

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

ITA 3175/Mum/2023 - A.Y. 2018-19

ITA 3176/Mum/2023 - A.Y. 2017-18

Dy. Commissioner of Income-tax(E)-2(1), Room No.608, 6th Floor, MTNL Building, Peddar Road, Cumbala Hill, Mumbai-400 026	vs	The Gem And Jewellery Export Promotion Council, Office No.D2B, Ground Floor, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E) PAN : AAATT3203H
APPELLANT		RESPONDENT

Assessee by : Shri Nitesh Joshi, Adv. & Shri Ashwin Kashinath

Respondent by : Dr. Kishor Dhule – CIT DR

Date of hearing : 21/05/2024

Date of pronouncement : 26 / 06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Both the appeals filed by the Revenue are preferred against the orders of Ld.Commissioner of Income-tax (A) (National Faceless Appeal Centre (NFAC), [for brevity, 'Ld.CIT(A)'] order passed under section 250 of the Income-tax Act, 1961 (in brevity the Act), for A.Y. 2018-19 and 2017-18 respectively. The impugned orders are emanated from the orders of the Ld.Assistant Commissioner of Income

Tax (Exemption), Circle-2, Mumbai[for brevity, 'Ld. "AO'] for A.Y. 2017-18, date of order 22/12/2019 order passed under section 143(3) and for A.Y. 2018-19 order passed by Ld. National e-assessment Centre (NEAC) date of order 22/04/2021 order passed under section 143(3) read with section 144B of the Act.

2. The revenue has taken the following grounds of appeals: -

2.1 ITA 3175/Mum/2023 (A.Y. 2018-19)

1. *Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the benefit of exemption u/s 11 & 12 of the I.T. Act, 1961 to the assessee, ignoring the fact that the objects of the assessee falls under the category of "advancement of any other object of general public utility" and the activities are clearly in the nature of providing services in relation to trade, business and commerce in lieu of fees and total receipts of the assessee from such activities which are more than 20% of total receipts, hence the proviso to section 2(15) of the I.T. Act is applicable and the assessee is not entitled to exemption u/s 11 of the Act in view of the provisions of section 13(8) of the I.T. Act, 1961?"*
2. *Whether, on the facts and in the circumstances of the case and in law the Ld. CIT(A) is right in allowing the exemption u/s 11 of the Act to the assessee whose case squarely falls under the proviso (i) to section 2(15) of the Act with respect to the advancement of any other object of general utility, as the act of conducting exhibitions being in the nature of trade and commerce. When such activities have been held as trade or commerce in the APEC case judgement of the Supreme Court?*
3. *Whether, on the facts and to the circumstances of the case and in law the Ld. CIT(A) is right in allowing exemption u/s 11 of the Act to the assessee, on the basis of the manner in which the funds generated from commercial activities are utilized even though provisions of proviso to section 2(15) clearly do not provide for any such exception on account of nature of use or application or retention of income from: commercial activities?*

4. *Whether on the facts and circumstances of the case and in law, the assessee trust is not liable to pay taxes on the surplus generated from commercial activities, akin to any other entity engaged in such commercial activity?*
5. *Whether on the facts and circumstances of the case and in law and in light of the law laid down by Hon'ble Supreme Court in Civil Appeal No, 21762 of 2017 in various batch of appeal and SLP's [lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority (2022) 143 taxinn.com278(SC)], the Ld.CIT(A) erred in not appreciating that even if the activities of the assessee are held to be covered under residuary part of section 2(15) as "advancement of any other object of general public utility" even then it is not entitled to exemption, u/s 11 because it is hit by the proviso to section 2(15) as the income of the assessee consists of activities which are in the nature of trade, commerce or business?*
6. *Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is right in allowing the accumulation of Income u/s 11 (2) of the Act without appreciating the fact that the purpose for which the income is being accumulated should not be vague and ambiguous and should be specific?*
7. *Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is right in allowing the prior period expenditure of Rs. 35,15.59S/- without appreciating the fact that as per provisions of Income-tax Act, the expenditure are allowed in the year in which it is incurred?"*

2.2 ITA 3176/Mum/2023(A.Y. 2017-18)

1. *"Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in allowing the benefit of exemption u/s 11 & 12 of the IT, Act, 1961 to the assessee, ignoring the fact that the objects of the assessee falls under the category of "advancement of any other object of general public utility" and the activities are clearly in the nature of providing services in relation to trade, business and commerce in lieu of fees and total receipts of the assessee from such activities which are more than 20% of total receipts, hence the proviso to section 2(15) of the IT. Act is applicable and the assessee is not entitled to exemption u/s 11 of the Act in view of the provisions of section 13(8) of the I.T. Act, 1961?"*
2. *Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is right in allowing the exemption u/s 11 of the Act to the assessee whose case squarely falls under the proviso (i) to section 2(15) of the Act with respect to the advancement of any other object of general utility, as the*

act of conducting exhibitions being in the nature of trade and commerce. When such activities have been held as trade or commerce in the APEC case judgement of the Supreme Court : ?

3, Whether, on the facts and in the circumstances of the case and in law the Ld.CIT(A) is right in allowing exemption u/s 11 of the Act to the assessee, on the basis of the manner in which the funds generated from commercial activities are utilized even though provisions of proviso to section 2(15) clearly do not provide for any such exception on account of nature of use or application or retention of income from commercial activities?

4. Whether on the facts and circumstances of the i case and in Jaw, the assessee trust is not liable to pay taxes on the surplus generated from its I commercial activities, akin to any other entity] engaged in such commercial activity?

5. Whether on the facts and circumstances of the case and in \ law and in light of the law laid down by Hon'ble I Supreme Court in Civil Appeal No. 21762 of 2017 in various batch of appeal and SLP's (Lead case ACIT (Exemptions) Vs, Ahmedabad Urban Development Authority [2022] 143 taxmnn.com 278(SC)), the Ld.CIT(A) erred in not appreciating that even if the activities of the assessee are held to , be covered under residuary part of section 2(15) as "advancement of any other object of general public utility" even then it is not entitled to exemption u/s 1 i because it is hit by the proviso to section 2(15) as the income of the assessee consists of activities which are in the nature of trade, commerce or business?

6, Whether, on the facts and in the circumstances of the case and to law the Ld.CIT(A) is right infollowing the accumulation of Income u/s 1 1 (2) ofthe Act without appreciating the fact that the purpose for which the income is being accumulated should not be vague and ambiguous and should be specific?

3. In the outset both the appeals have common issues and common fact. Therefore, both the appeals are taken together, heard together, and disposed of together. With the consent of both the parties, **ITA No.3176/ MUM/2023** is taken as the lead case.

4. Brief facts of the case are that the assessee, M/s Gems And Jewellery Export Promotion Council is a company incorporated under section 25 of the

Companies' Act, 1956 sponsored by Ministry of Commerce, Government of India. It is a charitable organization registered under section 12A of the Income-tax Act, 1961, since 1976 and is carrying out its activity strictly in conformity with its objects. The assessee filed return of income for both the assessment years declaring total income at Nil by claiming the exemption under section 11 of the Act. The notice under section 143(2) was issued and the assessment was completed by ascertaining the total income at Rs.173,38,88,333/-. The Ld.AO has rejected the claim under section 11 and entire profit is taken as business income amount to Rs.16,18,59,964/-. The additions are made as following heads, discarded asset amount to Rs.28543/- and loss on sale of asset Rs.22,728, prior period expenses Rs.35,15,598/- and addition under section 56(2)(vii)(v) read with section 50C amount to Rs.79,62,000/- which works out total amount to Rs.17,33,88,833/-. Being aggrieved, the assessee filed an appeal before the Ld.CIT(A). After considering the assessee's submission, the exemption under section 11 is considered and the entire addition is deleted. Ld. CIT(A) has considered the Proviso to section 2(15) as argued in the case charitable activity in the nature of "general public utility" (in short, 'GPU') adjudicated by determining the scope of GPU in the definition of charitable purpose. Considering the above provision, Ld.CIT(A) allowed the appeal of the assessee. Being aggrieved, the revenue filed an appeal before us.

5. The Ld.DR vehemently argued and placed that the assessee is converting the GPU as charitable work. In any case, the assessee is doing the business and the trading which is a full nature of business activity, and the commercial activity is more than 20% of the total receipt. So, in any case, the assessee has

contravened the provisions of section 2(15) of the Act. Ld.AO has correctly withdrawn the exemption u/s 11 of the Act. Ld.DR invited our attention in assessment order page 3 paragraphs 4.2 & 4.3 which are reproduced herebelow: -

“4.2 It is seen from the return of income filed by the assessee that the assessee is engaged in various commercial activities which prima-facie are in the nature of business. As such, it is clear that purpose of the assessee trust is not education, medical relief, relief to poor, preservation of environment and preservation of monuments or places or objects of artistic or historic interest but at the most of the advancement of any other object of general public utility. Since the object or activity of the assessee falls under the category of "advancement of any other object of general public utility", the assessee is engaged in any commercial activity for a fee or cess either direct or indirect and also the receipts from such commercial activity is more than 20% of the total receipts, the provisions of proviso to Section 2(15) of the Act are attracted.

4.3 The past history of the assessee shows that the proviso to section 2(15) has been invoked and exemption u/s 11 has been denied in earlier years against which the assessee is in appeal. Keeping in mind this fact, the assessee was asked to explain as to whether the issues and facts of the case for the year under consideration are distinguishable from the facts and the issues of the earlier years. The assessee in its submissions stated that there no change in facts and issues of the case as compared to the earlier years. The assessee was issued notice u/s. 142 (1) dated 20.11.2019 asked to explain as to why not the proviso to section 2(15) be invoked and exemption u/s 11 denied for the year under consideration i.e A.Y. 2017-18.”

6. The Ld.DR prayed for dismissal of the appeal order and to uphold the addition made by the Ld.AO.

7. Ld.AR filed the written submissions which are kept in the record (in short, 'APB'). The Ld.AR argued vehemently and first placed that the assessee is a promotion council and membership fees received from the members. The assessee used to arrange exhibitions all over the world for promoting the jewellery and the business of gems and jewellery. Accordingly, the assessee arranged the exhibitions in India and outside India. No sale was occurred during the exhibition arranged by the assessee. Considering the financial report, the Ld.AR has drawn our attention in APB page 107- 109 about the financial statement related to assessee's activity in exhibition in India. The financial statements are reproduced as below:-

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THE GEM & JEWELLERY EXPORT PROMOTION COUNCIL			
ACCOUNTING YEAR ENDED 31ST MARCH 2017			
ASSESSMENT YEAR 2017-18			
STATEMENT OF NET DEFICIT FROM EXHIBITION & OTHER ACTIVITIES			
Sr. No.	Particulars	Rs.	Rs.
1	Receipts for the Year		
	- Membership Fees		10,69,45,
	- Interest Income		13,48,76,
	- Grants from Government of India (GOI)		9,43,44,
	- Exhibition and Other Activities		1,05,59,29,
	RECEIPTS AS PER INCOME & EXPENDITURE ACCOUNT		1,39,20,95,1
Add:	Grant from GOI directly credited to the Specified Reserve & Surplus		-
	RECEIPTS AS PER COMPUTATION OF INCOME		1,39,20,95,1
2	Deficit from Exhibition and Other Activities		
	Surplus as per Income & Expenditure Account		16,18,59,90
Less:	Membership Fees	10,69,45,026	
	Interest Income	13,48,76,342	
	Grants from Government of India (GOI)	9,43,44,476	
			33,61,65,844
	NET DEFICIT FROM EXHIBITION & OTHER ACTIVITIES		(17,43,05,880)

THE GEM & JEWELLERY EXPORT PROMOTION COUNCIL (A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL) DETAILS OF INCOME AND EXPENDITURE FROM EXHIBITIONS AND ADVERTISEMENT FINANCIAL YEAR ENDED 31.03.2017			
INCOME FROM EXHIBITIONS:			
	Particulars	Rs.	Rs.
A.	IN INDIA		
	India International Jewellery Show		47,80,60,315
	India International Jewellery Show Signature		23,07,20,578
	India Gem & Jewellery Machinery Expo (IGJME)		1,41,10,514
			72,28,91,407
B.	OUTSIDE INDIA:		
	JCK, Las Vegas		6,11,47,447
	Hong Kong Jewellery Show - March Pearl		3,73,18,388
	Hong Kong Jewellery Show - March CEC		3,37,87,867
	Jewellery Arabia		3,41,79,081
	Watch & Jewellery Show, Basel		1,88,51,561
	Vicenza First Show Italy		1,25,75,558
	Vicenza charm show		1,23,15,849
	Indian Diamond Week at DDC (New York U.S.A)		57,51,170
	Singapore Jewellery International Expo		40,87,538
	Vicenza Oro Dubai Show		3,37,09,567
	The Antwerp Diamond Trade Fair		13,27,818
	India -Saarc Iran Jewellery BSM		1,27,84,527
	Forfeiture Income Other Exhibition		20,03,500
	Sundry Balances Written Back		93,248
	Miscellaneous Income		7,217
	Excess Provisions Written Back		2,14,107
	Foreign Exchange Gain		2,065
	Profit on sale of Assets		27,296
	Provisions for Doubtful Debts written back		45,897
			27,02,29,7
	Total Exhibition Income (A)		99,31,21,1
EXPENDITURE ON EXHIBITION AND ADVERTISEMENT & PUBLICITY			
ADVERTISEMENT & PUBLICITY:			
	In India		13,69,39,105
	Outside India		99,05,568
			14,68,44,
II.	EXHIBITIONS		
A	IN INDIA:		
	India International Jewellery Show	36,84,83,693	
	India International Jewellery Show Signature	17,53,93,691	
	India Gem & Jewellery Machinery Expo	66,27,148	
	India SAARC Iran Jewellery BSM	1,16,27,802	
	India International Diamond week	52,56,463	
			56,73,88,797
	OUTSIDE INDIA:		
	Watch & Jewellery Show, Basel	1,83,89,100	
	Vicenza Oro, Dubai	3,79,53,163	
	Vicenza Choice, Italy	1,20,47,526	
	JCK Las Vegas	6,76,34,922	
	Hongkong Watch & Jewellery Show March Pearl	3,98,75,988	
	Hongkong Watch & Jewellery Show March CEC	3,60,78,759	
	Vicenza	1,25,08,103	
	Jewellery Arabia, Baharain	3,23,50,706	
	Singapore International Jewellery Expo	37,33,164	
	Indo Euro BSM 2016	4,98,277	
	The Antwerp Diamond Trade Fair 2017	12,07,106	
	Employee Benefit Expenses	1,20,16,541	

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Rent	82,522	
Electricity Expenses	3,36,835	
Foreign Exchange Fluctuation	11,10,867	
Legal & Professional Charges	29,288	
Provision for Doubtful Debts	8,23,481	
Depreciation	28,51,722	
Other Administrative & Operational Expenses	1,44,58,462	
		29,39,86,532
		86,13,75,329
Total Exhibition Expenses (B)		1,00,82,20,002
Net Deficit from Exhibition Activities (A-B)		(1,50,98,894)

8. The Ld.AR further argued that the assessee is not taking any benefit of no business transaction. This is the promotion of business and trading all over India. The issue was already agitated before the ITAT, Mumbai Bench. The Ld.AR drew out attention in the assessee's own case the order was passed by the co-ordinate bench of ITAT, Mumbai bearing ITA No.752/Mum2017 & 989/Mum/2019 Date of pronouncement **31/01/2023**. The relevant paragraphs are reproduced below: -

5.10. In the instant year a assessee of promoting the export of gems and jewellery remained the same. In the year under consideration, the assessee has claimed the organising and participating in exhibitions and trade fair as the core activity promotion of Indian products of gems, jewellery overseas market buyers in these exhibitions, to overseas buyer and prohibited from purchase or sale of products. The exhibitions are meeting point of overseas buyers and Indian exporter and during the period of exhibition, the exporters are also made aware about various policies of foreign exchange to the country through seminars and conference organized alongwith exhibitions where exporter across the India participate.

5.11 Thus, we find that there is no change in facts and circumstances in the year under consideration 2010-11, therefore following the rule of consistency, the Revenue should have allowed the exemption u/s 11 of the Act to the assessee in the year under consideration as same issue has been conceded by the Revenue in AY 2010-11. But, there is a new development in relation to the a[[ea; for the year under consideration is the judgment of 19/10/2022 in the case of **Ahmedabad Urban development authority(supra)**, where applicability of the proviso to section 2(15) of the Act in case of entities engaged in charitable activity in the nature of general public utility (GPU) has been thoroughly examined and analyzed, therefore, now the issue, arises before us is whether in the light of the recent decision of the Hon'ble Supreme Court its order dated 19/10/2022 in the case of Ahmedabad Urban development authority (supra), the proviso to section 2(15) will apply in the case of the assessee or not. For ready reference, said section 2(15) and section 13(8)[i.e. directing consequent withdrawal of exemption under section 11] are reproduced as under:

“Section 2(15)

(15) "charitable purpose? includes relief of the poor, "education "yoga,) medical relief, "(preservation of environment" (including water-sheds, forests and wildlife and preservation of monuments or places o 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 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 income from such activity, unless-

- (i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility? 5; And

- (ii) *The aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]*

Section 13(8)

(8) *Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.*

5.12 *The proviso to section 2(15) is attracted in case charitable activity in the nature of 'general public utility'. adjudicated by the determining the scope of the phrase "general public utility" (GPU) in the definition of "charitable purposes" primarily on the grounds that the institutions were carrying on trade, commerce or business for consideration, which does not qualify as GPU under the provisions of the Act as amended by Finance Act (FA), 2008 read with subsequent amendments.*

5.13 *Before the Hon'ble supreme court (supra), in the cases of most of the entities, there is no dispute as to the activities involved in the appeal qualified as GPUs within the meaning of the term "charitable purposes", but the dispute was in respect of the meaning of "fee, cess or other consideration" and its impact on construing whether the activity falls under to the description of "trade, commerce or business".*

9. The Ld.AR has further invited our attention in the revenue's ground No.7 for A.Y. 2017-18 where the Revenue claimed that the prior period expenditure was duly allowed by the Ld.CIT(A) without considering the provisions of the Act.

In this case, Ld.AR invited our attention in the observation of the Ld.CIT(A). In the appeal order the relevant paragraphs are reproduced as under: -

4. *Decision: —*

Ground No.1, 2 and 3:- All the above three grounds are related to the denial of exemption u/s 11 of the IT Act and addition of Rs.17,33,88,833/-. This issue was in appeal during earlier Assessment Years also. The assessee claimed its activity to be charitable and claimed benefit of section 11 of the IT Act. The Assessing Officer referred to the amendment to the definition of charitable purpose to section 2(15) of the IT Act with effect from 01.04.2009 where in it is prescribed that 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 irrespective of the nature of use or application of income from such activity. The Assessing Officer after considering the submissions and facts on record held that the assessee has been registered for the charitable purpose of advancement of any other object of general utility for promotion of export of Gems & Jewellery and therefore the activity of conducting exhibition being in the nature of Trade, Commerce or business the assessee is not entitled for exemption u/s 11 of the IT Act and denied the benefit of exemption u/s 11 and 12 by holding that case of the assessee is hit by the proviso to section 2(15) of the IT Act. Further when the matter travel before the CIT(A), he confirmed the action of the AO.

Aggrieved by this the assessee preferred further appeal before the ITAT. The Hon'ble ITAT Mumbai, vide its order dated 31.01.2023 in ITA No. 752/MUM/2017 for A.Y.2012-13 and ITA No.989/MUM/2019 for A.Y.2013-14 has decided the matter in favour of the assessee and allowed the benefit of the section 11 and 12 to the assessee. While disposing off this appeal the Hon'ble ITAT has held as follows:

"5.12 The proviso to section 2(15) is attracted in case charitable activity in the nature of 'general public utility', adjudicated by the determining the scope of the phrase "general public utility" (GPU) in the definition of "charitable purposes" primarily on the grounds that the institutions were carrying on trade, commerce or business for consideration, which does not qualify as GPU under the provisions of the Act as amended by Finance Act (FA), 2008 read with subsequent amendments.

5.13 Before the Hon'ble Supreme Court (Supra), in the cases of most of the entities, there is no dispute as to the activities involved in the appeal qualified as GPU's within the meaning of the term "charitable purposes", but the dispute was in respect of the meaning of "fee, cess or other consideration" and its impact on construing whether the activity falls under to the description of "trade, commerce or business".

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5.14 *The Hon'ble Supreme Court held that where 'fee, cess or other consideration' is statutorily fixed or where it represents recoupment of cost or cost with nominal mark up, the activity may not be construed as 'trade, commerce or business' and will be excluded from the mischief of commercial activity under the amended provision. If, however, 'fee, cess or other consideration' charged is substantially higher over cost, it is tainted with 'trade, commerce or business' and will qualify for tax exemption only if receipts are within the quantitative limit prescribed by the amended provision. The relevant paragraphs of the order of the Hon'ble Supreme Court (supra) are reproduced as under for ready reference.*

"170. Classically, the idea of charity was tied up with eleemosynary. However, 'charitable purpose' - and charity as defined in the Act have a wider meaning where it is the object of the institution which is in focus. Thus, the idea of providing services or goods at no consideration, cost or nominal consideration is not confined to the provision of services or goods without charging anything or charging a token or nominal amount. This is spelt out in Indian Chamber of Commerce (supra) where this Court held that certain CPUs can render services to the public with the condition that they would not charge 'more than is actually needed for the rendering of the services, - may be it may not be an exact equivalent, such mathematical precision being impossible in the case of variables, - may be a little surplus is left over at the end of the year - the broad inhibition against making profit is a good guarantee that the carrying on of the activity is not for profit'".

171. Therefore, pure charity in the sense that the performance of an activity without any consideration is not envisioned under the Act. If one keeps this in mind, what section 2(15) emphasizes is that so long as a CPU's charity's object involves activities which also generates profits (incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated), it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to section 2(15) for receipts from such profits, is adhered to.

5.13 *Before the Hon'ble Supreme Court(Supra), in the cases of most of the entities, there is no dispute as to the activities involved in the appeal qualified as GPU's within the meaning of the term "charitable purposes", but the dispute was in respect*

172. Yet another manner of looking at the definition together with sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service

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relating to business is not attracted-if the quantum of such profits do not exceed 20% of its overall receipts."

5.15 Thus, the Hon'ble Supreme Court has laid down principle giving the example of 'Gandhi Peace Foundation' that where in the process of dissemination of Philosophy of Mahatma Gandhi through museum and exhibition for a nominal cost is ipso facto not a business. Similarly, the Hon'ble Supreme Court has held that services of low-cost hostel, providing of marriage halls or supply of blood bank for nominal markup is not in the nature of business.

.....

5.18 When we examine the facts of the instant case before us, we find that the Ld. AO and the Ld. CIT(A) has disputed the activities of conducting exhibitions and trade fair by the assessee, which according to the Assessing Officer are in the nature of trade, commerce or business or activity of rendering service in relation to trade, commerce or

5.19 We find that in the year under consideration, the assessee has declared expenditure of Rs.83,77,48,288/- on the exhibitions within and outside India. The detail of said expenditure is provided in the notes to the financial statement for the year ended 31/03/2012, which is available on paper book page 124 to 126. As against this expenditure on exhibitions, revenue (income) of Rs.83,95,30,850/- from exhibitions within and outside India has been shown in the notes to financial statement, which are available on paperbook page 119. The assessee has further claimed expenditure on advertisement for exhibition amounting to Rs.1,78,37,641/-.

Ground No. 4:-Addition on account of denial of accumulation u/s 11(2):-

During the course of assessment proceeding the A.O made an alternative disallowance of accumulation of income u/s 11 (2) of the IT act. The AO concluded in his order that furnishing form- 10 is not a formality but require precise details of the proposed projects and should not be reduce to a formality by merely reproducing the objects and denied the accumulation of u/s 11(2) of the IT Act.

Against such conclusion of the AO, the assessee submitted that accumulated income u/s 11(2) for specified purpose and the same has been spent in subsequent financial years for the purpose for which said funds has been accumulated i.e towards the objects of the Trust. It was further submitted that once the assessee has accumulated income with a specific purpose and such purpose is specified in the main objects of the trust, then the Assessing Officer cannot deny such accumulation of income merely for the reason that purpose specified in Form 10 is vague and general in nature. As long as objects of the Trust provide for such purpose, then the assessee can accumulate funds for the purpose which is specified in trust deed. Further the assessee submitted

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that this view is fortified by the decision of Hon'ble Gujrat High Court in the case of CIT (Exemption) v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust (409 ITR 591) where it was held that lack of declaration in Form no. 10 regarding specific purpose for which funds were being accumulated by the assessee trust would not be fatal to the exemption claimed u/s 11(2) of the Act. The Hon'ble Supreme Court has dismissed SLP filed by the department in the above case and has upheld the findings of the Hon'ble Gujrat High Court.

Considering the facts of the case and also the rulings cited above, alternate addition made by the assessee by denying the benefit of section 11(2) is not in accordance with the act and hence addition made by the assessing officer is deleted.

Ground No.5(a)T- "The assessee has challenged the action of the AO that Prior Period expenses of Rs.35,15,598/-. The AO has not made any elaborate discussion as to why the same is disallowed. Addition made without adequate discussion has been objected by the assessee. I am of the view that as all the expenditure were incurred by the assessee towards the objects of the trust and the AO has not brought out any adverse finding that this is not incurred for the objects of the trust, the same needs to be allowed as a deduction consequent to the allowability of benefit the section 11 of the assessee. Ground of appeal of the assessee is allowed.

Ground No.5(b):- Addition on account of difference between purchase consideration and valuation of the property:- During the course of Assessment proceedings the AO observed that assessee trust has purchased the immovable property vide agreement dated 02.03.2017 and the stamp duty value of the property is Rs.4,02,12,000/- and consideration paid by the assessee Rs.3,22,50,000/-. The AO brought the difference of Rs.79,62,000/-being the difference between the stamp duty value and the consideration paid by the assessee by invoking of provision of section 50C. The assessee in his submission stated as follows:

"22. During the year under consideration the appellant purchased a commercial property being Premises no. 16, D wing, 4th Floor, Building No. 4, Plot No. 78, Commerce Centre CHSL, Janata Nagar, Tardeo Road, Mumbai - 400 034 vide agreement dated 02.03.2017 for a consideration of Rs. 3,22,50,000/-. The stamp duty valuation for the aforesaid property as adopted by the valuation authorities was Rs. 4,02,12, 000/-.

23. The learned Assessing Officer made addition of Rs. 79, 62, 000/- under Section 56(2)(vii)(b)(ii) of the Act being the difference between purchase consideration and stamp duty value.

24. It is submitted that the provisions of Section 56(2)(vii)(b) of the Act is not applicable to the Appellant as it is a Trust. The said provision is applicable only in case of an individual or HUF. The relevant extract of the section is reproduced below:

"where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009, — (a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum; (b) any immovable property, (i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property; (ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:"

25. Thus, the said provisions are not applicable in the case of the Appellant and on this ground alone, the addition made by the Assessing Officer ought to be deleted.

26. It is further submitted that the Assessing Officer did not give an opportunity to the appellant to provide an explanation for the above difference in purchase consideration. This constitutes a violation of the principles of natural justice.

27. The Assessing Officer failed to appreciate that the property, being a 49 years old depleted building, was a distress sale. The appellant obtained a valuation report from an approved valuer determining the fair market value of the property at Rs. 3,27,54,750/- which is marginally higher than the amount paid by the appellant. The Assessing Officer without considering these factual aspects erroneously invoked Section 56(2)(vii)(b) of the Act and made the addition of Rs. 79,62,0007-."

Submission made by the assessee was examined in this regard. The AO invoked the provisions of Section 56(2)(vii)(b) of the IT Act which is applicable only for individuals and HUF's. There was no appropriate machinery provisions to tax trust in case of difference between the actual consideration paid and the stamp duty value. The Assessing Officer has invoked wrong provisions of the Act and the said provisions are not applicable in the case of the assessee and on this ground alone, the addition made by the Assessing Officer is deleted."

Thus, we find that in the year under consideration there is net loss of Rs.1,60,55,079/- from the activity of exhibitions conducted by the assessee within and outside India. In the immediately preceding assessment year the expenses on exhibitions were of Rs.77,09,23,044/- as compared to revenue or income of Rs.70,79,56,744/-. The assessee has further incurred expenditure on advertisement for exhibitions and thus there was a net loss from the consideration charged by the assessee for conducting said exhibitions or trade fair. Details of exhibition revenue and expenses submitted by the assessee for assessment year 2011-12 to 2015-16 is reproduced as under.

.....

5.20 Thus, in the instant case it is evident that assessee has charged fee or consideration for conducting exhibitions or trade fair is slightly below the cost. The Hon'ble Supreme Court in the case of AEPC has held that activity of renting space to individual exhibitors or exporters in the exhibition or trade fair is a service in relation to trade commerce or business, but in the instant case, there being no markup on consideration charged from the exporter, therefore in the broad principles laid down by the Hon'ble Supreme Court, the activity is beyond the purview of either trade, commerce and business or activity of rendering services in relation to trade, commerce or business.

5.23 In view of the above discussion, we are of the opinion that assessee is not hit by the proviso to section 2(15) of the Act as far as activity of conducting or participating in exhibitions within India or overseas and therefore the disallowance of exemption claimed by the assess made by the Assessing Officer and the findings of the Ld CIT(A) on the issue in dispute are set aside and matter restore back to grant benefit of section 11 and 12 as per provisions of law."

After elaborate discussion on this matter, the Hon'ble ITAT has come to a conclusion that in the instant case, there being no markup on consideration charged from the exporter, therefore in the broad principles laid down by the Hon'ble Supreme Court, the activity is beyond the purview of either trade, commerce and business or activity of rendering services in relation to trade, commerce or business. Further the ITAT has held that assessee is not hit by the proviso to section 2(15) of the Act as far as activity of conducting or participating in exhibitions within India or overseas. Respectfully following the decision of the respective jurisdictional ITAT the A.O is directed to grant the benefit of section 11 and 12 as per provisions of law. Grounds of appeal are allowed in favour of the assessee."

(Emphasis supplied)

10. The Ld. AR placed that the issue related prior period adjustment is squarely covered by the order of the co-ordinate bench of **ITAT, Mumbai Bench** in assessee's own case bearing **ITA No.3158 & 3159/Mum/2023** date of pronouncement **25/04/2024** which is as under: -

“Ground No. 7: Claim of prior period of expenditure of Rs.8,40,895/-

19. During the course of assessment the AO has disallowed prior period expenses of Rs.8,40,895/-.

20. However, the Id. CIT(A) held that assessee is entitled to the benefit of Sec. 11 of the Act and all the expenditure were incurred by the assessee towards the object of trust. The AO has not brought any contrary material to demonstrate that assessee has not incurred the expenditure for the object of the trust, therefore, we don't find any reason to interfere in the decision of Id. CIT(A), accordingly, this ground of appeal of the revenue is dismissed.”

21. The appeal of the revenue is dismissed. “

11. The Ld.DR further argued and placed the order of the Hon'ble **High Court at Calcutta** in the case of **DIT (Exemption) vs Trustees of Singhania Charitable Trust bearing (1993 199 ITR 819 (Cal))**. The relevant para 2 is reproduced below: -

“2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in cancelling the order of the Commissioner of Income-tax under section 263 of the Income-tax Act, 1961, holding that the assessment of the Income-tax Officer allowing accumulation of the income under section 11(2) of the Income-tax Act, for all the objects for which the trust was created and not for any specific objects, was neither erroneous nor prejudicial to the interests of the Revenue ?”

The facts leading to this reference are that the assessee, a public charitable trust, was assessed by the Income-tax Officer for the assessment year 1984-85 on January 7, 1987, and allowed exemption under section 11, relying on the notice given by the assessee under section 11(2). Thereafter, the Commissioner of Income-tax, invoking the powers vested in him under section 263 of the Income-tax Act, 1961, called for and examined the assessment records of the assessee. On such examination, the Commissioner of Income-tax found that, in the notice given by the assessee under section 11(2) of the Act, the assessee had listed as purposes of accumulation of income all the charitable objects for which the assessee-trust was created. According to the Commissioner of Income-tax, section

11(2) enjoins on the assessee to state the specific or concrete purposes to which its income is being accumulated for application at a later point of time. Since this was not done by the assessee, the impugned order of the Income-tax Officer was erroneous and prejudicial to the interests of the Revenue. He, therefore, put the assessee on notice of his intention to pass suitable orders under section 263 of the Act.”

The Ld.DR also relied on the order of the Hon’ble **High Court of Gujarat** in the case of **CIT (Exemptions) vs Bachasanwasi Shi Akshar Purshottam Public Charitable Trust (2019) 102 taxmann.com 122 (Guj)**. The Ld.AR further argued and placed that the issue is squarely covered by the order of the co-ordinate bench of ITAT, Mumbai Bench and the order of the Hon’ble High Court of Gujarat was duly considered.

12. The Ld. AR invited our attention in the relevant paragraph of the orders bearing **ITA No.3158 & 3159/Mum/2023** in assessee’s own case. The relevant paragraphs are reproduced below: -

Ground No. 6:

16. During the course of assessment the assessing officer has made alternative disallowance u/s 11(2) of the Act holding that specific detail of objects for which the surplus was accumulated is not specified in the form no. 10 filed by the assessee, therefore, AO has denied the accumulation u/s 11(2) of the Act.

17. However, the Id. CIT(A) has deleted the said disallowance made by the assessing officer. The relevant extract of the decision of Id. CIT(A) is reproduced as under:

“Ground No. 5: During the course of assessment proceeding the A.O made an alternative disallowance of accumulation of income u/s 11(2) of the IT act. The AO concluded in his order that furnishing

form-10 is not a formality but requires precise details of the proposed projects and should not be reduced to a formality by merely reproducing the objects and denied the accumulation of u/s 11(2) of the IT Act. Against such conclusion of the AO, the assessee submitted that accumulated income u/s 11(2) for specified purpose and the same has been spent in subsequent financial years for the purpose for which said funds have been accumulated i.e. towards the objects of the Trust. It was further submitted that once the assessee has accumulated income with a specific purpose and such purpose is specified in the main objects of the trust, then the Assessing Officer cannot deny such accumulation of income merely for the reason that purpose specified in Form 10 is vague and general in nature. As long as objects of the Trust provide for such purpose, then the assessee can accumulate funds for the purpose which is specified in trust deed. Further the assessee submitted that this view is fortified by the decision of Hon'ble Gujarat High Court in the case of CIT (Exemption) v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust (409 ITR 591) where it was held that lack of declaration in Form no 10 regarding specific purpose for which funds were being accumulated by the assessee trust would not be fatal to the exemption claimed u/s 11(2) of the Act. The Hon'ble Supreme Court has dismissed SLP filed by the department in the above case and has upheld the findings of the Hon'ble Gujarat High Court. Considering the facts of the case and also the rulings cited above, alternate addition made by the assessee by denying the benefit of section 11(2) is not in accordance with the act and hence addition made by the assessing officer is deleted."

18. Heard both the sides and perused the material on record. We find that the Id. CIT(A) held that assessee trust has accumulated the surplus for the purpose specified in the trust deed. In this regard, the Id. CIT(A) has also discussed the

decision of Hon'ble Gujarat High Court in the case of CIT (Exemption) Vs. Bochanwasi Shri Akshar Purshottam Public Charitable Trust (409) ITR 591 wherein it is held that lack of declaration in the form no. 10 regarding specific purpose for which funds were be accumulated by the assessee trust would not be fatal to the exemption claimed u/s 11(2) of the Act. Further the Hon'ble Supreme Court has dismissed the SLP filed against the aforesaid decision of the Hon'ble High Court. We have also perused the copy of Board Resolution dated 18.08.2015 filed at the appellate proceedings as per which the surplus is accumulated for the specified purposes in accordance with the provision of Sec. 11 sub-section (2) of the Act In the light of the above facts and circumstances we don't find any infirmity in the decision of Id. CIT(A), therefore, this ground of appeal of the revenue is also dismissed.

Ground No. 7: Claim of prior period of expenditure of Rs.8,40,895/- : 19. During the course of assessment the AO has disallowed prior period expenses of Rs.8,40,895/-. 20. However, the Id. CIT(A) held that assessee is entitled to the benefit of Sec.11 of the Act and all the expenditure were incurred by the assessee towards the object of trust. The AO has not brought any contrary material to demonstrate that assessee has not incurred the expenditure for the object of the trust, therefore, we don't find any reason to interfere in the decision of Id. CIT(A), accordingly, this ground of appeal of the revenue is dismissed.

21. The appeal of the revenue is dismissed."

13. We heard the rival submission and considered the documents available in the records. All the grounds of the revenue are duly covered by the orders of the co-ordinate bench of ITAT, Mumbai in assessee's own case. The assessee is a facilitator and arranges the exhibition for its members for development of the business and trade in India and outside India. There is no deviation of assessee's main object which is covered by section 2(15) of the Act. The Ld.AO in

assessment order has not pointed out any of the deviations of the main object of the assessee.

The Id. AO observed receipts from membership, subscription fees, grants from Government of India, income from publication, exhibitions, award functions etc. Regarding the activity of conducting exhibitions, the Id. AO was of the view that was a commercial activity trade or business, in view of expression meaning of 'Business' is wide in fiscal statutes. He also inferred profit motive to assessee. Whether Id. AO erred in upholding the denial of carry forward of deficit relating to the earlier years contrary to the binding judgment of the jurisdictional High Court in the assessee's own case for assessment year 2004-05. The assessee is a started on 27/04/1966 U/s 25 of the Companies Act, 1956 with the main object to support, protect, maintain, increase and promote the export of gems and etc. For the assessment year under consideration, the assessee filed return of income along with income and expenditure account, balance sheet and audit report in prescribed of Income-tax Rules, 1962.

Considering the assessee's transaction in impugned assessment year exhibition in India and outside after deleting the membership fees and the interest from investment, the assessee had incurred loss in exhibitions for promotion of trade and business of the members as well as the benefit should be carried over to other business entities who run as the members of the assessee's organization. In larger aspect, the assessee's GPU is duly covered U/s 2(15) of the Act. The business of trading, sale and purchase are duly restricted during the time of exhibition. The revenue was unable to establish that the assessee is doing any business transactions during its activities. We rely on the orders of our co-

ordinate bench of ITAT, Mumbai in assessee's own case. Accordingly, we restrict the revenue for rejecting the exemption which the assessee is entitled to get as per the registration U/s 12A of the Act. We are not intervening in the impugned appeal order. The assessee is eligible for the benefit of exemption U/s 11 of the Act in impugned assessment year.

14. The Ld.DR respectfully relied on the judgement of the Hon'ble Calcutta High Court in the case of **DIT (Exemption) vs Trustees of Singhania Charitable Trust** (supra). In our respectful observation, that is distinguished from our case. In our considered view, we are not intervening the impugned appeal order of the assessee

15. Considering the above, the grounds of the revenue are dismissed.

ITA 3175/Mum/2023: A.Y. 2018-19

16. The facts and circumstances are identical, the decision arrived at above in case ITA No. 3176/Mum/2023 applies *mutatis mutandis* to this appeal also.

17. In the result, appeals of the revenue in **ITA nos. 3175 & 3176/Mum/2023** are dismissed.

Order pronounced in the open court on 26th day of June, 2024.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 26/06/2024

Pavanan

sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai