislation concerning that purpose, was contemplated."

It was only for the purpose of securing its primary aims that it was mentioned in the memorandum of association that the Chamber might take steps to urge or oppose legislative or other measures affecting trade, commerce or manufactures. Such an object ought to be regarded as purely ancillary or subsidiary and not the primary object." In connection to the above case it is laid out the said case dealt with the assessment of the assessee in the A.Ys 1948-49 to wherein relevant to the said AYs 948-49 to 1952-53, by the last paragraph of sub-section (3) of the IT Act, 1922", charitable purposes" was defined as

> *"… .. In this sub-section "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in clause (i) or clause (ii) shall operate to exempt from the provisions of this Act part of the income from property held under a trust or other legal obligation for private religious purposes which does not enure for the benefit of the public." The adding of the words "not involving the carrying on of any activity for profit: was introduced by the Income tax Act, 1961. Hon'ble Apex court in the earliest decision in the case of Surat Art Silk Cloth Manufacturers Association (Supra) held the theory of dominant or primary object of the trust to be the determining factor so as to take the carrying on of the business activity merely ancillary or incidental to the main object.*
>
> *It was held as follows:-*
>
> *(i) That the dominant or primary purpose of the assessee was to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth a set out in clause (a) and the objects specified in clauses (b) to (e) were merely powers incidental to the carrying out of that dominant and primary purpose;*
>
> *(ii) That the dominant or primary purpose of the promotion of commerce and trade in art silk, etc., was an object of public utility not involving the carrying on of any activity for profit within the meaning of s.2(15) and that the assessee was entitled to exemption under s 11(1)(a)"*

Again the Hon'ble Apex Court in the case of Federation of Indian Chambers of Commerce & Industry (supra) held that

> *"that the dominant object with which the Federation was constituted being a charitable purpose viz. promotion, protection and development of trade, commerce and industry, there being no motive to earn profits, the respondent was not engaged in any activity in the nature of business or trade, and, if any income arose from such activity, it was only incidental or ancillary to the dominant object for the welfare and*

> *common good of the country's trade, commerce and industry, and its income was, therefore, exempt from tax under s.11 of the IT Act, 1961"*

Again reiterating the dominant purpose theory, the Hon'ble SC in the case of Sai Publication Fund (supra) laid out as follows:

> *"… 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".*

In the recent decision which deals specifically with the newly amended section 2(15) of the Act, in the case of Institute of Chartered Accountants of India v. Director General of Income-tax (Exemptions) [2012] 347 ITR 0099 Del HC, laying down the very same principle it was again laid:

> *"that the fundamental or dominant function of the Institute was to exercise overall control and regulate the activities of the members/enrolled chartered accountants. A very narrow view had been taken that the Institute was holding coaching classes and that this amounted to business."*

Again, Hon'ble Bombay High Court in the WP of Baun Foundation Trust (Writ Petition No. 1206 of 2010 in the High Court of judicature At Bombay 27 March 2012) it was held that

> *"4… It is a well settled position in law that the dominant nature of the purpose for which the trust exists has to be considered. The Chief Commissioner has not doubted the genuineness of the trust or the fact that it is conducting a hospital."*

Thus from all the above it is seen that though the definition of "charitable" purpose under section 2(15) has undergone changes, the principle underlying the same has remained the same. In context of the above, with regard to the "principle of consistency" it would be of relevance here to quote the decision of the Apex Court in the case of RadhasoamiSatsang v. Commissioner of Income-tax (193 ITR 321 SC) wherein it was held that:

> *"…. (ii) That, in the absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the assessee appellant should not have been reopened.*
>
> *Strictly speaking, res judicata does not apply to income-tax proceedings. Though, each assessment year being a unit, what was decided in one year might not apply in the following year; where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the ordered, it would not be at all appropriate to allow the position to be changed in a subsequent year."*

37. Now coming to application of section 28(iii) of the Act. We find that section 28(iii) of the Act provides that the income derived by a trade, professional or similar association from specific services performed for its members will be brought to charge under the head "profits and gains of business or profession". The underlying idea behind s. 28(iii) is that there must be a business from which income is derived and that in the course of such business specific services must be rendered for its members. The concept behind s.28(iii) is to cut at the

mutuality principle being relied on in support of a claim for exemption, when the assessee was actually deriving income or making profits as a result of rendering specific services for its members in a commercial way. The reason for the introduction of Section 28(iii) of Act, to ignore the principle of mutuality and reach the surplus arising to the mutual association and this is clear from the fact that these provisions are confirmed to services performed by the association "for its members". Such income would either be charged as business income or under the residual head, depending upon the question whether the activities of the association with the non-members amount to a business or otherwise. Section 28(iii) constitutes certain income of the association to be business income without affecting the scope of the exemption under Section 11. Section 2(15) which incorporates the definition of "charitable purposes" simply shows that several mutual associations may also fall within the definition. The receipts derived by a chamber of commerce and industry for performing specific services to its members, though treated as business income under Section 28(iii) would still be entitled to the exemption under Section 11 r.w.s. 2(15) of the Act, provided there is no profit motive. Thus, assessee being a charitable Institution carrying on the object of promotion and development of trade and commerce and which is not involved in the carrying on of any activity in the nature of "business", the said section 28(iii) of the Act does not apply.

38. In view of the above discussion, we are of the considered view that in the given facts and detailed reading of the various judicial decisions through the years, interpreting the definition of "charitable purpose" as laid out in section 2(15) of the Act and also the definition of "business" in relation to the said section amply revels that the theory of dominant purpose has always, all through the years, been upheld to be the determining factor laying down whether the Institution is Charitable in nature or not. Where the main object of the Institution was "charitable" in nature, then the activities carried out towards the achievement of the said, being incidental or ancillary to the main object, even if resulting in profit and even if carried out with non members, were all held to be "charitable" in nature. Hon'ble Apex Court in the earliest case of Andhra Chamber of Commerce (supra) had clearly laid out the principle that if the primary purpose of an Institution was advancement of objects of general public utility, it would remain charitable even if an incidental or ancillary activity or purpose, for achieving the main purpose, was profitable in nature. In our view the basic principle underlying the definition of "charitable purpose" remained unaltered even on amendment in the section 2(15) of the Act w.e.f. 01/04/2009, though the restrictive first proviso was inserted therein. Accordingly, in the given facts of the case as discussed above in detail, the assessee association's primary purpose was advancement of objects of general public utility and it would remain charitable even if an incidental or ancillary activity or purpose, for achieving the main purpose was profitable in nature. Hence, assessee is not hit by newly inserted proviso to section 2(15) of the Act. This issue of assessee's appeal is allowed."

17.1. In the impugned assessment yearalso , there is no change in facts or law vis-à-vis AY 2009-10 and therefore the department cannot be allowed to take a different stand on the same facts. The case of the assessee is squarely covered by the decision of Hon'ble Apex Court in the case of CIT vs. Radhasoami Satsang (supra) and by subsequent decision of the Apex Court in the case of CIT vs. M/s PFH Mall & Retail Management Pvt. Ltd. (supra). Similar view has also been taken by the coordinate bench in DCIT vs. Kolkata Port Trust (supra) wherein it was held that there is no change in the facts and law , the revenue cannot be allowed to take a

different view. Accordingly we are inclined to hold that the rule of consistency has to be applied. Pertinent to state that revenue authorities have failed to adhere to the principle of judicial discipline in following the decision of the Tribunal while adjudicating the case of the assessee. In our considered view the assessee is eligible and entitled to claim exemption u/s 11 of the Act in respect of its entire receipts. Therefore for this reason alone the order of ld. CIT(A) has to be and cannot be sustained.

18. Besides the assessee has received subscription fee from the existing member on annual basis as well as admission fee from new members as entrance fee which is not an income eligible to tax by virtue of principle of mutuality which means that there exists no difference between two persons (i.e. they are one and the same) and a person cannot make profit from himself. The Hon'ble Apex Court in the case of Secunderabad club vs. CIT (supra) has dealt with the principle of mutuality and thus the relevant part is extracted below:

> *"31. While considering the triple test for applying the principle of mutuality, we find that in the case of Bangalore Club [2013] 350 ITR 509 (SC), the aforesaid triple test was applied. It was reiterated that the principle of mutuality envisages:*
>
> *i) Complete identity between the contributors and participators;*
> *ii) Action of the participators and contributors must be in furtherance of the mandate of the associations or the clubs. The mandate of the Club is a question of fact which has to be determined form the Memorandum of Articles of Associations, Rules of Membership, Rules of the Organizations, etc. which must be construed broadly.*
> *iii) There must be no scope for profiteering by the contributors from a fund made by them which could only be expended or returned to themselves."*

18.1. Similarly the decision of Hon'ble Delhi High Court in the case of CIT vs. Deloitte Touche Tohmastu (supra) has held as under:

> *"10. All three tests of mutuality having been satisfied as aforesaid, we are of the considered view that the receipts of the respondent/assessee wherein from its members were not in the nature of fees for technical services and that the same were exempt from tax having regard to the principle of mutuality."*

18.2. Therefore if the membership fee/ annual entrance fee of members is reduced from the so-called business income of the assessee company then the loss would further increase which further buttress the contentions of the assessee that the ICC is

not carrying on or holding the meetings, seminars and conferences for business purpose but its only is supportive activity carried on to the main object of the ICC for promotion and protection of trade, commerce and industry.

19. We also note that the other income comprises of interest income, rental income and other miscellaneous income. We further note that the interest income is accrued and earned from fixed deposits with the Banks which are maintained as per the provisions of Section 11(5)(iii) of the Act. The assessee has furnished the details of fixed deposits in schedule J of the ITR which is filed at page 50 and 95 of PB. Rental income and miscellaneous income were earned from building held by the assessee. Section 11(2) of the Act provides that the income of the institution falls short of 85% of the gross/total receipts or the said shortfall can be accumulated and set apart to be spent on the activities of the institutions over a period of 5 years. In other words the assessee can be said to have applied the said income over the said period provided that the said income is accumulated or set apart in terms of provision of Section 11(5) of the Act. Whereas provisions of 11(1) provides for accumulation of income of the trust to the extent of 15% of the gross receipts in perpetuity. In other words , the institution can retain 15% from the application of income without applying for charitable purpose in which accrued meaning thereby that 15% is indefinite accumulation and the assessee is not obliged to apply the same in subsequent years and can be retained as part of the corpus of the body. The AO has accepted which the same. But the institution has to comply with the requirements of section 11(5)(iii) of the Act. The ICC has fully complied with the provisions of section 11(5)(iii) of the Act and kept the funds invested in terms of the said section. So the ld CIT(A) has erred in treating the same as taxable income. But in any case we have allowed the main contentions of the ICC by allowing exemption u/s 11 of the Act on the entire receipts of the ICC as discussed supra.

20. Considering the above facts and ratio laid by the various judicial forums , we set aside the order of ld CIT(A) and direct the AO to allow exemption u/s 11 of the

Act in respect of entire receipts/income. Consequently ,the grounds no. 1to 5 are allowed.

21. Issue raised in ground no. 6 and 7 is against the order of Ld. CIT(A) not allowing the depreciation of Rs. 16,20,365/- as claimed by the assessee thereby upholding the assessment order.

22. Facts in brief are that the assessee has claimed depreciation of Rs. 16,20,365/- in AY 2013-14 and Rs. 18,43,085/- in AY 2014-15 as application of income. The AO as well as Ld. CIT(A) has not allowed the deduction of the said depreciation as an expense to be deducted from the gross receipts for the purposes of calculating the income available for application.

23. After hearing the rival contentions and perusing the material on record, we find that the assessee's case is squarely covered by the decision of Hon'ble Apex Court in the case of CIT vs. Rajashthan and Gujrati Charitable Foundation [2018] 402 ITR 441 (SC) in the context of amendment in Section 11(6) of the Act by the Finance (NO.2) Act 2014 w.e.f 01.04.2015 wherein it has been held that up to AY 2015-16 the assessee is entitled to claim the cost of acquisition of fixed asset as application of income and further depreciation thereon in subsequent years. The operative part is reproduced as under:

> *"2. After hearing learned Counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.*
>
> *3. It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions vs. CIT [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344.'*
>
> *4. It may also be mentioned at this stage that the legislature, realizing that there was no specific provision in this behalf in the Income Tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-16. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.*
>
> *5. It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.*

6. For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters."

24. Considering the facts of case and the decision of Hon'ble Apex Court, we set aside the order of Ld. CIT(A) and direct the AO to allow the depreciation on fixed asset as application of income/expenses. Accordingly ground nos. 6 and 7 are allowed.

25. Issue raised in ground no. 8 is against the confirmation of addition of Rs. 1,95,000/- by ld CIT(A) as made by AO by treating the sale value of motor car as income on the ground that the cost of car has been treated allowed as application of income when the car was purchased.

26. Facts in brief are that during the year the assessee has sold old motor car for a consideration of Rs. 1,95,000/- and purchased a new car of Rs. 14,49,732/-. The assessee has reduced the sale consideration from the fixed asset, however the AO rejected the same and treated the entire sale consideration as income by holding that the entire cost of car has been claimed as application of income in the year of purchase and thus the assessee was not entitledto reduction of cost of car from the sales consideration for the purpose of calculation of capital gain in the instant year which according to the AO would amount to double deduction.

27. The Ld. CIT(A) affirmed the order on this issue by holding that there is no opening WDV for this year.

28. After hearing the rival contentions and perusing the material on record, we find that up to AY 2015-16 even if fixed asset purchased by the assessee was claimed as application of income while computing the income, even then it is presumed that WDV is there in the books of account. We have even perused the provisions of Section 11(1)(a) of the Act which provide that if the sale consideration received on sale of assets is utilized for acquiring another asset then the same is treated as having applied for the charitable purposes. The case of the assessee also find support from the decision of Hon'ble Apex Court in the case of CIT vs. CIT vs. Rajashthan and Gujrati Charitable Foundation (supra) wherein it was held that besides claiming the full

deduction of cost of fixed asset in the year and the assessee would be entitled to depreciation thereon. By considering the ratio laid down in the said decision, we are of the view that even if the entire cost has been claimed as application of income even then the assessee is entitled to claim the deduction of WDV from the sales consideration in order to calculate the capital gain. Accordingly we set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the addition.

29. Issue raised in ground no. 9 is against the order of AO computing the deduction u/s 11(1)(a) @ 15% on the net income and not on the gross receipt of the ICC whereas the Ld. CIT(A) has not decided the issue on the ground of denial of exemption of assessee u/s 11 of the Act.

30. Facts in brief are that the assessee has computed the accumulation u/s 11(1)(a) of the Act on the total receipt thereby computing admissible amount of Rs. 2,41,45,442/- whereas the AO has computed the deduction u/s 11(1)(a) on net receipt at Rs. 58,85,340/-.

31. The assessee raised said issue before the Ld. CIT(A) but the Ld. CIT(A) did not decide the same on the ground that exemption to the assessee has been denied as a result of enhancement of income and thus there is no need to adjudicate the same thereby dismissing the ground raised by the assessee.

32. After hearing the rival contentions and perusing the material on record, we find that accumulation u/s 11 is to be computed on the gross receipts and not the net receipts. The issue settled by the Hon'ble Surpeme Court in the case of ACIT vs. A.L.N. Rao Charitable Trust [1995] 83 Taxman 252 (SC) wherein it has been held that statutory accumulation u/s 11(1)(a) has to be computed on the gross receipts of the assessee. The relevant extract of the decision held as under:

> *"A mere look at section 11(1)(*a *) as it stood at the relevant time clearly shows that out of the total income accruing to a trust in the previous year from property held by it wholly for charitable or religious purposes, to the extent the income is applied for such religious or charitable purpose, the same will get out of the tax net but so far as the income which is not so applied during the previous year is concerned, at least 25 per cent of such income or Rs. 10,000, whichever is higher, will be permitted to be accumulated for charitable or religious*

*purpose and it will also get exempted from the tax net. Then follows sub-section (2) which seeks to lift the restriction or ceiling imposed on such accumulated income during the previous year and also brings such further accumulated income out of the tax net if the conditions laid down in section 11(2) are fulfilled. The contention that the investment as contemplated by section 11(2)(*b*) must be investment of all accumulated income in the Government securities, etc., namely, 100 per cent of the accumulated income and not only 75 per cent thereof and if that is not done then, only the invested accumulated income to the extent of 75 per cent will get excluded from income-tax assessment, the remaining 25 per cent of the accumulated income will not earn such exemption, could not be accepted. Section 11(1)(*a*) operates on its own. By its operation two types of income earned by the trust during the previous year from its properties are given exemption from income-tax(*i*) that part of the income of the previous year which is actually spent for charitable or religious purposes in that year, and (*ii*) out of the unspent accumulated income of the previous year 25 per cent of such total property income or Rs. 10,000, whichever is higher, can be permitted to be accumulated by the trust, earmarked for such charitable or religious purposes. Such 25 per cent of the income or Rs. 10,000, whichever is higher, will also get exempted from income-tax. That exhausts the operation of section 11(1)(*a*). Then follows sub-section (2) which deals with the question of investment of the balance of accumulated income which has still not earned exemption under sub-section (1)(*a*). So far as that balance of accumulated income is concerned, that balance also can earn exemption from income-tax meaning thereby the ceiling or the limit of exemption of accumulated income from income-tax as imposed by section 11(1)(*a*) would get lifted if additional accumulated income beyond 25 per cent or Rs. 10,000 whichever is higher, as the case may be, is invested as laid down by section 11(2) after following the procedure laid down therein. Therefore, sub-section (2) only will have to operate* qua *the balance of 75 per cent of the total income of the previous year or income beyond Rs. 10,000, whichever is higher, which has not got the benefit of tax exemption under section 11(1)(*a*). If 100 per cent of the accumulated income of the previous year was to be invested under section 11(2) to get exemption from income-tax then the ceiling of 25 per cent or Rs. 10,000, whichever is higher which was available for accumulation of income of the previous year for the trust to earn exemption from income-tax as laid down by section 11(1)(*a*) would be rendered redundant and the said exemption provision would become* otios. *Out of the accumulated income of the previous year an amount of Rs. 10,000 or 25 per cent of the total income from property, whichever is higher, is given exemption from income-tax by section 11(1)(*a*) itself. That exemption is unfettered and not subject to any conditions. In other words, it is an absolute exemption. If sub-section (2) is so read as suggested by the revenue, what is an absolute and unfettered exemption of accumulated income as guaranteed by section 11(1)(*a*) would become a restricted exemption as laid down by section 11(2). Section 11(2) does not operate to whittle down or to cut across the exemption provisions contained in section 11(1)(*a*) so far as such accumulated income of the previous year is concerned It has also to be appreciated that sub-section (2) of section 11 does not contain any* non obstante *clause like 'notwithstanding the provisions of sub-section (1)' Consequently, it must be held that after section 11(1)(*a*) has full play and if still any accumulated income of the previous year is left to be dealt with and to be considered for the purpose of income-tax exemption section 11(2) can be pressed in service and if it is complied with then such additional accumulated income beyond 25 per cent or Rs. 10,000, whichever is higher, can also earn exemption from income-tax on compliance with the conditions laid down by section 11(2). It is true that section 11(2) has not clearly mentioned the extent of the accumulated income which is to be invested. But on a conjoint reading of the aforesaid two provisions of sections 11(1) and 11(2) this is the only result which can follow. Therefore, if the entire income received by a trust is spent for charitable purposes in India, then it will not be taxable but if there is a saving, i.e., to say an accumulation of 25 per cent or Rs. 10,000, whichever is higher, it will not be included in the taxable income, section 11(2) further liberalizes and enlarges the exemption. A combined reading of both the provisions would*

clearly show that section 11(2) while enlarging the scope of exemption removes the restriction imposed by section 11(1)(a) *but it does not take away the exemption allowed by section 11(1)*(a)*. The combined operation of section 11(1)*(a) *and section 11(2) as applicable at the relevant time would yield the following result :—*

(*i*) *If the income derived from property held under trust wholly for charitable or religious purposes during the previous year was Rs. 1 lakh and if Rs. 20,000 therefrom were actually applied to such purposes in India then those Rs. 20,000 would get exempted from payment of income-tax as per the first part of section 11(1)*(a)*.*

(*ii*) *Out of the remaining accumulated income of Rs. 80,000 for the previous year, a further sum of Rs. 25,000 would get exempted from payment of income-tax as per second part of section 11(1)*(a)*. Thus, out of the total income derived from property during the previous year, that is, Rs. 1 lakh, Rs. 45,000 in all, would get excluded from the tax net on a combined operation of first and second part of section 11(1)*(a)*.*

(*iii*) *The aforesaid ceiling of Rs. 25,000 of accumulated income from property of previous year, would get lifted under section 11(2) to the extent the balance of such accumulated income was invested as laid down by section 11(2). To take an illustration if, say an additional amount of Rs. 20,000 out of the balance of accumulated income of Rs. 55,000 was invested as per section 11(2) then this additional amount of Rs. 20,000 of accumulated income would get excluded from the tax net as per section 11(2).*

(*iv*) *The remaining balance of the accumulated income out of Rs. 55,000 that is Rs. 35,000 if not invested as per sub-section (2) of section 11 would be added to the taxable income of the trust and would not get exempted from the tax net.*

(*v*) *If on the other hand, the entire remaining accumulated income of Rs. 55,000 was wholly invested as per section 11(2) the said entire amount of Rs. 55,000 will get exempted from the tax net.*

Therefore, the appeal was dismissed."

32.1. Similarly in the case of CIT vs. Programme for Community Organization [2001] 116 Taxman 608 (SC) wherein it has held that the accumulation u/s 11(1)(a) has to be computed on the gross income by observing and holding as under:

"3. The question that really required consideration is whether, for the purposes of section 11(1)(a) of the Income Tax Act, 1961 ("of the Act), the amount for the grant of exemption of twenty five percent should be the income of the trust or it should be its total income determined for the purposes of assessment to income tax. This question has to be answered in the light of these facts the assessee trust, received donations in the aggregate sum of Rs. 2,57,376/- It applied thereof for its charitable purpose the aggregate sum of Rs. 1,70,369/- leaving a balance of Rs. 87,010/-. The question is whether the assessee is entitled to accumulate twenty five percent of Rs. 2,57,376/- as it contends, or twenty five percent of Rs. 87,010/- as the revenue appeared to contend."

32.2. Considering the facts of the case and ratio laid down by the Hon'ble Apex Court we are inclined to direct the AO to allow the accumulation u/s 11(1)(a) of the

Act on the gross receipt of the assessee and not on the net receipt. Accordingly ground raised by the assessee is allowed.

33. Now we shall take in ITA No. 934/Kol/2023 for AY 2014-15 and find that the issues are similar to ones as decided by us in ITA No. 933/Kol/2023 for AY 2013-14.Since we have decided the similar issue in ITA No. 933/Kol/2023 for AY 2013-14 in favour of the assessee, therefore our findings/decisions in the above ITA No. 933/Kol/2023 would, mutatis mutandis, apply to this appeal as well. Consequently this appeal is also allowed.

34. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 22nd December, 2023

Sd/-	Sd/-
(RajpalYadav /राजपाल यादव)	(Rajesh Kumar / राजेश कुमार)
Vice-President /उपाध्यक्ष	Accountant Member / लेखा सदस्य

Dated: 22nd December, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Indian Chamber of Commerce, 4, ICC Tower, India Exchange Place, Kolkata-700001
2. Respondent – DCIT, Circle-1(1), (Exemption), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata