

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI ' H ' BENCH
MUMBAI BENCHES, MUMBAI**

BEFORE SHRI J SUDHAKAR REDDY, AM & SHRI VIJAY PAL RAO, JM

ITA No. 7189/Mum/2005 (Asst.Year 1997-98)

ITA No. 4168/Mum/2006 (Asst Year 2001-02)

The Asst Director of Income Tax (E) II (I) Mumbai	Vs	India ITME Society 76 Mittal Tower B Wing, 7th Floor 210 Nariman Point - Mumbai 21
(Appellant)		(Respondent)

&

CROSS OBJECTION Nos. 146 & 147/Mum/2011

India ITME Society 76 Mittal Tower B Wing, 7th Floor 210 Nariman Point - Mumbai 21	Vs	The Asst Director of Income Tax (E) II (I) - Mumbai
(Cross Objector)		(Respondent)

PAN No.	AAATI 2855B
Assessee by	Sh Vipul Joshi
Revenue by	Sh Goli Srinivas Rao
Dt.of hearing	13 th Oct 2011
Dt of pronouncement	12 th Dec 2011

PER VIJAY PAL RAO, JM

These appeals by the revenue and the Cross Objections by the assessee are directed against the orders dated 28.9.2005 and 26.4.2006 of the CIT(A) for the AYs 1997-98 and 2001-02 respectively.

2. Since the assessee has raised a legal ground in the Cross Objection regarding the validity of the reopening of the assessment; therefore, we first take up the Cross Objection filed by the assessee.

CROSS OBJECTIONS Nos 146 & 147/Mum/2011

3 The assessee has raised the following effective grounds:

The Id. Commissioner of Income — tax (Appeals), ! XXXIII, Mumbai [“Id. CIT (A)”], erred in not adjudicating the ground raised by the Appellant challenging the action of the Assessing Officer [“A.O.”] in reassessing the income of the Appellant by invoking the provisions of section 147 of the Income — tax Act, 1961 (“the Act”).

The Id. CIT (A) erred in not adjudicating the alternative ground raised by the Appellant before her with respect to allowability of exemption under section 11 of the Act.

4 There is a delay of 1747 days in filing these cross objections for both these assessment years. The assessee has filed affidavit for explaining the delay in filing the cross objections.

5 The assessee has pleaded that it is not conversant with the technicalities of the appeal proceedings; therefore, the assessee was under bonafide impression that it would be able to take up the issues in the appeals filed by the department. It is only when discussing the case with the counsel, the assessee realised that the assessee should have filed cross objection within 30 days of receipt of the notice of the department appeal. After coming to know about the correct legal position these steps were taken to file the cross objection on 24.8.2011. It has been pleaded that the delay is due to bonafide, though erroneous, impression about the legal remedy and therefore, due to the circumstances beyond the control of the assessee. The delay is not due to any deliberate negligence or carelessness on the part of the assessee.

5.1 On the other hand, the Id DR has vehemently opposed the condonation and submitted that there is an inordinate delay in filing of these cross objections and the assessee cannot take an undue advantage of process of law. He has forcefully submitted that the assessee has not explained the sufficient cause for

not filing the cross objections within the period of limitation. He has relied upon the decision of the Hon'ble Gujarat High Court in the case of Vareli Textile Industries v. Commissioner of Income-tax reported in 284 ITR 238.

5.2 On rebuttal, the Id AR of the assessee has submitted that the assessee can raise this issue even under Rule 27 of the ITAT rules as the assessee raised this issue before the CIT(A), though the same was not adjudicated.

6 We have heard the Id AR of the assessee as well as the Id DR and considered the relevant material on record on condonation of delay in filing the cross objections. The main ground of delay as explained by the assessee in the affidavit is that the assessee was not conversant with technicalities of appeals and under bonafide impression that it would be able to take up the issues in the appeals of the department and only while discussing the case with the counsel, it was realized that the assessee should have filed cross objection. The assessee stated that the notice of the appeal of the department was received on 12.9.2006. The assessee has been appearing since beginning in the appeals of the department. The power of attorney has been given in favour of the counsel of the assessee on 12.11.2008 since then; the Id counsel of the assessee has been representing the case of the assessee in these appeals filed by the revenue before the Tribunal.

7 There is a delay of about 5 years in filing the cross objections by the assessee. It is settled proposition of law that the Courts should take a liberal approach while deciding the condonation of delay but at the same time, the requirement of sufficient cause for delay cannot be ignored and it becomes more significant when the delay is inordinate and abnormal. It is not the case of the assessee that due to some wrong advise by the counsel, the assessee did not prefer cross objection but the averments in the affidavit state that the society is

not well versed with the technicalities of the appeal proceedings before the Tribunal and therefore, under bonafide impression, it would be able to take up this issues in the appeals of the department. This statement in the affidavit is self-contradictory because on the one hand the assessee society claims to be not well versed with the technicalities of the appeal proceedings and on the other hand it was under bonafide impression it would take up these two issues in the appeals of the department. In our view, raising the issues, which are decided against the assessee in the appeals of the department under ITAT rules is more technical then filing of appeal or cross objection against the impugned order of the CIT(A), if the assessee is aggrieved. When the assessee engaged the counsel way back on 12.8.2008 then, in the absence of any detail, as on which date during the discussion with the counsel, the assessee realized that the cross objection should have been filed within 30 days.

7.1 In the ordinary course, the case is discussed when the brief is handed over to the counsel and a letter of authority/vakalathnnama is signed by the assessee. The assessee has not uttered a single word regarding the delay from 12.11.2008 when the counsel was engaged till 24.8.2011 when the cross objections were filed. Therefore, the explanation narrated in the affidavit is not supported by the fact on record. Though, a lenient view has to be taken while interpreting sufficient cause of delay; however, this does not mean that the litigant has a free license to approach the Court on its will.

8 In the absence of any satisfactory or cogent explanation, the plea of condonation of delay deserves dismissal. The assessee has not filed any material or evidence in support of its explanation, which otherwise appears to be vague and contrary to the facts and circumstances of the case. There is no particular date given on which the assessee discussed the matter with the counsel.

9 The provisions of limitation have to be given effect with all its vigour. Nevertheless, may harshly affect the particular party.

9.1 The Hon'ble Supreme Court in the case of Lachhman Das Arora V Ganeshi Lal (1999) 8 SCC 532 has observed as under:

"There is no gain saying that the law of limitation may harshly effect a particular party but it has to be applied with all its vigour when the statute so prescribed. The courts cannot extent the period of limitation on equitable grounds."

9.2 Under sub sec. 5 of sec 253, the Tribunal may permit filing of cross objection after the expiry of prescribed period, if it is satisfied that there was sufficient cause for not presenting it within that period. Thus, this provision of allowing of filing of cross objection after the period of limitation is discretionary in nature and the party cannot seek condonation of delay under this provision as a matter of right; but has to satisfy the Tribunal by explaining the sufficient cause for the delay. The averments in the affidavit and submissions of the Id AR of the assessee do not make out a case of sufficient cause for such an inordinate delay in filing the cross objection. The assessee has failed to bring out the sufficient cause by furnishing the necessary details and explanation as to how the assessee was prevented from filing the cross objection even after 12.11.2008 when the assessee engaged the counsel to defend the present case.

9.3 From the facts and circumstances of the case and from the conduct of the assessee it appears that the assessee took the provisions of condonation of delay in a casual manner and granted. It is well settled that the Court helps vigilant and not indolent. Hence, we are of the view that the assessee has not disclosed a reasonable/good much less a sufficient cause for not filling the cross objections within the period of limitation and the delay of about 5 years.

10 In view of the above facts and circumstances of the case, we decline to condone the delay of 1747 days in filing the cross objections. Accordingly, the prayer for condonation of delay is rejected. Consequently, the Cross Objections filed by the assessee are dismissed as time barred.

11 The assessee has also raised an alternative plea that this issue can be raised under rule 27 of the ITAT Rules, even without filing the cross objection or appeal against the order of the CIT(A).

12 The Id AR of the assessee has placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of B R Bamasi v. CIT reported in 83 ITR 223. The Id AR of the assessee then submitted that the reasons recorded by the Assessing Officer for reopening of the assessment does not show any cogent reason to believe that income assessable to tax has escaped assessment. He has referred the reasons recorded at page 79 and 80 of the Paper book. Thus, the Id AR of the assessee has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of Prashant Joshi vs ITO reported in 324 ITR 154 and submitted that even if there is no assessment u/s 143(3), the reopening u/s 147 is bad, if there are no proper reason to believe recorded by the Assessing Officer. The notices issued u/s 148 is bad in the absence of any material or information on the basis of which the Assessing Officer could believe that the income assessable to tax has escaped assessment. In support of the contention, the Id AR has relied upon the decision of the Hon'ble Madras High Court in the case of Bapalal & Co vs JCIT reported in 289 ITR 37 (Mad) and the decision of Hon'ble Rajasthan High Court in the case of CIT vs Manoharlal Gupta reported in 213 CTR 193. He has also referred various decisions of this Tribunal on this point.

12.1 The Id DR, on the other hand has submitted that there was no assessment for the AY 2001-02 because the assessment framed u/s 143 (3) was annulled by the CIT(A) on the ground that notices issued u/s 143(2) and 142(1) are beyond the limitation period. Thus, the return becomes only processed u/s 143(1)(a). He has further submitted that the Assessing Officer relied upon the decision of the Hon'ble jurisdictional High Court in the case of Ratna Bhai N K Duba reported in 2003 J 101 – 80 HC. He has relied upon the order of the Assessing Officer.

13 We have considered the rival contention and carefully perused the relevant material on record as well as the decisions relied upon by both the parties. The Hon'ble jurisdictional High Court in the case of B R Bamasi (supra) has held as under

“But even if the assessee had not made such a statement, the above judgment shows that the assessee would be entitled to raise a new ground, provided it is a ground of law and does not necessitate any other evidence to be recorded, the nature of which would not only be a defence to the appeal itself, but may also affect the validity of the entire assessment proceedings. If the ground succeeds, the only result would be that the appeal would fail. The acceptance of the ground would show that the entire assessment proceedings were invalid, but yet the Tribunal which hears that appeal would have no power to disturb or to set aside the order in favour of the appellant against which the appeal has been filed. The ground would serve only as a weapon of defence against the appeal. If the respondent has not himself taken any proceedings to challenge the order in appeal, the Tribunal cannot set aside the order appealed against. That order would stand and would have full effect in so far as it is against the respondent. The Tribunal refused to allow the assessee to take up this ground under an incorrect impression of law that if the point was allowed to be urged and succeeded, the Tribunal would have not only to dismiss the appeal, but also to set aside the entire assessment. The point would have served as a weapon of defence against the appeal, but it could not be made into a weapon of attack against the order in so far as it was against the assessee.”

13.1 Thus it is clear from the observation of the Hon'ble jurisdictional High Court in the case of B R Bamasi (supra) that the effect of the plea raised by the

assessee against the validity of the reopening would be only to the extent of defence against the appeal and if assessee succeeds in the said ground then, the appeal of the revenue would fail.

14 For the AY 2001-02, the Assessing Officer has taken recourse to the provisions of sec. 147 as the only remedy available after the assessment framed u/s 143(3) was annulled by the CIT(A) on the issue of limitation of notices issued u/s 143(2) and 142(1). Consequently, there was no assessment and the return becomes only processed u/s 143(1)(a).

14.1 It is pertinent to note that the notice issued u/s 148 was issued within four years from end of the relevant assessment year; therefore, the case does not fall under the first proviso to sec. 147 of the I T Act.

15 Similarly, for the AY 1997-98, the return was processed u/s 143(1) and there was no assessment. The Assessing Officer exercised the power u/s 147 on the reason that in the course of assessment proceedings for the AY 2001-02, the income arising out of exhibition brought to tax as business income.

16 It is relevant to note here that the notice of reopening for the AY 1997-98 was after the framing of the assessment u/s 143(3) for the AY 2001-01 and before the same was annulled by the CIT(A) on the ground of limitation. Therefore, at the time of issuing the notice u/s 148 for the AY 1997-98, the assessment framed u/s 143(3) for the AY 2001-02 was very much in existence. The case for the AY 1997-98 also does not fall under the first proviso to sec. 147 because there was no assessment; but only the return was processed u/s 143(1). Therefore, the prerequisite condition for exercise of powers u/s 147 for both the AYs is “existence of reasons to believe” that there is escapement of income from assessment. The sufficiency of reasoning is not required to be tested as conclusively proved at the stage of reopening u/s 148. Even otherwise, the case

of reopening for these two years falls under Explanation 2(b) of sec. 147 which creates a deeming fiction. Accordingly, the detailed enquiry made and income from exhibition was assessed to tax in the assessment proceedings u/s 143(3) for the AY 2001-02 and subsequently annulled by the CIT(A), is a sufficient tangible material for forming belief that the income assessable to tax has escaped assessment. When the issue of assessment of exhibition income was already in the knowledge of the assessee, as it was discussed and adjudicated in the assessment proceedings u/s 143(3) for the AY 2001-02, then, it cannot be said that the Assessing Officer, at the time of reopening, has relied upon something, which was not in the knowledge of the assessee or known to the assessee. When the assessee was very much aware and contested the assessment of exhibition income in the assessment proceedings u/s 143(3) for the AY 2001-02 then, the reopening of the assessment is founded on the material and information, which was part of the assessment and known to the assessee.

16.1 In the case relied upon by the Id AR of the assessee the only requirement is that there should be a tangible material on the basis of which the Assessing Officer can form a belief that the income assessable to tax has escaped assessment.

16.2 The Hon'ble jurisdictional High Court in the case of Multiscreen Media Private Limited v. Union of India reported in 324 ITR 54 has held as under:

“What is material is that on the basis of a detailed inquiry which took place during the course of the assessment year 2005-06, the claim of the assessee of deduction of the entire expenses was not accepted and disallowance was made to the extent of expenditure incurred over and above 18.75 per cent. The Assessing Officer did so on the basis of fresh material which came before him in view of the notice dated November 26, 2008 in pursuance of which the assessee filed a detailed representation elucidating the relevant particulars of the business of the

assessee and the reasons for the expenditure. Whether the Assessing Officer was justified in the decision which he took for the assessment year 2005-06 is again not a matter to be considered at this stage of the proceedings. The point is that on the basis of the additional material which was available on record, the Assessing Officer issued a notice for reopening the assessment for the assessment year 2004-05. In our considered view, the Assessing officer did have tangible material to reopen the assessment under section 147 of the Act and to form a reason to believe that income had escaped assessment. Clause (c)(iv) of Explanation 2 to section 147 creates a deeming fiction where though the assessment has been made, income chargeable to tax is under assessed. In such a case, law deems that income chargeable to tax has escaped assessment. For these reasons, we are of the view that recourse to the provisions of section 147 cannot be faulted."

16.3 The Hon'ble High Court has given the above findings after considering various decisions of the Hon'ble Supreme Court and earlier decisions of the Hon'ble jurisdictional High Court itself. It is observed by the High Court that the Assessing Officer while seeking to reopen an assessment u/s 147 is not precluded from relying on an order of assessment in the subsequent year where additional material has emerged before the Assessing Officer to lead to the formation of a belief that income chargeable to tax had escaped assessment. While observing so, the Hon'ble Jurisdictional High Court has considered the decision of the Hon'ble Supreme Court in the case of *Sri Krishna Pvt Ltd vs ITO* reported in 221 ITR 538 and noted that the Hon'ble Supreme Court has held that at that stage it was only a reopening of assessment and while it was true that the Assessing Officer could have investigated the truth of the assertion of the assessee, which he actually did in subsequent assessment year, the question as to whether the loan alleged to have been taken by the assessee was true or false, was a material fact and not a mere inference to be drawn from the given facts.

16.4 The Hon'ble jurisdictional High Court also discussed the case of Supreme Court in the case of Ess Ess Kay Engineering Co Pvt Ltd reported in 247 ITR 818 and noted that the Supreme Court has held that it would be open to the Assessing Officer to reopen the assessment, based on the finding of fact made on the basis of fresh material gathered in the course of assessment proceedings for a subsequent year.

16.5 The Hon'ble High Court has also discussed a decision in the case of Anusandhan Investments Ltd vs DCIT reported in 287 ITR 482 and noted that in the said decision a division Bench has held that it is a well established position of law that an assessment can be reopened on the basis of information contained in an assessment of a subsequent year. The Hon'ble Jurisdictional High Court, while deciding the issue also considered the decision of the Supreme Court in the case of Kelvinator reported in 320 ITR 561.

17 In view of the above discussion and in the facts and circumstances of the case, we are of the considered opinion that the information and the material gathered during the course of assessment proceedings and assessment of exhibition income for the AY 2001-01 u/s 143(3) constitute a tangible material for coming to the conclusion that the income assessable to tax has escaped assessment. Hence, the reopening for the AY 2001-02 and 1997-98 is valid and as per law.

18 Now, we will take up the appeals of the revenue in ITA Nos. 7189/Mum/2005 (Asst.Year 1997-98) and ITA No. 4168/Mum/2006 (Asst Year 2001-02)

19. The grounds raised in the appeal for Assessment Year 2001-02 are common to the grounds in the appeal for Assessment Year 1997-98; therefore,

for the sake of convenience, both these appeals are disposed off by this Composite order.

20 The revenue has raised the following grounds in the appeal for Assessment Year 1997-98:

1. On the facts and in the circumstances of the case, and in law, the CIT(A), Mumbai has erred in allowing exemption to the assessee even though the activity of carrying on the exhibition was a dominant activity and not an incidental one and carried on in a systematic way so as to constitute business income.

2. On the facts and in the circumstances of the case, and in law, the CIT(A), Mumbai has erred 'in directing the assessing officer to allow exemption to the assessee even though perusal of income and expenditure account reveal that income generated through holding of exhibitions were not utilized for charitable purposes.

3. On the facts and in the circumstances of the case, and in law, the CIT(A), Mumbai has erred in directing the Assessing officer to allow exemption to the assessee even though the assessee had not maintained separate books of accounts as prescribed by the Act/Rules.

4. On the facts and in the circumstances of the case, and in law, the CIT(A), Mumbai has erred in directing the Assessing officer to allow contribution of Rs. 25 lakhs to ITT, Powai on the ground that it had become infructuous.

21 Ground nos 1 & 3 are common in both the assessment years.

21.1. Briefly stated the facts of this case are that the assessee society was formed on 20th July 1980 and registered under the Societies Act 1860. The objects of the assessee society are;

- (i) to organise international textile machinery exhibitions
- (ii) to organise technical and other symposia on textile engg. Industries
- (ii) to coordinate and assist Bureau of Indian Standard to promote textile standardisation; and
- (iv) to work in cooperation with the institution having similar aims and objects and encourage other for having similar aims to join such institutions and helped them.

21.2 The CBDT vide its notification dated 16.5.1994 had granted exemption to the assessee society u/s 10(23C)(iv) of the Income Tax Act 1961 for the

assessment years 1993-94 to 1995-96. The said exemption has been further renewed from time to time and lastly it has been granted for the AY 2003-04 and 2004-05.

21.3 During the financial year 2000-01, the assessee had organized an exhibition from 1.12.2000 to 10.12.2000 called as "International Textile Machinery Exhibitions 2000 (ITME) and earned a profit of Rs. 12,52,75,120/-. The assessee has filed its return of income for Assessment Year 2001-02 on 30.7.2001 declaring total income at Nil as the exemption u/s 10(23C)(iv) was claimed. The assessment for the Assessment Year 2001-02 was completed u/s 143(3) on 30.1.2004 by treating the exempted income as business income. The assessee challenged the assessment order before the CIT(A). The CIT(A) vide his order dated 5.7.2004 annulled the assessment order on the ground that the notice u/s 143(2) was served after 12 months from the end of the month in which the return of income was furnished. Consequently, the assessment was reopened u/s 148.

21.4 In the meantime, the return of income for the AY 1997-98 filed on 30.9.1997 was processed u/s 143(1). However, since for the Assessment Year 2001-02, the exempted income was treated as business income, the assessment for the Assessment Year 1997-98 was also reopened u/s 147 by issuing notice u/s 148 dt 10.3.2004.

21.5 The assessee maintain computerised books of account and the Assessing Officer has stated in the order that extracts of the same were produced at the time of assessment u/s 143(3) for the Assessment Year 2001-02; but the assessee has not produced the books of account during the proceedings of reassessment. The Assessing Officer accordingly took view that no separate books of account are maintained by the assessee.

21.6 In order to ascertain the actual nature of activities and real character of income, the Assessing Officer obtained necessary information in respect of holding of exhibition. The Assessing Officer recorded that the exhibition was organised very systematic on the basis of business orientation. The assessee has issued a Guide Book-India ITME 2000 containing rules & regulations. The tariff for Indian Exhibition was fixed at Rs. 4,500/- per sq.mtr and for Foreign Exhibition US \$ 270 per sq.mtr. The Assessing Officer was of the view that when the Exhibition was conducted very systematically and in commercial manner charging exorbitantly from the Exhibitors on each and every facility provided to them, then why the income from exhibition should not be treated as business income.

21.7 After considering the reply, the Assessing Officer held that the exhibition conducted by the assessee is in the nature of business as all elements of business are present; therefore, the income arose is business income. The Assessing Officer further held that the entire surplus generated over the years has been accumulated and has not been applied towards any charitable cause and kept in bank deposits. The assessee has accumulated surplus of more than Rs 27 crores and the entire money has been kept in the form of deposits in the banks. The viewed that since the assessee has not proved with evidence that the income arising from business is being utilized for any charitable cause therefore, holding of exhibition is a business as defined u/s 2(13) and is not an activity incidental to the object of society. Further, the assessee has not maintained separate books of account and the surplus has not been utilized for charitable purposes; hence, the assessee is not eligible for deduction u/s 10(23C)(iv). Accordingly, the Assessing Officer treated the income from exhibition as business income. Similar view was taken for the AY 1997-98 as well.

22 On appeal, the CIT(A) allowed the claim of the assessee for both the assessment years.

23 Before us, the Id DR has referred the assessment order and submitted that the assessee did not produce the books of account before the Assessing Officer. He has further submitted that admittedly no separate books of account are maintained by the assessee. The Id DR has pointed out that the Assessing Officer has recorded the fact that only extracts of computerized books were filed by the assessee; therefore, the assessee did not fulfil the conditions of notification issued by the CBDT u/s 10(23C)(iv) as well as sec. 11 of the I T Act. The Id DR has further submitted that as per sec. 11(4A) the activity of the assessee falls under the business and not charity. He has relied upon the decisions of the Hon'ble Supreme Court in the case of Assistant Commissioner of Income-tax v. Thanthi Trust reported in 247 ITR 785 as well as the order of the Tribunal in the case of Indian Machine Tools Mfgr Association vs ADIT(Exemptions) reported in 70 ITD 304. The Id DR has then submitted that the profit margin of the assessee is more than 50% from the activity of providing facilities to the participants of the Exhibition, which show the motive as profit making and not charity. He has relied upon the order of the Assessing Officer.

23.1 On the other hand, the Id AR of the assessee has submitted that the Assessing Officer has no jurisdiction to withdraw or disallow the exemption once granted by the CBDT vide notification issued u/s 10(23C)(iv). He has referred the notification issued by the CBDT for granting exemption to the assessee at page 38 of the paper book. The Id AR has submitted that once the objects of the assessee has been accepted as charitable and the exemption u/s 10(23C)(iv) has been granted; then the Assessing Officer has no power to reverse the exemption granted by the appropriate authority (government of India). He has

further contended that holding the exhibition is the only activity of the assessee; therefore, there is no need to maintain separate books of account. The books of account maintained for exhibition are separate and exclusively as no other activity has been carried out by the assessee. The Id AR then referred the memo explaining the provisions in the financial bill 2002 regarding the power to withdraw approval or rescind notification issued in the case of scientific research association, news agency, notified trust or institution, educational and medical institution etc.

23.2 The Id AR has submitted that only after the amendment whereby a proviso has been inserted so as to provide explicit power to Central Government and the prescribed authority to withdraw the approval or rescinding the notification. Before such amendment, there was no power to withdraw the exemption once granted by the CBDT. The case of the assessee society is distinguishable from those trust and institutions which are assessed u/s 11 & 12 of the I T Act; therefore, the case of the assessee cannot be compared with the cases, which falls u/s se. 11 & 12 of the Act. The Id AR has then submitted that the cases relied upon by the Id DR are distinguishable and not applicable in the case of the assessee. The assessee society has regularly and fully complied with all the terms and conditions stipulated in the notification issued u/s 10(23C)(iv) and therefore, the exemption granted by the CBDT cannot be withdrawn by the Assessing Officer. He has further submitted that though the assessee society is also registered u/s 12 of the Act, however, when the assessee has been granted exemption u/s 10(23C)(iv) then, the case has to be considered as per the notification issued u/s 10(23C)(iv). The Assessing Officer cannot re-examine the objects of the assessee society once exemption was granted by the CBDT after satisfactions about the objects. The registration and exemption once granted cannot be denied by the Assessing Officer when the activity carried out by the

assessee is as per the objects of the society. He has reiterated the contention and submitted that the amendment by which the proviso 13 to clause 10 (23C) has been inserted is applicable w.e.f 1.4.2003 and therefore, prior to the amendment there was no provision of withdrawal of the exemption granted by the Central government. In support of the arguments and contention, Id AR of the assessee has relied upon the following decisions:

- a) Raza Textiles Ltd. v. Income-tax Officer - 87 ITR 539(SC)
- b) Cochin Devaswom Board v. Government of India - 188 ITR 8(Kel)
- c) Lakshmi Niwas Birla v. Wealth-tax Officer - 252 ITR 598 (Cal)
- d) Assistant Commissioner of Income-tax v. Surat City Gymkhana - 300 ITR 214 (SC)
- e) Hiralal Bhagwati v. Commissioner of Income-tax - 246 ITR 188 (Guj)
- d) Maharashtra Academy of Engineering and Educational Research v. Director General of Income-tax (Investigation) - 319 ITR 399 (Bom)
- e) Chaturvedi Har Prasad Educational Society vs CIT - 46 DTR 121 (Lko)
- f) CIT vs Manipal Academy of Higher Education - 9 SOT 284(Bang)

24 We have considered the rival contentions and carefully perused the relevant material on record as well as the provisions of the Act. The first question emerges for our consideration and adjudication is whether after the notification u/s 10(23C)(iv) , the Assessing Officer has the power to withdraw the exemption.

24.1 At the threshold, we may point out the denial of the claim of exemption at the time of assessment does not necessarily amount to withdrawal of exemption granted by the CBDT by notification issued u/s 10(23C)(iv). Section 10(23C)(iv) as exists at the relevant time reads as under:

(23C) any income received by any person on behalf of—

(i)

(ii).....

(iii)

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

It is clear from the clause (iv) of sub.sec. 23C of sec. 10 that any fund or institution established for charitable purposes which is notified by the Central Govt, the income received by such fund or institution is exempted subject to fulfilment of the conditions as enumerated under various provisions to clause (23C) as well as the terms and conditions stipulated by the Central Government in the notification u/s 10(23C)(iv).

24.2 The second proviso to clause 23C prescribes the procedure and the requirement for granting the exemption by the Central Govt by notification, which reads as under:

***“Provided further** that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf:”*

24.3 Thus, it is clear that before notifying any fund, trust or institution, the Central Government or the prescribed authority, as the case may be, may call such record or information as it think necessary in order to satisfy itself about the genuineness of the activity. Therefore, at the time of granting the approval/exemption, the Central Government or the prescribed authority has to satisfy about the genuineness and objects of the trust/institution. The enquiry/information at the time of considering the application for granting of exemption u/s 10(23C)(iv) is restricted to the examination/verification as to whether the trust/institution is actually in the activity which are genuine and to achieve the object of the trust/institution. Once the exemption is granted by

issuing the notification u/s 10(23C)(iv), the assessee becomes entitled to claim the exemption against the income from those activity, which are in consonance of the object of the trust/institution for which the exemption is granted. The notification issued u/s 10(23C)(iv) itself does not tantamount to have allowed the claim of exemption. The approval/exemption by notification is pre-requisite condition for claiming of exemption whether the claim is allowable or not, has to be examined in the light of various conditions stipulated under the statute as well as by the Central Govt subject to which the approval is granted. The compliance with the terms and conditions stipulated by the Central government/prescribed authority would be gauged at the assessment stage.

25 As per the provisions of sec 10(23C)(iv), the object of the institution should be for charitable purpose. The exemption has been granted vide notification issued by the Central Government u/s 10(23C)(iv), the same was subject to the following conditions:

"In exercise of the powers conferred by sub clause (iv) of clause (23C) of sec. 10 of the Income tax Act, 1961 (13 of 1961) the Central Government hereby notifies "India International Textile Machinery Exhibition Society, Mumbai" for the purpose of the said sub-clause for the assessment years 1999-2000 to 2001-2002 subject to the following conditions namely:

- i) The assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;*
- ii) The assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub section (5) of section 11;*
- iii) This notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business."*

25.1 It has been made clear that this notification will not apply in relation to any income being profit and gain of business unless the business is incidental to the attainment of the objectives of the assessee and separate books of account are maintained in respect of such business. There is no dispute that the assessee has not maintained any separate books of account; but claimed that the only activity of the assessee is to carry out the exhibition and therefore, the books of account maintained by the assessee are separate books of account for exhibition activity. The Assessing Officer, for the AY 1997-98 has given details of the income relating to exhibition at page 2 & 3 of his assessment order as under:

i)	Space rental	Rs. 15,37,23,281
ii)	Power installation charges	Rs. 80,48,638
iii)	Power service charges	Rs. 59,63,429
iv)	Exhibition telephone receipts	Rs. 6,45,402
v)	Compressed Air hire charges	Rs. 6,83,755
vi)	Interest on late payment of exhibition receipts	Rs. 6,87,621
vii)	Other exhibition income	Rs. 48,73,600
	Total	Rs.17,46,25,726

25.2 The assessee has not disputed this fact that the assessee has charged more than 50% margin in providing the facilities to the participants of the exhibition. Thus, it is clear that the assessee is charging a different rate of tariff from the participants in respect of power, telephone, compressor hire charges. The nature of these facilities itself shows that the assessee is charging separately for each and every facilities made available to the participants in the exhibition by adding its own margin in the tariff rate charged by the service provider. It is not the case that for holding the exhibition, the assessee is charging for its service for organizing the exhibition; but apart from the space rentals, the assessee is charging for all other facilities and services like

electricity, telephone in a manner as to earn the profit. Thus, when the assessee is not charging lump sum amount from the participants for the services for organizing; but adding the margin of more than 50% on each and every services, which shows that the assessee is not working under 'no profit no loss basis' but having a definite target of earning the profit from the activity. No doubt about this activity of providing other facilities/services to the participants of the exhibition are connected with the main object of organising the exhibition but some of these activities are clearly having the element of profit motive and not charitable in nature. Therefore, the condition as stipulated in the notification issued u/s 10(23C)(iv) the assessee is required to maintain separate books of account for the activities which are in the nature of business, though connected with the main object of the assessee.

25.3 Since the assessee has not maintained separate books of account for these activities of providing other services and charging with a margin, the notification issued u/s 10(23C)(iv) will not applicable in respect of such income from other activities and therefore, the exemption u/s 10(23C)(iv) is not available in respect of the income earned by the assessee from the activity of providing power installation, electricity, telephone facilities, compressed air hire etc. etc. Accordingly, the Assessing Officer is directed to allow exemption with respect to the receipt and accumulations from the holding and organizing the exhibition and hence, the income from other activities in providing other services by charging huge profit has to be taxed as income of the assessee. Accordingly, the appeal filed by the revenue is partly allowed.

26₹ In the result, the appeals filed by the revenue are partly allowed whereas the cross objections by the assessee are dismissed.

Order pronounced on the 12th day of Dec 2011.

Sd/

Sd/

(J SUDHAKAR REDDY) Accountant Member	(VIJAY PAL RAO) Judicial Member
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Place: Mumbai : Dated: 12 Dec 2011

Raj*

Copy forwarded to:

1	Appellant
2	Respondent
3	CIT
4	CIT(A)
5	DR

/TRUE COPY/
BY ORDER

Dy /AR, ITAT, Mumbai