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

Reserved on : 30th August, 2012.
% **Date of Decision** : 19th October, 2012.

\+ **ITA NO.368-369/2012**

PHD CHAMBER OF COMMERCE & INDUSTRY .... Appellant
Through: Mr.C.S.Aggarwal, Sr.Advocate with
Mr.Prkash Kumar, Advocate.

VERSUS

DIRECTOR OF INCOME TAX-EXEMPTIONS .....Respondent
Through: Mr.Anupam Tripathi, Sr.Standing Counsel with
Mr.Sumit Kumar, Advocate

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J.:

These two appeals filed by the assessee pertain to the assessment years 2006-07 and 2007-08. The assessee is the PHD Chambers of Commerce and Industry which was established in 1909. It was incorporated as a company on 26th April, 1951 as "Punjab Chamber of Commerce" and thereafter on 13th August, 1981 a fresh certificate of incorporation was issued in the name of PHD Chamber of Commerce and Industry under the Companies Act, 1956. The assessee is also registered under Section 12A of the Income Tax Act, 1961 ("Act" for short) vide certificate dated 23rd May, 1994 and from the assessment year 1996-97 up to the assessment year 2005-06, it was granted exemption under Section 11 of the Act.

2. In making the assessments for the years under appeal, the Assessing Officer for the first time denied the assessee's claim for exemption of its income under Section 11

of the Act. He held that the assessee was carrying on the business of rendering services not only to its members but also to non-members and therefore the provisions of Section 11(4A) were attracted, with the result that exemption u/s. 11(1) could be given only if (a) the business was incidental to the carrying out of the objects of the Trust and (b) separate books of accounts were maintained for the business. According to him, the activities of the asessee were not charitable in nature. The assessee's appeal to the CIT (Appeals) for the assessment year 2006-07 was accepted; the CIT(Appeals) recorded a finding that none of the objects or activities undertaken by the assessee was sullied with a profit motive, that there was no business activity carried on by the assessee and, therefore, there was no need to maintain separate books of accounts for such activities. He also held that the generation of income is not a conclusive test for determining the charitable nature of the activities. He accordingly directed the Assessing Officer to allow the exemption under Section 11 of the Act. The Revenue carried the matter in appeal to the Income Tax Appellate Tribunal ("Tribunal" for short) in ITA No.1233/Delhi of 2010. The Tribunal held that the activities carried out by the assessee were "admittedly"in the nature of a business and, therefore, the provisions of Section 11(4A) were attracted, with the result that the assessee should maintain separate books of accounts for such activities. The Tribunal however held that the activities carried on by the assessee were charitable activities and a certificate of registration was also granted under Section 12A and, therefore, the only enquiry that can be carried out was whether the business carried on by the assessee was incidental to the attainment of the objects of the assessee and whether separate books of accounts were maintained for such business. The matter was thus restored by the Tribunal to the Assessing Officer for conducting the enquiry.

3. In respect of the assessment year 2007-08, the Tribunal followed its order for the assessment year 2006-07 and restored the matter to the Assessing Officer with the same directions.

4. It is relevant to reproduce the order of the Tribunal for the assessment year 2006-07 passed on 31st March, 2011, which was followed by it for the assessment year 2007-08.

> *"5.2 The provision contained in section 11(4A) is clear to the effect that various deductions u/s 11 shall not be admissible in relation to any income, being profits and gains of business profit. Thereafter, a concession is also given that if – (i) the business is incidental to attainment of objectives of the institution and (ii) separate books of account are maintained in respect of such business, the assessee will become entitled to other deductions u/s 11. however, the other deductions will become inadmissible in respect of business income if the aforesaid two conditions are cumulatively satisfied. This is a statutory provision and rule of consistency cannot override the provision. Therefore, it cannot be held that looking to the past assessments. This provision ought to be ignored. In other words, this provision will have to be applied. The admitted position of fact is that the assessee has been carrying on business activities. However, it is not clear whether separate books of account have been maintained for such business or businesses. The finding of the Assessing Officer is that the assessee is carrying on business activity by rendering professional services to members and non-members and it is not carrying on any charitable activity. The latter finding of the AO cannot be upheld in view of the fact that the assessee's objects are charitable in nature and it has been registered u/s 12A. therefore, the only thing which can be done on the facts of the case is to ascertain the business income, whether such income is incidental to the objects, whether books are maintained for the business and quantum thereof. If the conditions prescribed in section 11(4A) stands satisfied, the assessee will be entitled to other deductions u/s 11, otherwise not. As mentioned earlier, these facts could not be ascertained by the AO due to paucity of time. Therefore, the matter is restored to the file of the AO to ascertain facts in this matter, hear the assessee and pass a fresh order as per law. Thus, this ground is treated as allowed for statistical purposes.*
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> *6. In so far as the deduction of depreciation is concerned, the case of the ld. Counsel is that the assessee has never written off capital assets from its accounts by treating them as application of income. Therefore, it is argued that the assessee is entitled to the deduction of depreciation. We find that this issue has not been discussed by the AO in the assessment order. Therefore, we think it fit to restore the .....To his filed for*

considering this submission of the assessee also and thereafter decide it de novo after hearing assessee. Thus, this ground is treated as allowed for statistical purpose."

5. It may be added that against the order passed by the Tribunal for the assessment year 2006-07 in ITA 1233/Del/2010, the assessee filed a miscellaneous application under Section 254(2) of the Act in MA No.133/Del/2011 seeking rectification of certain mistakes which according to it were apparent from the record in the order of the Tribunal; however the miscellaneous application was rejected by the Tribunal by order pronounced on 14th October, 2011, the relevant extracts from which are as under:

"3. We have considered the facts of the case and submissions made before us. The import of the remark made in paragraph no.5 of the order of the Tribunal is not what is understood by the ld. counsel. The finding of the AO is that the assessee is carrying on certain activities which are in the nature of business. However, the finding of the ld. CIT (A) is that since the activities are carried on in pursuance of the objects, the activities do not constitute business. Further, it has also been held that the mode of earning is not the sine qua non for grant of deduction u/s 11(1) and what is to be seen is that the income howsoever earned should be applied towards the objects of the institution. The difference in the findings is on account of appreciation of law and not on account of consideration of the activities per se. The question whether the assessee has earned profits and gains of business has to be decided not with reference to the provision contained in section 2(15), but with reference to the provision contained in section 2(13). We have already narrated various heads under which receipts have been classified and it is clear therefrom that receipts under certain heads have been earned by repetitive activities, which could rightly be termed as business. Therefore, we do not find any error in the order when it is held that the only thing which can be done is to ascertain the business income, whether such income is incidental to the objects, whether books are maintained for such business and quantum thereof. Thereafter, the AO has been directed to examine whether condition prescribed in section 11(4A) has been satisfied. Since these matters could not be ascertained by the AO due to paucity of time, the matter was restored, to his file. Thus, as such there is no mistake apparent from record in the order, which can be rectified u/s 254(2) of the Act.

4. In the result, the application is dismissed."

6. The questions of law sought to be urged on behalf of the appellant-assessee are several in number, but the crux of the issue is whether the Tribunal was right in law in holding that the provisions of Section 11 (4A) were attracted to the assessee's case. Accordingly we frame the following substantial question of law for both the years:-

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Section 11(4A) of the Act were attracted to the assessee's case and consequently in remanding the case to the Assessing Officer with directions."*

7. The answer to the question depends on the construction of sub-section (4A) of Section 11 which makes the sub-sections (1), (2), (3) and (3A) inapplicable to the income of a trust or an institution, being profits and gains of business, unless (a) the business is incidental to the attainment of the objectives of the trust and; (b) the trust or institution maintains separate books of accounts in respect of such business. Section 28(iii) 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 assessee is a Chamber of Commerce and in the course of pursuing its objects renders several services to its members such as certification, committee room services, secretarial services and facilities, energy audit etc. Some of the services are also rendered to non-members for a higher fee. The assessee also lets out space to members as well as non-members. In the opinion of the Tribunal, the Assessing Officer was not right in the characterisation of these services, both to the members as well as non-members, as non-charitable activities; however, it upheld the view of the Assessing Officer that in rendering these services the assessee was carrying on a business activity.

8. The nice question as to whether by rendering specific services to members and non-members for a fee, a trade, professional or similar association can be said to be

carrying on a business activity needs to be examined. The further question to be addressed, with reference to Section 11(4A), would be whether such activities (which amount to a business) were incidental to the attainment of the objectives of trust or institution and whether separate books of accounts were maintained in respect of such activities. There can be no doubt that the activities of the nature described above, in the case of an assessee such as the present one, which is a trade association- Chamber of Commerce and Industry, established to protect the interests of trade and industry in Punjab, Haryana and Delhi- were activities which are incidental to the attainment of the objects of the chamber. We do not think that the Tribunal is justified in taking the view that the assessee, which is a chamber of commerce and industry, is carrying on business activities which require compliance with the conditions of Section 11(4A). In *CIT, Madras vs. Andhra Chamber of Commerce (1965) 55 ITR 722*, it was held by the Supreme Court that advancement or promotion of trade, commerce and industry leading to economic prosperity enured for the benefit of the entire community; that prosperity would be shared also by those who engaged in trade, commerce and industry, but on that account the purpose was not rendered any the less an object of general public utility. Echoing these sentiments another Bench of equal strength of the Supreme Court in *Commissioner of Income Tax, New Delhi vs. Federation of Indian Chambers of Commerce and Industries, New Delhi 1981) 130 ITR 186* held that where the main object of the assessee was the promotion, protection and development of trade, commerce and industry in India, its income from conducting a trade fair, rent for space allotted and sale of entry and gate tickets, fees for arbitration etc. would be exempted from tax under Section 11 read with Section 2(15) of the Act. The "dominant purpose" test was applied to hold that the activities to earn income were not driven with the motive of profit-making. In this judgment, separate opinions were expressed by each of the three learned judges and while Justice Pathak (as His Lordship then was) considered the matter to be covered by the majority opinion of the Supreme Court in *Additional Commissioner of Income-tax, Gujarat*

vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR page 1, Sen, J. and Venkataramiah, J, held different opinions but considered themselves bound by the majority opinion in *Additional Commissioner of Income-tax, Gujarat vs. Surat Art Silk Cloth Manufacturers Association (*supra). It would, therefore, appear that judicial thinking was never in favour of the view that the services performed by a trade, professional or similar association, such as a chamber of commerce and industry, were in pursuit of a business or trade with a profit motive.

9. In *Delhi Stock Exchange Association Ltd. vs. CIT (1997) 225 ITR 235(SC)*, the approach adopted in the case of a stock exchange was that if there is no obligation that the income from the properties held by the assessee was to be exclusively used for charitable purposes and if it was open to the assessee, under its constitution, to distribute the whole or part of the income as dividend amongst its shareholders, then there would be no exemption under Section 11 of the Act. In *Additional Commissioner of Income-tax v. Delhi Brick Kiln Owners Association (1981) 130 ITR 55* a Division Bench of this Court, applying the judgment of the Supreme Court in *CIT vs. Surat Art Silk Cloth Manufactures Association (supra)* and *CIT vs. Andhra Chamber of Commerce (Supra)* applied the "dominant intention" theory and held that an association formed to promote brick kiln trade, which did not involve the carrying on of any activity for profit, was entitled to the exemption under Section 11(1) of the Act.

10. Section 10(6) of the Indian Income Tax Act, 1922 enacted as follows:

> *"A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly."*

A noticeable feature of the above provision is that the income from the specific services were "deemed for the purpose of this section", to carry on business in respect of those services. The present Act, however, simply provides that the income derived by a trade, professional or similar association from specific services performed for its members shall be chargeable to income tax under the head "profits and gains of business". The clause aims at destroying the principle of mutuality under which associations or combination of persons, in which both the contributors and the participators are identical, are kept away from the tax net on the principle of mutuality. The principle of mutuality is just this, namely, that where there is identity between contributors to and participators in a fund, there can arise no profit which can be made the subject matter of taxation. Section 28(iii) appears to have been enacted, as in the case of its predecessor, to bring to charge the surplus of a mutual association which would not otherwise be chargeable. The trade, professional or similar association, including a chamber of commerce and industry has no separate existence apart from the members constituting it and when the members pay fees for services rendered by the association and a surplus arises to the association, it actually belongs to the members who had availed of the service. Thus there is identity between the contributors to and participators in the surplus and under general principles of mutuality, the surplus ought not to be taxed. However, the clause has been enacted to ensure that such surplus does not enjoy any exemption. Since the surplus had to be brought to tax under a particular head, it was thought by the legislature that the head "profits and gains of business" would be the most appropriate head under which the surplus can be brought to tax. This does not, however, mean that a business is carried on by the association in the sense that there is a profit motive which drives the carrying on of the activity.

11. We are fortified in our view by a judgment of the Madras High Court where this question was directly considered in *CIT vs. South Indian Film Chamber of*

Commerce (1981) 129 ITR 22. The question before the High Court was with specific reference to Section 28(iii), which was whether the income derived by the South Indian Film Chamber of Commerce by way of services rendered by it to its members is not liable to be charged to tax under Section 28(iii). The Film Chamber was formed to encourage and develop the film industry and protect the interests of the film trade in general and to do various other things for the purpose of assisting the persons engaged in this line of activity. It assisted the members by supplying them raw materials and carbon, keeping the films in safe custody, screening the pictures for preview in its theatre etc. For these services, the film chamber was in receipt of fees. It also provided arbitration services for a fee. The question was whether these receipts were exempt under Section 11 on the ground that the film chamber of commerce was engaged in furtherance of charitable purposes. The taxing authorities had rejected the claim by referring to Section 28(iii), but the Tribunal took the view that this provision could not be pressed into service once it was found that the income derived by the film chamber was exempt under Section 11 and that the provision could be applied only in respect of income derived from a trade, professional or similar association from specific services performed for its members, by an assessee whose objects did not constitute charitable purposes under Section 2(15). The High Court firstly held that the film chamber was a charitable organisation and its objects constituted charitable purposes within the meaning of Section 2(15). So far as Section 28(iii) is concerned, Sethuraman, J. speaking for a Division Bench of the Madras High Court, referred to Section 10(6) of the 1922 Act and contrasted the same with Section 28(iii) of the Act in the following words:-

> *"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.

Under the Indian I.T. Act, 1922, s. 10(6) provided:

"A trade, professional or similar association performing specific services for its members, for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gain therefrom shall be liable to tax accordingly."

It may be seen that under this section, a statutory fiction is attributed to remuneration received in consideration of specific services rendered to its members so as to treat it as business income. Such remuneration would, in other words, be deemed to have been derived from a business. There is no such deeming provision in the present Act."

The learned judge then proceeded to consider the section on the basis that attribution of a statutory fiction was unnecessary. He held that though the definition of the word "income" under Section 2(24)(v) included any sum chargeable to tax under Section 28(iii) the definition would apply so as to bring to tax the income as a business income "*only if the income was not covered by any exemption available under the Act. Section 28(iii) cannot be read in isolation, but has to be read with the other provisions of the Act. ……..This is not a case where the object of public utility is sought to be achieved by these activities. Therefore, the fact that there was income does not by itself solve the problem. The profit-making was only an incident and not the means of achieving the object of public utility. So long as the object was charitable and so long as the income was not earned from an activity which was by itself designed to achieve the object of general public utility, the exemption cannot be denied."*

Reference was made to Section 10(23A), as it existed at that time. This sub-section provided for complete exemption of the income of an association or institution established in India having as its object the control, supervision, regulation or encouragement of the professions of law, medicine, accountancy, engineering or

architecture and such other professions notified by the government. The learned Judge, after noticing the aforesaid provision, observed as follows:-

> *"In the above provision, there is an exclusion from assessment of the income falling under certain categories. One of the categories is income derived from rendering any specific services. It is true that this provision deals only with institutions or associations having as their object the control, supervision, regulation or encouragement of certain professions. But we are here concerned with the same question whether receipts in consideration of services are taxable. This provision is relevant to show that Parliament does not always conceive such receipts to be taxable and that such receipts may be exempt under certain conditions. It is not, therefore, enough if there are receipts. Such receipts must be considered in the context of all the provisions of the Act.*
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> *Section 11(4) provides that for the purpose of this section "Property held under trust" includes a business undertaking so held. Therefore, even if there is a business, which yields income, so long as the business is held under trust, its income would be exempt from tax. It is not suggested that the properties were held otherwise than under trust. Section 28(iii) would not apply, to tax income from such a business, as otherwise, the benefit sought to be conferred under s. 11 would be destroyed, and the exemption provision would be stultified."*

12. In most of the cases, the services are performed in the true spirit of service to the members of the association (such as a chamber of commerce) and the fees charged are so calculated or fixed that it merely covers the costs incurred by the association in rendering the service. Since accuracy in matching the costs and the fees charged cannot be maintained consistently, there can arise a surplus. The mere arising of a surplus does not clothe the activity of performing the services for the members with a profit motive, which is essential in business. It has been observed by the Supreme Court in *Surat Art Silk (Supra)* that where profit making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. It was held as follows:-

> *"But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management."*

13. The judgment of the Supreme Court in the case of *Surat Art Silk (Supra)* is significant also for the reason that the earlier judgment in *Indian Chamber of Commerce vs. CIT (1975) 101 ITR 796* was overruled. It was held that the Court would not be justified in drawing the inference that the activity is driven by a profit motive merely because the activity resulted in profit. It was also held that "it was not at all necessary that there must be a provision in the constitution of the trust or institution that the activity shall be carried on, on no profit no loss basis or that profit shall be proscribed".

14. The reason for the introduction of Section 10(6) of the old Act or Section 28(iii) of the new Act is, as already noted, 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 confined to services performed by the association "for its members". But at the same time, income received by the association from a non-member would be chargeable to tax because qua that activity, mutuality will be lacking since the recipient of the services is a non-member. There is no statutory provision as to what would happen if a mutual association deals with a non-member. It, however, stands to reason that 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.

15. *CIT vs. Andhra Commerce of Chamber (supra)* introduced the possibility of some of the trade, professional or other similar association being entitled to the exemption under Section 11. It seems to us that all that Section 28(iii) does is to constitute 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 purpose" as including relief of the poor, education, medical relief and the advancement of any other object of general public utility, on the lines of what Sir Samuel Romilly suggested to the Court in *Morice v. Durham, Bishop of Durham*, (1805) 10 Ves Jr. 522, shows that several mutual associations may also fall within the definition. On this basis, a Gymkhana Club formed to promote physical fitness, sports and games and social intercourse amongst the members has been held entitled to the exemption under Section 11 by the Madras High Court in *Commissioner of Income-tax v. Ootacamund Gymkhana Club (1977) 110 ITR 392*; an association formed for the general benefit of the members of the legal profession was held eligible for the exemption by the Supreme Court in *Commissioner of Income-tax v. Bar Council of Maharashtra*, (1981) 130 ITR 28*;* a public utility undertaking such as a State Road Transport Corporation was held eligible for the exemption by the Supreme Court in *Commissioner of Income-tax v. Andhra Pradesh State Road Transport Corporation* 159 ITR 1. In all these cases the common thread which was noticed to run through was the absence of any motive of private profit. These decisions do establish that 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 2(15) read with Section 11, provided there is no profit motive.

16. A survey of the decided cases shows that trade and professional associations have been held entitled to the exemption under Section 11. An association of businessmen who sold goods on hire purchase [*Add. CIT vs. South India Hire*

Purchase Association (1979) 116 ITR 793], an association of traders dealing in photographic and connected trades *[Commissioner of Income-tax v. South Indian Photographic and Allied Trades Assn (1987) 166 ITR 166]*, and an association consisting of Kirana Merchants (*Madras Kirana Merchants Association v. CIT*, (1978) 111 ITR 156) were held by the Madras High Court to be eligible for the exemption under Section 11 notwithstanding that some of the associations charged their members fees for specific services rendered. Other cases on similar lines are:

NAME OF CASE	**CITATION**	**ASSOCIATION OF**
CIT v. Banaras Brass Merchant and Manufacturers Association	(2000) 241 ITR 70 (All.)	Brass Merchant and Manufacturers
CIT v. Gayathri Women Welfare Association	(1993) 203 ITR 389 (Kar.)	Women's Welfare
CIT v. Silk and Art Silk Mills Association Ltd.	(1990) 182 ITR 38 (Bom.)	Silk Mills
CIT v. A. P. Bankers & Pawnbrokers Association	(1988) 170 ITR 476 (AP)	Bankers & Pawnbrokers
CIT v. Bengal Mills and Steamers Presbyterian Association	(1983) 140 ITR 586 (Cal.)	Mills and Steamers Presbyterian
CIT v. Nachimuthu Industrial Association	(1982) 138 ITR 585 (Mad.)	Industrial Association
Add. CIT v. Madras Jewellers and Diamond Merchants Association	(1981) 129 ITR 214 (Mad.)	Jewellers and Diamond Merchants
Add. CIT v. Automobile Association of Southern India	(1981) 127 ITR 370 (Mad.)	Automobile owners

The predominant intention theory was applied in these decisions and it was found that none of these associations worked for a profit and they were essentially associations established for the protection of interests of businessmen carrying on a particular trade.

17. Turning specifically to the facts of the case before us, we find that there is no dispute that the objects of the assessee are charitable in nature within the meaning of Section 2(15) of the Act. The Tribunal has so held and that finding is not under challenge before us by the Revenue. Clause 4 of the memorandum of association proscribed the distribution of profit and is in the following terms:-

> *"4.The income and property of the Company whensoever derived shall be applied solely towards the promotion of the objects of the company as set forth in this Memorandum of Association, and no portion by way of dividend or bonus or otherwise, shall be paid to the persons who at any time, are, or have been, members of the Company, or to any of them or to any person claiming through any of them; provide that nothing herein contained shall prevent the payment in good faith of remuneration to any officer or servants of the Company, to any member thereof, or to any other person in return for any services actively rendered to, for or on behalf of the Company or of interest on money borrowed by or for the purposes of the company, from any person, whether a member of the Company or otherwise."*

Clause 3 of the articles of association categorises the members as follows: - patron members, ordinary members, professional members, association members, overseas members and honorary members. The procedure for admission to membership is set out in detail in clause 10 of the articles of association. The financial statements and the audited accounts for the years ended 31st March, 2006 and 31st March, 2007 have been placed before us; they were also placed before the Assessing Officer. The income of the assessee under various heads such as membership subscription, specialised services, services and facilities, meetings, seminars and training programmes (net), legal and arbitration fee, sale of publications (net), miscellaneous

etc. have been separately shown in the income and expenditure account, against which the expenditure is set of. The entire surplus which amounted to ₹32,92,986/- was taken to the general reserve; it was not distributed as dividend or profits. For the year ended 31st March, 2006, there was a deficit of ₹63,67,202/- which was also transferred to the general reserve.

18. The Tribunal in the present case disapproved the view taken by the Assessing Officer that by rendering professional services to members and non-members, it was not carrying on a charitable activity. This was because the assessee's objects were charitable in nature and it was so registered under Section 12A. However, it tended to view the assessee's activities as amounting to business. It even observed that "the admitted position of fact is that the assessee has been carrying on business activities". This part of the order of the Tribunal was sought to be corrected by an application under Section 254(2) of the Act but that application was dismissed by the Tribunal, though with some clarification. The Tribunal noted that on this aspect the finding of the CIT(Appeals) was that the activities were carried on pursuant to the objects and, therefore, they do not constitute business. At the same breath it has also been observed that the receipts were earned by repetitive activities, which can rightly be termed as business. Having regard to the authorities which we have noticed above it is not proper to characterise the activities of the chamber as activities amounting to a business in the generally understood sense of the word, the most important feature of business being profit motive. It has not been suggested by the income tax authorities that the activities carried out by the assessee chamber were propelled by any profit motive. In such circumstances, it is proper to view the activities as driven by a charitable motive in the sense in which a charitable purpose is defined in Section 2(15) of the Act. In this view of the matter, we are satisfied that the provisions of Section 11(4A) are not attracted to the present case and a remand to the Assessing Officer for finding out whether the activities were incidental to the objectives of the trust and

separate books of accounts were maintained for such business was unnecessary. We accordingly answer the substantial question of law framed by us in the negative, in favour of the assessee and against the Revenue. However, there shall be no order as to costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

OCTOBER 19, 2012
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