

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ' B ' NEW DELHI)

BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER
And
SHRI J. S. REDDY, ACCUNTANT MEMBER

ITA No. 387/ Del/ 2013
(Assessment Year 2009-10)

Divya Yog Mandir Trust,
Kripalu Bagh, Kankhal,
Hardwar
PAN : AAATD1114E
(Appellant)

Vs. JCIT, Hardwar Range,
Hardwar

(Respondent)

Assessee by: S/Shri Ajay Vohra, Rohit Jain, Adv.
and Deepashree Rao, CA
Revenue by: Dr. Sudha Kumari, CIT DR

ORDER

PER I. C. SUDHIR, JUDICIAL MEMBER:

The assessee has questioned the first appellate order on the following grounds:

1. "That the Commissioner of Income-tax (Appeals) erred on facts and in law in upholding the action of the assessing officer in denying exemption under sections 11/12 of the Income Tax Act. 1961 ('the Act') after holding that the appellant's activities are not charitable in nature.
2. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the objects of the appellant did not fall within the purview of providing 'medical relief, 'imparting education' or 'relief to the poor'. but was in the nature of 'object of general public utility' as contained in the definition of "charitable purpose" under section 2(15) of the Act.
3. That the Commissioner of Income-tax (Appeals) erred on facts and in law in failing to appreciate that the Revenue authorities have. in the past years,

consistently accepted that the objects of the appellant are in the nature of providing 'medical relief, inter alia, by treating patients through ayurveda, yoga, naturopathy, acupressure, etc.

- 3.1 That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that propagation of yoga does not qualify as providing "medical relief. on the ground that yoga unlike other medical systems is not a curative system for alleviating diseases. but is only a spiritual S) stem having indirect salutary benefits on the health of an individual.
- 3.2 That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that yoga as a system. falls in the residuary category of 'advancement of any other object of general public utility' contained in section 2(15) of the Act.
- 3.3 That the Commissioner of Income-tax (Appeals) erred on facts and in law in failing to appreciate that yoga is not only a traditional system of physical exercise and meditation for attaining physical wellbeing or spiritual upliftment, but is a 'recognized system of medicine' providing medical relief to various ailments, as provided in the Clinical Establishments (Registration and Regulation) Act. 2010.
- 4 That the Commissioner of Income-tax (Appeals) erred on facts and in law in further failing to appreciate that imparting of yoga training through well structured yoga shivirs/ camps also falls under the category of imparting "education', one of the charitable objects defined under section 2(15) of the Act.
- 5 That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the appellant had not incurred any expenditure for pursuing its objectives of providing medical relief.
- 5.1 That the Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that the appellant actually provided medical relief to lacs of people, inter alia, through yoga treatment, Patanjali

Ayurvedic Hospital, Patanjali Chikitsalaya. etc, all over India.

- 5.2 That the Commissioner of Income-tax (Appeals) erred on facts and in law in disregarding the fact that the appellant had, during the assessment year under consideration, provided medical services/treatment to more than 2,39,000 patients. through its' Department of Medical Services & Facilities', which has nowhere been denied by the assessing officer.
- 5.3 That the Commissioner of Income-tax (Appeals) erred on facts and in law in alleging that the free consultation provided by the appellant to patients was not on account of any charitable intention of providing "medical relief" but was only a marketing ploy to boost sales of the products manufactured by the appellant.
- 5.4 That the Commissioner of Income-tax (Appeals) erred on facts and in law in failing to appreciate that the activities being carried out by the appellant are in furtherance of its main objective of providing 'medical relief' for which the appellant has been set up and are not commercial in nature.
- 5.5 That the Commissioner of Income-tax (Appeals) erred on facts and in law in alleging that the medical practitioners of the appellant trust were prescribing medicines which were available only in the medical sales counter managed by the appellant disregarding the findings in the remand report. wherein the medical practitioners had categorically stated that they also prescribed medicines manufactured by other pharmaceutical companies.
- 5.6 That the Commissioner of Income-tax (Appeals) erred on facts and in law in alleging that the appellant's activities are similar to private pharmaceutical companies in the market, who are working on commercial basis and earning profits.
6. That the Commissioner of Income-tax (Appeals) failed to appreciate the distinction between pursuing predominant charitable objectives of providing "medical relief" and imparting "education" vis-a-vis carrying on

of business incidental to the main objects of the trust referred to in section 11(4A) of the Act.

- 6.1 That the Commissioner of Income-tax (Appeals) erred on facts and in law in alleging that the appellant's activities in relation to production and sale of ayurvedic preparations were not incidental to its main objective as the same are commercial in nature.
7. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the appellant was not engaged in pursuing the objective of imparting education.
7. I That the Commissioner of Income-tax (Appeals) failed to appreciate that the appellant imparted yoga education and applied substantial amounts in setting up of ayurved college. which commenced operations w.e.f. 20.07.2009.
8. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the inter-trust donations amounting to Rs. 38.35 crores made to Patanjali Yog Peeth, for the purpose of setting up Yog Bhavan and other yoga related activities, did not amount to application of income for the purpose of 'medical relief.
9. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not allowing expenditure incurred by the appellant towards acquisition of capital assets as application of income for charitable purposes.
10. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not allowing the revenue expenditure incurred by the appellant as application of income for charitable purposes.
11. Without prejudice to the contention that the income of the applicant was exempt under section II and therefore section 40(a)(ia) of the Act had no application, the Commissioner of Income-tax (Appeals) erred on facts and in law in affirming the disallowance of RS.17,27,88,778/- under section 40(a)(ia) of the Act, being payments made to suppliers for purchase of

materials like packing material. CD. VCD. magazines and books.

- 11.1 That the Commissioner of Income-tax (Appeals) erred on facts and in law in alleging that tax was liable to be deducted at source under section 194C of the Act in respect of payments made to suppliers for purchase of materials by inferring that a contractual relationship existed between the appellant and the supplier.
- 11.2 That the Commissioner of Income-tax (Appeals) failed to appreciate that payment made to suppliers was in the nature of 'contract of sale' and not at all in the nature of 'works contract falling within the scope and ambit of section 194C of the Act.
- 11.3 That the Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that tax having already been paid by the recipient of income, the amount paid by the appellant was allowable as expenditure.
- 12 Without prejudice, that the Commissioner of Income-tax (Appeals) further failed to appreciate that disallowance under section 40(a)(ia) of the Act, if any, should have been restricted only to the amount remaining unpaid/payable as on the last date of the previous year.
13. Without prejudice, that the Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that in case the appellant was held to be non-charitable, then the donations received amounting to Rs.3,99,14,400/- represented capital receipt, not liable to tax under the provisions of the Act.
14. Without prejudice, that the, Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that in case the appellant was held to be non-charitable, then the appellant should have been allowed, depreciation on assets in accordance with the provisions of the Act.
15. That the Commissioner of Income-tax (Appeals) erred on facts and in law in confirming charging of interest under section 234A of the Act.

16. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not directing the assessing officer to delete interest charged under sections 234B, 234D and 244A of the Act “

2. We have heard and considered the arguments advanced by the parties, perused the orders of authorities below, material available on record and the decisions relied upon.

3. The brief facts of the case are that the appellant is a public charitable trust registered vide deed dated 05.01.1995. It is also registered u/s 12A of the I. T. Act, 1961 vide order dated 2.03.1995 issued by DIT(E), Dehradun. It was also enjoying approval granted u/s 80G(5)(vi) of the Act vide order dated 24.08.2007 applicable for the year under consideration. The appellant trust has been denied exemption by treating it as covered under the proviso to Section 2(15) of the Act on account of the fact that it was carrying on business activities having turnover of more than the prescribed limit. Ld. CIT(A) has upheld this action of the A.O. Aggrieved, the assessee has preferred the present appeal on the above grounds. The issues raised in the grounds are interconnected and hence, a consolidated order is being passed touching all these issues.

4. The basic issue involved in the grounds is as to whether the assessee is entitled to the claim of exemption u/s 11 and 12 of the I. T. Act, 1961. In support of the grounds, the Ld. A.R. submitted that the trust was set up with the predominant objective of providing medical relief through Yoga, Ayurved, Acupressure and Naturopathy and imparting education in the field of Yoga for the purpose of alleviating all kinds of diseases and provide medical relief through Yoga, Naturopathy, Acupressure and Ayurved, providing relief to the poor and undertaking research & development activities in the field of yoga, Ayurved and Vedic literature to further the

cause of alleviating all kinds of diseases and provide medical relief. He submitted that on the basis of aforesaid objectives, the appellant was granted registration u/s 12A of the Act, which is in force till date. Ld. A.R. submitted that the appellant in accordance with the approved objective has been consistently pursuing its charitable activities for the past 18 years including the assessment year under consideration and the appellant had always been allowed exemption u/s 11/12 including previous assessment completed u/s 143(3) of the Act. There has been no change in the facts during the year under consideration.

4.1. In furtherance of its charitable objectives the appellant has established the following:

- (i) Department of Medical Science & Facilities (DOMSF) commonly known as Patanjali Hospital. He submitted that the hospital is run by the appellant trust having various departments including Dental Department, Radiology Department, Surgical Department, Ophthalmology Department etc. providing medical relief to over 2000 patients every day. Apart from primary set up in Hardwar, over 2,39,000 patients were treated during the relevant year, the hospital also has its presence in Ranchi & Patna where more than 60,000 and 75,000 patients respectively are treated every year.
- (ii) Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan: Ayurvedic College has been set up, which was under construction in the year under consideration and has since started operations w.e.f. 20.07.2009, for imparting education in the field of Ayurved.
- (iii) R&D Yoga and Ayurved: Engaged in continued research and development in the field of Yoga and Ayurved to

further the cause of alleviating all kinds of diseases and provide medical relief. The R&D of the appellant trust is duly recognized by the Scientific and Industrial Research Organization (SIRO). In this regard, the Ld. A.R. referred to page 197-198 of the paper book.

- (iv) Patanjali Chikitsalaya's: Apart from the above, the appellant trust has also set up Patanjali Chikitsalaya's all across the country for providing free medical consultations to patients suffering from various diseases. More than 1,000 vedyas are giving free consultation to over 50,000 patients of curable and incurable diseases in about 1,000 Patanjali Chikitsalayas across the country.

4.2. The Ld. A.R. submitted that to feed up the aforesaid charitable objects, the appellant has set up five business undertakings under the appellant trust which are carrying on the activities stated below:

- i) Divya Nursery: Dealing in cultivation, restoration and research in rare medicinal plants/herbs and selling these plants.
- ii) Divya Pharmacy (Ayurvedic Pharmaceutical unit): It is an undertaking engaged in manufacturing of quality ayurvedic medicines as per the tradition of sages & modern science. The motto of Divya Pharmacy is to make available the medicines to common man and driven by this motive, the price of all its ayurvedic preparations are comparatively lower than other competitors in the market. Ld. A.R. referred to page 199 of the paper book.
- iii) Divya Prakashan: It deals with publication and distribution of different types of literature relating to Yoga and Ayurved with the motive of creating awareness about Yoga and its

effects with the ultimate objective of providing medical relief to the society at large.

- iv) Divya Yog Sadhna: It deals with preparation and distribution of audio-video CDs, DVDs and audio-video cassettes relating to Yoga and Ayurveda with the motive of creating awareness and providing medical relief to the society at large.
- v) Yog Sandesh: It is a monthly magazine having millions of readers, containing articles on yoga, ayurveda, etc. with the motive of creating awareness and providing medical relief to the society at large.

4.3. Ld. A.R. submitted that the surplus generated from the aforesaid business undertakings of the appellant trust are redeployed for the purpose of achieving its main charitable objectives. He submitted that from the aforesaid activities of the undertakings of the appellant trust it may be appreciated that the appellant is solely committed to achieving its predominant charitable objectives of providing medical relief, imparting education and relief to the poor. The authorities below while accepting that the objects/activities of the appellant trust as being charitable in nature, in the same breadth held that it fell under the sixth limb of the definition of charitable purpose given u/s 2(15) of the Act, i.e. advancement of any other object of general public utility. It was covered under the mischief of proviso to that section. Applying the aforesaid proviso, the authorities below held the appellant's transaction to be in the nature of business and commerce, similar to private players in the market and denied exemption amounting to Rs.103,32,76,024/- u/s 11/12 of the Act. He pointed out that the appellant, since its inception, in the year 1995, has been engaged in the activities of providing medical relief through Ayurved, Naturopathy, Yoga, Acupressure which has been consistently accepted by the revenue authorities in the assessment years 2004-05 to 2008-09 vide various assessments completed

u/s 143(3) of the Act. In support, he referred to pages 207-244 of the paper book i.e. copies of these assessment orders for asstt. years 2004-05 to 2008-09. In all these assessment orders, the A.O. has consistently held that the appellant was engaged in providing medical relief, contended the Ld. A.R. Ld. A.R. pointed out further that in the assessment years 2004-05 to 2008-09, the A.O. has allowed exemption u/s 11/12 of the Act but the addition/disallowances were made (primarily relatable to compute the income of the business undertaking) while computing the taxable income. On appeal, the first appellate authority has deleted the additions/disallowances made by the A.O. in each of the said years, thereby accepting the return of income of the appellant and also accepted that the appellant trust was engaged in providing medical relief. Ld. A.R. submitted that the aforesaid orders of the first appellate authority have not been challenged by the revenue and accordingly, the said orders have reached its finality. He submitted that there was no dispute raised by the A.O. as regards to the objects of the trust of providing medical relief being pursued by the appellant. He pointed out further that there has been no change in the charitable objectives pursued by the appellant in the assessment year under consideration in comparison to earlier years. Thus, the A.O. has deviated from its stand which has been consistently accepted in the past many years. Ld. A.R. contended that in income tax proceedings though the principle of res judicata does not strictly apply, yet, the rule of consistency does apply. In support he placed reliance on the following decisions:

- i) Radhasoami Satsang Vs CIT 193 ITR 321 (SC)
- ii) DIT(E) Vs Guru Nanak Vidya Bhandar Trust 272 ITR 379(Del)
- iii) CIT Vs Shri Agastyar Trust 149 ITR 609 (Mad)
- iv) DIT Vs Escorts Cardiac Diseases Hospital 300 ITR 75
- v) CIT Vs Sewa Bharti Haryana Pradesh 325 ITR 599 (P & H)

4.4. On the issue of applicability of the proviso to Section 2(15) of the Act, Ld. A.R. submitted that it is not applicable in the facts and circumstances of the present case. He referred the provisions with this submission that the proviso to Section 2(15) of the Act provides that if any of the objects of the assessee involves carrying on any activity in nature of trade, commerce, or business for cess or fee or any other consideration, then irrespective of the nature of use, or application or retention of income, the assessee shall not be regarded as existing for charitable purposes. Similarly if any of the objects of the assessee involves carrying on the activity of rendering services in relation to trade, commerce or business for consideration therein, then too the assessee shall cease to be regarded as carrying out any activity for charitable purpose. It is however pertinent to mention that the proviso to Section 2(15) of the Act applies only to the trusts/institutions falling in the last limb of the definition "charitable purpose", that too, if such trust/institution carry out commercial activity in nature of business, trade or commerce. Thus, the aforesaid proviso does not apply to a trust/institution engaged in the charitable objects of providing relief to the poor, imparting education and providing medical relief, contended the Ld. A.R.

4.5. The Ld. A.R. submitted that the vision with which the appellant trust has been set up and which is being followed over the years are as under:

“ To make a disease free world through a scientific approach to Yoga and Ayurved and to fulfill the resolution of making a new world free from disease and medicine;

To establish 'pran' as medicine for the treatment of all curable and incurable diseases by research of Pranayam/Yoga;

To propagate Pranayam as a "free" medicine for treatment of diseases round the globe, through in-depth research in accordance with the parameters of modern medical science, so that the rich and poor may avail its benefits in order to attain sound health;

To form a new integrated system of treatment, consisting mainly of the techniques of Yoga and Ayurveda, for Surgery and Emergency cases, Allopathy, Homeopathy, Uani and Acupressure to soothe patients suffering from unbearable pains and rid them of disease.

To evaluate methods of treatment of physical body, etheric body, astral body, mental body and casual body beyond the present incomplete system of treatment for cure of physical body alone;

Imparting yoga and health education and to begin degree and diploma courses for students in discipline of Yoga and Ayurveda."

4.6. He submitted that the aforesaid predominant objects and the vision with which the appellant is being run, makes it patently clear that the objects of the appellant are to impart education and provide medical relief to the society at large. It may be appreciated that none of the activities of the appellant are hit by the proviso to Section 2(15) of the Act.

4.7. Meeting out the primary objection of the authorities below, that Yoga as a system does not provide any medical relief, the Ld. A.R.

submitted that Ld. CIT(A) has observed that 'Yoga' unlike other medical systems is not a curative system for alleviating diseases but is only a spiritual system having indirect salutary benefits on the health of an individual. Such observation of Ld. CIT(A) is not correct since Yoga is one of the well recognized traditional system of physical exercise and meditation for attaining the physical wellbeing and is a complete medical science in itself. In support Ld. A.R. referred pages 161-176 of the paper book i.e. a copy of Clinical Establishment (Registration and Regulation) Act, 2010. He submitted that this Act has been enacted by the Central Government to provide for registration and regulation of all Clinical Establishments in the country with a view to prescribing the minimum standards of facilities and services provided by them. As per this Act, Yoga is a recognized system of medicine and it has been defined as such u/s 2(h) of the said Act. Ld. A.R. pointed out that the US National Center for Complementary and Alternative Medicine (NCCAM) has recognized yoga as a complementary and alternative medicine (CAM) to prevent and treat diseases. NCCAM defines CAM as a group of diverse medical and health care systems, practices, and products that are not generally considered at par of conventional medicine (also called Western or allopathic medicine). He submitted that a survey released in December 2008 by NCCAM found that yoga was the sixth most commonly used alternative therapy in the US during 2007, with 6.1 percent of the population participating. The said study also states that Yoga has been used as supplementary therapy for diverse conditions such as cancer, diabetes, asthma and AIDS and the scope of medical issues where yoga is used as a complementary therapy continues to grow. In support he referred pages 193-196 of the paper book, i.e. copy of relevant extract of the survey conducted in December 2008 by the US National Center for Complimentary and alternative medicines (NCCAM) which is also recognized. Ld. A.R. pointed out further that the Standing Committee of Human Resource Department (HRD) Ministry has recommended that Yoga be made

compulsory for all school going children in the country. The said report further provides that yoga is one of the core components of Health and Physical Education. In support he referred page 181 of the paper book. Ld. A.R. pointed out that recently in Sep 2012, the Harvard University of USA came forward to introduce Yoga and Ayurveda in their university in collaboration with Swami Ramdevji in the wake of dreadful diseases being cured by Samiji's Pranayam and his Ayurved medicines. In this regard he referred to page nos. 636 to 638 of the paper book i.e. relevant extracts from the website 'wikipedia' providing details of Yoga and Ayurveda as a subject in the Harvard University.

4.8. Ld. A.R. referred the contents of page 16 of the first appellate order for the purpose of adjudicating as to whether yoga can be classified as a form of medical relief. He submitted that Ld. CIT(A) has placed reliance on the definition of the term "medical" as provided in Major Law Lexicon by P Ramanatha Aiyar (2010 edition) as per which "of pertaining to or having to do with the art of healing disease or the science of medicine; containing medicine; used in medicine". On perusal of this definition, it may be observed that the term 'medical' has been defined very broadly. The definition clearly provides that the 'art of healing any disease' continues medical relief and the same need not be restricted to conventional methods of treatment. He also referred page 15 of the first appellate order with the submission that Ld. CIT(A) had selectively quoted from the website of Department of Ayush (Ministry of Health and Family Welfare). Ld. A.R. referred complete information on Yoga as available on the website <http://www.indianmedicine.nic.in> reproduced below:

"Yoga

The concepts and practices of Yoga originated in India about several thousand years ago. Its founders were great saints and sages. The great yogis presented rational interpretation of their

experiences of Yoga and brought about a practical and scientifically sound method within every one's reach. Yoga today, is no longer restricted to hermits, saints, and sages; it has entered into our everyday lives and has aroused a worldwide awakening and acceptance in the last few decades. The science of Yoga and its techniques have now been reoriented to suit modern sociological needs and lifestyles. Experts of various branches of medicine including modern medical sciences are realizing the role of these techniques in the prevention and mitigation of diseases and promotion of health.

Yoga is one of the six systems of vedic philosophy, maharishi Patanjali, rightly called "the father of yoga" compiled and refined various aspects of yoga systematically in his "Yoga Sutras" (aphorisms). He advocated the eight folds path of Yoga, popularly known as "Ashtanga Yoga" for all round development of human beings. They are :- Yama, Niyama, Asana, Pranayama, Pratyahara, Dharana, Dhyana and Samadhi. These steps are believed to have a potential for improvement of physical health by enhancing circulation of oxygenated blood in the body, retraining the sense organs thereby inducing tranquility and serenity of mind. The practice of Yoga prevents psychosomatic disorders and improves an individuals resistance and ability to endure stressful situations."

4.9 The Ld. A.R. referred other informations downloaded from the aforesaid website, placed at pages 639 to 659 of the paper book, and submitted that these make it patently clear that 'Yoga' is one of the recognized system/method of providing medical relief. Yoga thus, as a system of medicine, has been successful in curing various dreadful diseases and providing relief to the sufferings of people. Thus, it undoubtedly qualifies as a form of 'medical relief' as provided in section 2(15) of the Act.

4.10. Ld. A.R. submitted that the allegation of the A.O. at para 4.6 of the assessment order that the appellant has received substantial amount from organizing yoga shivirs/camps in the assessment year under consideration, is factually incorrect and vehemently denied. He submitted that in the assessment year under consideration, the appellant has not conducted any yoga shivir/camp and that the question of receiving any sum on this account does not arise at all. In the assessment year under consideration, the appellant made inter-trust donations amounting to Rs.38.35 crores to Patanjali Yogpeeth, another charitable trust, for the purpose of setting up 'Yog Bhavan' and other yoga related activities, in pursuance of its charitable objectives of imparting yoga training for providing medical relief. The yoga is one of the departments in the Patanjali Hospital where patients are cured through yoga. He contended that the authorities below have gone wrong in holding that (a) yoga does not provide medical relief and/or (b) any amount spent towards yoga (either in any of the departments of the appellant or by way of donation) does not amount to application of income for providing medical relief.

The Ld. AR submitted that yoga, is one of the well recognized traditional system of physical exercise and meditation for attaining physical well being and is a complete medicinal science itself. He pointed out that various features, methods, aspects and benefits of yoga have been highlighted by various authors in various publications and literature, one such publication being 'yog in synergy with medical science' written by an ayurved Acharya of the appellant. The said publication was documented on the basis of clinical tests which were conducted in the most scientific manner showing the clinical effect of yoga on the participants in various yoga camps. The aforesaid publication also documents the feedback/testimonies of various people who were suffering from various chronic diseases and have benefited from yoga. The Ld. AR pointed out

further that these are various publications which clearly highlight yoga as a means to cure several ailments / diseases, including but not limited to the following :-

- a) Yog for Cancer
- b) Yog for Migraine & Epilapsy
- c) Yog for Renal Diseases
- d) Yog for Psonasis (skin diseases)
- e) Yog for Musculosketal Disorder
- f) Yog for constipation and piles
- g) Yog for Asthama
- h) Yog for parkinsons and paralysis

4.11. Ld. A.R. submitted that reliance placed on the decision of Hon'ble Bombay High Court in the case of CIT Vs Rajnish Foundations 280 ITR 553 (Bom.) by the CIT(A) is misplaced as the said decision was rendered prior to introduction of the proviso to Section 2(15), when there was no dispute in so far as classification of charitable objective was covered for the purpose of claiming exemption u/s 11/12 of the Act. This decision was rendered in the context of classifying "meditation" as a charitable objective for the purpose of Section 2(15) of the Act. The Hon'ble High Court in the given case has adjudicated only on the issue of classification of "meditation" and 'preaching/propagation of philosophy' as a charitable object falling under the category of 'general public utility', but has nowhere explicitly dealt with 'yoga', except for making passing references in respect of the same. The Ld. A.R. submitted that it is pertinent to note that the Hon'ble Court in the aforesaid decision has observed that 'not only in India, medication and yoga are being accepted in the western countries also as a great source for physical and mental health' meaning thereby that yoga is a source for medical relief, as is in the case of the assessee. He pointed out that the M P Government has introduced various forms of alternative medicines,

meditation classes in the field of yoga which inter alia include M.Sc. in human consciousness and yogic science, Ph.D. in Yogic Science, M.Phil. in Yogic Science and Post Graduate Diploma in Yoga etc. which goes to prove that yoga is now a well equipped medical science which is effective in providing medical relief to numerous diseases. In this regard, he referred to pages 634 and 635 of the paper book i.e. details of various formal courses in yoga introduced by the Madhya Pradesh Govt.

4.12. Ld. A.R. submitted further that propagation of yoga constitutes imparting of education. Authorities below have failed to appreciate that the propagation of yoga by way of conducting yoga classes on a regular basis and in a systematic manner also fall under the category of 'imparting education' provided u/s 2(15) of the Act. He submitted that the expression 'education' has not been defined under the Act. However, reliance in this regarding may be placed on the following legal precedents:

- i) Lok Shikshan Trust 101 ITR 234 (S.C.)
- ii) Delhi Music Society Vs DGIT 246 CTR 327 (Del.)
- iii) ITO Vs SRM Foundation of India 21 ITD 598 (Del.)

4.13. Ld. A.R. submitted that even as per Halsbury's Laws of England (4th edition, Volume 5, Paragraph 522) the advancement and propagation of education and learning generally are charitable purposes, even in the absence of an element of poverty in the class of beneficiaries, but the trust must be for the benefit of a sufficient section of the community. It has been further noted in para 524 that the promotion of education in particular subjects, such as art, artistic taste, the appreciation of fine arts, music, commercial education, training for industrial employment, the art and science of Government, economic and sanitary science or psychological healing is charitable. He submitted that in the case of the appellant the predominant objects of the trust are to provide practical and theoretical

training in the field of yoga, which could ultimately provide medical relief to the society at large. In pursuance of the said objective, the appellant trust has made inter-trust donations to Patanjali Yog Peeth to support their endeavors of imparting yoga education by means of organizing yoga shivirs/camps across the country on daily/weekly/monthly basis in a systematized/organized manner in order to provide medical relief to people who cannot afford modern medical method or have been subjected to ill effects of modern medicine. Such Yoga education was given in the shivirs/camps by Yoga Gurus (i.e. yoga teachers). Thus, imparting of yoga training through well structured yoga shivirs/camps also falls under the category of imparting 'education', one of the charitable objects defined u/s 2(15) of the Act and accordingly the appellant's activities are not hit by the proviso inserted in the definition of 'charitable purpose' as contained in the said section.

4.14 In support of ground No.5 that the actual medical relief not judiciously considered, the Ld. A.R. submitted that the appellant has been providing medical relief to millions of people all across the country through Patanjali Hospital and Patanjali Chikitsalayas. He referred page 59 of the paper book to support his contention that on perusal of Schedule 31 of the income and expenditure account of the appellant being the net expenditure on development of medical science and facilities (DOMSF) in Patanjali Hospital, it will be apparent that the appellant's expenditure on providing medical relief has exceeded the receipt from patients. He pointed out that the aforesaid hospital at Haridwar, Ranchi and Patna served more than 2.25 lacs, 0.60 lacs and 0.75 lacs patients during the relevant year. The hospitals have team of doctors, nurses and paramedical staff working round the clock. The hospital at Haridwar is well equipped with ultra modern diagnostics facilities like OPD & IPD, pathology lab, cardiology lab, Pnchkarma clinic, Yoga & Shatkarma Clinic, Surgical Dental &

ophthalmologic clinic and provides free yogic and Ayurved consultancy to all its patients. Ld. A.R. submitted that in the assessment year under consideration, the appellant has provided medical services/treatment to more than 2.4 lacs patients through its Ayurvedic Hospital, which has nowhere been denied by the A.O. He pointed out further that during the assessment year under consideration, the appellant has provided free medical relief/treatment to more than 38 lacs patients through Patanjali Chikitsalyas spread all across the country. All the records of such treatment and activities of the trust have been examined in scrutiny assessments by the Revenue department over so many years and have never been disputed.

4.15. In support of ground No.6, i.e. on the issue of distinction between objects and business u/s 11(4)/(4A), the Ld. A.R. submitted that it has been misunderstood by the authorities below as they have simply brushed aside the submissions of the appellant by holding that the aforesaid activities were merely sub-serving the business of Divya Pharmacy, without appreciating that the said business undertaking was run by the appellant as an activity incidental to attainment of the main objects of the appellant and to feed charity, which is clearly permitted u/s 1(4)/(4A) of the Act. He submitted that it is outside law that once registration u/s 12A of the Act has been granted by CIT, the A.O. could not question the charitable character of the institution during the course of assessment proceedings. It is not open to the A.O., in the assessment proceedings, to hold that the objects of the assessee are not charitable in nature. In this regard, reliance has been placed on the following decisions:

- i) ACIT Vs Surat City Gymkhana: 300 ITR 214 (S.C.)
- ii) Sonapat Hindu Educational and Charitable Society Vs CIT 278 ITR 262 (P & H)
- iii) Hiralal Bhagwati Vs CIT 246 ITR 188 (Guj.)

- iv) Ananda Marga Pracharaka Sangha Vs CIT 218 ITR 254 (Cal.)
- v) ITO Vs Mrs. Dwarika Prasad Trust 30 ITD 84 TM (Del.)
- vi) ITO Vs Trilok Tirath Vidyavati Chutani Charitable Trust 90 ITD 569 (Chd.)
- vii) Gaur Brahmin Vidya Pracharini Sabha Vs CIT 34 SOT 371 (del.)

4.16. The Ld. A.R. submitted that section 11 of the Act, provides exemption from tax for income derived from property held under trust for charitable or religious purposes. Section 11(4) lays down that "property held under trust" for the purpose of section 11 of the Act may include the business undertaking held by the trust. This section deals with cases where the business itself is still in trust for a charitable purpose. He submitted that sub-section (4A) of section 11 also exempts the income of a business carried on by the trust as long as the business carried on by it is; (a) incidental to the attainment of main objects; (b) feeds the charitable objects and (c) separate books of accounts are maintained in respect of the same, even on fulfillment of the aforesaid conditions, profit from such businesses are exempt under sections 11/12 of the Act.

4.17 Ld. A.R. submitted that in the case of the appellant, the activity of manufacturing and sale of Ayurved preparations has been undertaken only for the purpose of effectuating the charitable objective of providing 'medical relief' to the society at large, as a genuine need was felt to provide superior quality Ayurved preparations at economical prices, in order to attain effective medical results. He pointed out that the total donations/voluntary contributions received by the appellant trust during the assessment year under consideration amounted to Rs. 3,89,14,100/- only whereas the total revenue expenditure incurred by the appellant trust in the assessment year under consideration, for undertaking its charitable activities amounted to Rs.48,54,93,383/- (excluding depreciation). Further, substantial capital

expenditure has also incurred by the appellant trust, in pursuing its charitable activities. In support, he referred page 26 of the paper book. He submitted that meaning of expression 'not for purpose of profit' is no longer res integra, and the test being, what is the predominant object of the activity whether it is to carry out a charitable purpose or to earn profit. If the predominant object is to carry out a charitable purpose and not to earn profit, the organization would not lose its charitable character merely because some profit arises from the activity. The expression 'for the purpose of profit' implies that the predominant object should be to earn profit. Further, to determine the predominant object, what is required to be examined is the objects of the society, and not the quantum of surplus, though such quantum may become relevant in certain circumstances. The Ld. A.R. cited following decisions in support:

- i) ACIT Vs Surat Art Silk Cloth Manufacturers 121 ITR 124
- ii) CIT vs Andhra Pradesh State Road Transport Corporation 159 ITR 01 (S.C.)
- iii) Victoria Technical Institute Vs CIT 188 ITR 57 (S.C.)
- iv) Thiagarajar Charities Vs Addl. CIT 225 ITR 1010, 1026 (S.C.)
- v) Aditanar Educational Institution Vs ACIT 224 ITR 310 (S.C.)
- vi) CIT Vs Bar Council of Maharashtra 130 ITR 28 (S.C.)
- vii) American Hotel Lodging Association Education Institute vs CBDT 301 ITR 86 (S.C.)
- viii) CIT Vs Delhi Kannada Education Society 246 ITR 73 (Del.)
- ix) ACIT Vs ALN Rao Charitable Trust 102 ITR 474 (Kar)
- x) CIT Vs Pullikal Medical Foundation Pvt. Ltd. 210 ITR 299 (Ker.)
- xi) Umaid Charitable Trust Vs CIT 125 ITR 55 (Raj.) etc....

4.18 The Ld. A.R. contended that there is no bar in the charitable trust/institution carrying on business, provided the conditions prescribed in the conditions prescribed in Section 11(4)/11(4A) of the Act are satisfied. The Hon'ble Supreme Court in the case of CIT vs. P. Krishna Warriors, 53 ITR 176 (SC), has been pleased to hold that where business is held in trust for charitable purposes, the condition prescribed in proviso (b) to section 4(3)(i) of 1922 Act is not applicable and the assessee was held to be eligible

for exemption. The Ld. A.R. also placed reliance on the decision of Hon'ble Supreme Court in the case of DCIT Vs Thathi Trust 247 ITR 785 (S.C.) and on Hon'ble Delhi High Court in the case of Hamdard Dawakhana (Wakf) 157 ITSR 639 (Del.). The Ld. A.R. submitted that in furtherance of the charitable objective to provide medical relief through yoga and Ayurved, the need was felt to provide Ayurvedic medicines to the patients to attain optimum medical results as results of ayurvedic treatment are largely dependent upon the quality of medicines prepared. Hence, a small scale manufacturing unit of ayurvedic medicines was established by the appellant. This was the beginning of Divya Aushadhi Nirmanshala (Divya Pharmacy), which was totally based on traditional methods.

4.19. Ld. A.R. submitted that the quality of medicines so produced is of highest level and it is also ensured that the medicines are available to common man at reasonable prices. In support, he referred to page 199 of the paper book wherein the prices of ayurvedic medicines of the appellant has been compared with other products of different companies available in the market. Ld. A.R. submitted that surplus generated form the business undertaking is, as stated above, redeployed for charitable purpose i.e. for providing medical relief, imparting education and relief to the poor. Thus, there was nothing wrong in the incidental business being carried out by the appellant to feed the predominant charitable objects of providing medical relief and imparting education. In support, he placed reliance on the following decisions:

- i) CST Vs Sai Publication Fund 258 ITR 70
- ii) DIT(E) Vs Agri Horticulture Society 273 ITR 198
- iii) DIT(E) Vs Willington Charitable Trust 195 Taxman 232
- iv) Shri Haridevji Gaushala Trust Vs CIT 119 TTJ 981
- v) Bombay Keraleeya Samaj vs ITO 56 ITD 26 (Mum.)

4.20. Ld. A.R. submitted further that the findings of authorities below are perverse as it is factually incorrect to allege that the medical practitioners of the appellant trust were prescribing medicines which were available only in the medical sale counter managed by the appellant and the same is vehemently denied. CIT(A) has disregarded the findings of the A.O. in remand report dated 11.10.2012 reproduced at page 12 of the order wherein the medical practitioner has categorically stated that they also prescribe medicines manufactured by other pharmaceutical companies and there was no compulsion on the patient to purchase the medicines from the appellant only. The authorities below have totally failed to appreciate that out of the total sale of Rs.168.12 crores by Divya Pharmacy, medicines of Rs.4.2 crores only were sold from the hospital sale counter. Even otherwise there is no bar in selling medicines from the hospital counter. The allegation of the authorities below that the assessee did not sell any medicines other than products of Divya Pharmacy is legally and factually unsustainable. The authorities below have further failed to appreciate that medicines of Rs.41,26,217/- were purchased by various departments of the hospital run by the appellant. In support he referred contents of page 13 of the first appellate order. Ld. A.R. submitted further that the assessee had applied substantial amount in setting up ayurvedic college in the name of Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan, which commenced operations w.e.f. 20.07.2009. The said college is affiliated with Uttarakhand Technical University and runs BAMS course. Highly qualified and experienced faculties have been appointed to provide quality education to the students.

4.21. In support of ground No.7 regarding inter-trusts donations, the Ld. A.R. submitted that the authorities below have wrongly held that the inter trust donations amounting to Rs.38.35 crores made to Patanjali Yogpeeth,

another charitable trust for the purpose of setting up of yoga gram and other yoga related activities, did not amount to application of income for the purpose of 'medical relief' or 'imparting education'. The legal position in this regard is well settled that when donor trust which itself is a charitable trusts, donates its income to another trust, the same constitutes application of income u/s 11(1)(a) of the Act. In this regard, he drew our attention to the instructions issued by CBDT vide Instruction No.1132 dated 05.01.1978 reproduced hereunder:

"A question has been raised regarding the availability of exemption in the hands of charitable trusts of amounts aid as donation to other charitable trusts.

The issue has been considered by the Board and it has been decided that as the law stands at present, the payment of a sum by one charitable trust to another for utilization by the donee trust towards its charitable objects is proper application of income for charitable purpose in the hands of the donee trust; and the donor trust will not lose exemption under section 11 of the I. T. Act, 1961, merely because the donee trust did not spend the donation during the year of receipt itself.

The above position may kindly be brought to the notice of all officers working in your charge."

4.22 In support, the Ld. AR placed reliance on the following decisions:-

- i) CIT Vs Thanthi Trust 239 ITR 502 (SC)
- ii) CIT Vs Trustees of Jadi Trust 133 ITR 494 (Bom.)
- iii) CIT Vs Hindustan Charity Trust 139 ITR 913 (Cal.)
- iv) CIT Vs Nirmala Bakubhai Foundation 226 ITR 394 (Guj.)
- v) CIT vs Shri Ram Memorial Foundation 269 ITR 35 (Del.)
- vi) CIT Vs HPS Social Welfare Foundation 235 CTR 330 (Del.)

4.23 In support of grounds No.9 & 10 regarding non allowance for actual application of income, Ld. A.R. submitted that without prejudice to the assessee's primary contention against denial of exemption under section 11/12 of the Act, it is further submitted that the A.O. /CIT(A) has erred in not allowing deduction for actual expenditure (both revenue and capital) incurred by the appellant in the assessment year under consideration, for

pursuing its charitable activities. While denying exemption u/s 11/12 of the Act on the gross income of the assessee, the authorities below have failed to appreciate that addition/disallowance if any, could have only been restricted to the net amount/profit on which exemption was claimed under the said section and not on the entire gross income of the assessee. The appellant had incurred various revenue expenditure amounting to Rs.52,26,81,441/- in pursuing its charitable activities, for which no allowance has been given by the A.O. It has been subsequently intimated that the application u/s 154 of the Act for rectification filed before the A.O. in this regard has now been disposed off vide order dated 03.06.2013 whereby he has rectified the assessment order and allowed deduction of revenue expenditure aggregating to Rs.52,26,81,441/-. A copy of this order has been filed, thus the grounds No.9 & 10 have become infructuous and are rejected as such.

4.24. Ground No.11 of the appeal is against the disallowance made u/s 40(a)(ia) read with section 194C of the Act. Ld. A.R. pointed out that apart from denial of exemption u/s 11/12 of the Act, the A.O. has further disallowed a sum of Rs.17,27,88,778/- on account of non-deduction of tax at source u/s 40(a)(ia) read with Section 194C of the Act. He submitted that the assessee had during the year made payment to various suppliers against the purchase of material like packing material, CD, VCD, magazines and books. Since the said transactions between the assessee and the suppliers did not involve any contractual relationship; and no raw materials were supplied by the appellant for undertaking any job work, the same constituted a 'contract of sale', not falling within the ambit of section 194C of the Act. Accordingly, the appellant did not deduct tax at source on such payments. The authorities below have held that this system of contractual relationship between the assessee and the suppliers since the textual content and layout for books/magazines and CD DVD's, being the most

critical components, were supplied by the appellant. On that basis, the A.O. inferred that the same constituted 'works contract' covered within the ambit of section 194C of the Act and the appellant should have deducted tax on such payments. Accordingly, the A.O. disallowed expenditure of RS.17,27,88,778/- on purchase thereof u/s 40(a)(ia) of the Act on account of non deduction of tax at source. Ld. CIT(A) has upheld the same.

4.25. In support of this ground, Ld. A.R. submitted that since the assessee is a charitable trust, is eligible for exemption u/s 11/12 of the Act the provisions of Section 40(a)(ia) in the case of appellant has no application. Without prejudice to this primary contention that non applicability of these provisions in the case of the assessee the Ld. A.R. further contended that the authorities below have failed to appreciate the distinction between the contract for work and a contract for sale of the goods in the context of Section 194C of the Act, since the said section is applicable to the former but not to the latter category of contracts. In support he placed reliance on the decision of Hon'ble Supreme Court in the case of State of Himachal Pradesh Associated Hotels of India Ltd. 29 SOT 474, wherein difference between work out contract and sale contract has been discussed. Ld. A.R. also referred CBDT Circular NO.681 dated 21.02.1994 and 13.12.2006 para 7 (vi) of Circular 689 dated 08.03.1994. Taking assistance of these circulars, the Ld. A.R. submitted that goods sold are manufactured according to specifications of the buyer is not relevant in determining whether the contract is a contract of sale or works contract. What is relevant to determine is passing of property/title in the goods from the vendor to the buyer. Where title to the goods passes to the buyer at the time goods are manufactured and transported, the contract would be one for sale of goods, notwithstanding that the goods are manufactured according to the specifications of the buyer. The Ld. A.R. submitted that the principal test to be applied to determine whether the contract is works

contract of contract for sale is whether title to the goods passes to the purchaser in time anterior to the manufacture and delivery of goods to the purchaser. If the answer to the aforesaid query is in the negative then, the contract is one of sale, where the vendor manufactures goods in his own right, as principal, and not as job worker. In support he placed reliance on the following decisions:

- i) CIT Vs Silver Oak Laboratories P. Ltd. SLP
No.18012/2009
- ii) CIT Vs Dabur India Ltd. 283 ITR 297 (Del.)
- iii) CIT Vs Reebok India Co. 306 ITR 124 (Del.)
- iv) CIT Vs Glenmark Pharmaceuticals Ltd. 324 ITR 199
(Bom.)

4.26 The Ld. A.R. submitted further that section 194C amended by the Finance (2) Act of 2009 w.e.f. 01.10.2009 whereby the difference of 'work' was enlarged to include contract for manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. The said amendment also provided that contract for carrying out work shall not include contract for manufacturing or supplying of product according to the requirement or specification of customer by using material purchased from a person other than such customer. The aforesaid amendment in section 194C of the Act vide Finance (2) Act, 2009 made the position absolutely clear that where no raw material is supplied by the ultimate purchaser to the vendor, the goods supplied by the vendor according to the specifications of the purchaser are, even in terms of the amended provisions, not regarded as being in the nature of contract for carrying out work, requiring deduction of tax at source u/s 194C of the Act. He submitted that in case of the assessee, the finished goods are manufactured by the supplier as per the prescribed specifications of the assessee. The raw material and other ingredients required for

manufacture are specified by the appellant, in order to ensure proper quality of the finished products. Such raw materials are however acquired by the vendor on their own account and not on behalf of the appellant. In support, he referred pages 202-204 of the paper book which are sample copies of invoices raised. He submitted that right of ownership passes to the appellant only after the goods come into existence, on manufacture and are supplied to the appellant as finished goods. Prior thereto, the risk in the goods vests with the vendor/supplier. Were the supplier to incur any loss, such as, on account of fire, before passing of title in the goods, the same would be borne by the vendor and not the appellant. All the other terms of purchase/sale between the vendor and supplier, like payment terms, period of delivery, etc., were agreed independently between the said two parties and appellant had no say in the same. The contract between the appellant and the suppliers is for acquisition of ascertained goods. The contract is thus one of sale and not contract for carrying out work. Ld. A.R. submitted further that it is settled law that income of a charitable trust claiming exemption u/s 11/12 of the Act has to be computed in accordance with the normal commercial principles and not under artificial head defined in Section 14 of the Act. In order to compute income not required to be included in the total income u/s 11 of the Act, a charitable trust/society is, required to consider the extent of application of income for charitable purpose. He placed reliance on the following decisions:

- i) Rao Bahadur Calavala Cunnan Chetty Charities 135 ITR 485 (Mad)
- ii) CIT Vs Ishmian India Maritime P. Ltd. 113 ITR 570 (Mad)
- iii) CIT Vs Kotak Securities Ltd. 340 ITR 333 (Bom)

5. The contention of the Ld. CIT, D.R. who has basically placed reliance on the orders of authorities below, on the contrary remained that the very objectives are in the nature of general activities as 7 out of 15 objectives in the trust deed are devoted to yoga, vedic dharma, making cow sheds, etc.

These objectives have been mentioned at page 7 of the assessment order. These are imparting practical training on various asanas as practiced by Rishies and Munies to receive calm state of mind and extreme happiness, construct buildings for yoga and meditation, organize yoga camps to propagate yoga training and vedic dharma, research on yoga, ayurveda and vedic literature, preparation and sale of medicines, arrangement of study of Veda, Geeta, Upnishads, prepare for uprooting zealousness, hate, evil etc., establish and run stables for cows and carry on agnihotras and yagnyas. She has also pointed out that a newly added clause in the objectives is related to the field of energy, air and water. Ld. CIT DR submitted that all these are objectives of general public utility and not to provide medical relief. She submitted that in the assessment year 2009-10, this objective is hit by the proviso to Section 2(15). Yoga is a way of meditation rather than a way of medication rather lify for 'medical relief'. In India, it is well known age old discipline of meditation for spiritual well being as defined in the Indian literature on the subject website, Department of Ayush, Ministry of Health and various dictionaries. She submitted that Hon'ble Bombay High Court in the case of CIT Vs Rajnish Foundation (supra) and Cochin Bench of the tribunal in the case of Kashyap Vedic Research Foundation Vs CIT 131 ITD 370 (Cochin) clearly defines Yoga as way of meditation, there is no case law to prove that it is a way of medical relief. The claim of medical research on the ground of yoga is not maintainable. She submitted that yoga's inclusion in the curriculum along with Ayurveda on Ayush website as claimed by the assessee before the tribunal, is also not recognized as an independent medical science. Hence, inclusion of yoga is neither be construed as a recognized independent medical science nor as a substitute of physiotherapy. It is Ayurveda and not yoga which is recognized as an independent medical science. Yoga cannot be treated at par with the Ayurveda. Even the assessee is dependent on Ayurveda for treatment in its own hospital as per trust deed. Ld. CIT DR submitted that the main

objective of the assessee is not compared to above medical formulation produced by assessee as can be seen from the sheer magnitude of business in production, sale counters opened throughout India, huge export business, voluminous trust promotion and publication house. In development to the main objective of the medical relief as claimed, the assessee has established a chain of retail outlets for its products all over India under the name of 'Patanjali Divya Yoga Trust' which is sold through Seva Kendras for which security deposits has been taken by the assessee and collected Rs.6.21 crores from these seva kendras as security deposits. In support, she referred the contents of pages 4 to 7 of the assessment order and page No.17 to 22 of the first appellate order and pages 17 to 19 of the paper book filed on behalf of the department.

5.1. Ld. CIT DR submitted further that the assessee is also engaged in export of its products, the volume of net export being Rs.5,15,64,050/- while the claim of charity is confined to India only due to legal restriction, the assessee is having a brisk sale of its products in India as well as abroad, explain the real intention of objectives of the assessee. Ld. CIT DR referred the contents of pages 106 and 107 of the paper book filed on behalf of the assessee. These are balance sheets of Divya Pharmacy as on 31.03.2009 with accounting policy and notes to the accounts. She submitted that the details of business ventures have been provided at pages 68 to 108 of the paper book i.e. copies of annual audited accounts for the financial year, return of income., computation for the financial year and tax audit report for the assessment year 2009-10.

5.2. Ld. CIT DR submitted that application of income on charitable objectives is minimal which is observed from the contents of pages 4 to 7 of the assessment order and those of pages 19 to 21 of the first appellate order as well as the remand report's pages 4 and 5. She pointed out that

even the donation to the other trust is actually a conduct for transfer of its funds to its sister concern i.e. Patanjali Yogpeet trust. It is not donation to other concern but retention of funds within its own control.

5.3. Ld. CIT DR submitted that the inquiry conducted by the department shows that no work was done for the charity in chikitsalayas and yoga camps so as to qualify for medical relief but to boost the sale of its products. She submitted that inquiry u/s 133(6) reveals that assessee trust is charging exorbitant rates for accommodation fee at Yoga Shivirs @ Rs.9800/- per day in the name of donation from the participants. She drew our attention in this regard at page nos. 6 to 8 of the paper book filed by the department, i.e. copy of the above sated report u/s 133(6) of the Act. she pointed out that the total amount collected during the year is Rs.68.45 lacs as stated in para (i) to (ix) at page No. 11 of the assessment order. She submitted that the assessee charged Rs.290.79 lacs from participants during the year through its department of medical science (chikitsalayas) which is in addition to the price of medicines charged from patients by the assessee trust. She submitted that during the course of assessment proceedings, the assessee never produced any documentary evidence regarding charity work qualifying as 'medical relief' in any of the hospitals as can be seen from the copy of the order sheet made available at pages 9 to 13 of the paper book filed on behalf of the department. Even during the remand proceedings when the assessee was asked to produce the doctors prescriptions given to patients, none was produced. When the matter was again remanded, the assessee could produce a list of 15 doctors only against 71 doctors. Out of these 71, only 11 doctors were produced. Surprisingly 59 doctors had quit the job in two years as claimed. In this regard, she referred the remand report II available at pages 14 and 15 of the paper book filed on behalf of the department. Ld. CIT D.R. pointed out that all the 11 doctors produced stated that patients have to pay for all

services except consultation in which they suggest medicines, both classical and patent and advised patients to get admitted in assessee's hospital when required. The A.O. says in its remand report that the doctors being paid employees are very useful to boost the sale of the products made by their employer trust. In support she referred page nos. 15 to 17 of the paper book filed by the department and contents of page Nos. 18 and 19 of the first appellate order. She submitted that during the appellate proceedings, the appellant could not produce the record and has admitted that the doctors prescribe the medicines manufactured by the assessee trust which are said to be of superior quality at cheaper rates. Ld. CIT DR submitted further that there is violation of the trust deed by the appellant trust. The trust received the amount of Rs.132.50 lacs from foreign membership and Rs.98.88 lacs from membership donations and Rs.52 lacs through money orders which are not permitted by the trust deed. One Doctor Kuldeep Singh stated that he prescribes allopathic treatment to the patients. This is also not in accordance with the trust's objectives. In support, she referred page 22 of the paper book filed on behalf of the department i.e. the recorded statements of the said doctor.

5.4. Ld. CIT DR submitted that the alternative claim of education in yoga college does not pertain to this assessment year as the college was not constructed. The certificate from SIRO shown at this stage enclosed in the assessee's paper book was never produced before the authorities below to verify the correctness of the claim for exemption or deduction as confirmed by the A.O. Moreover, R&D work done for government and other institutions is object of general public utility as per the decision of Hon'ble Delhi High Court in the case of CIT Vs IEAI 322 ITR 73 (Del.). She contended that the submission of the assessee that the assessee has fixed the rates of its medicines lower than that of the established companies as it is a new entrant in the field of market strategy is nothing but an act of

normal business prudence to boost its sale, not an act of charity. She submitted that the claim of the assessee that all the papers in the paper book were produced before the authorities below is not correct. In this regard she referred page No. 20 of the paper book filed by the department whereby the AO vide its letter dated 2.5.2013 has informed that letter No. 14/408/2005/TU-V dated 20.5.2006 issued by the Department of Scientific & Industrial Research Organisations, New Delhi and comparative chart of list of sale price furnished before the Tribunal were not produced before the authorities below.

Supporting above submission the Ld. CIT(DR) placed reliance on the following legal precedents :-

CIT v Rajneesh Foundation - 280 ITR 553 (Bom)

Kasyapa Veda Research Foundation v CIT [2011]131 ITD 370 (Cochin)

Samajbadi Society v ACIT - 79 ITD 112 (Cutt)

Aurolab Trust v CIT - 46 SOT 125 (Che)

CIT v ICAI – 321 ITR 73 (Del)

CIT v Queens' Educational Society ITA no.103

Saurashtra Educational Foundation v CIT - 273 ITR 139 (Guj)

Sanjeevamma Hanumantha Gowda Charitable Trust v DITCE – 9 SOT 293 (Bang)

Daulatram Public trust v CIT - 244 ITR 514 (Del)

Jacob v Thasildar [1989] 176 ITR 243 (Ker)

Sole Trustee, Lok Shikshana Trust v CIT - 101 TR 234 (SC)

CIT v Jodhpur CAs Society - 258 ITR 548 (Raj)

A detailed rejoinder has also been furnished by the Ld. AR, which we will discuss in our decision in the following paragraphs.

6. We find that grounds No.1-9 involve the issue as to whether the appellant is entitled to claim the exemption u/s 11/12 of the I. T. Act, 1961 for adjudication upon this issue, we will have to decide the other connected issues. These issues are as under:

- a) As to whether the appellant trust did fall within the purview of providing 'medical relief', 'imparting education' or 'relief to the poor'.
- b) If the above issue is decided in negative then the issue will arise as to whether the objectivity of the appellant were in the nature of 'object of general public utility' as contained in the definition of charitable purpose u/s 2(15) of the Act?
- c) As to whether Yoga as a system, falls in the residuary category of 'advancement of any other objects of the general public utility' contained in Section 2(15) of the Act?.
- d) As to whether the donation of Rs.38.356 crores made to Patanjali Yogpeeth for the purpose of setting up of Yoga Bhawan and other expenditure incurred for acquisition of capital assets as application of income for classified purposes.

6.1. We, therefore, prefer to adjudicate upon the first issue as to whether the objects and activities of the appellant trust did fall within the purview of providing 'medical relief, 'imparting education' or 'relief to the poor'. The objects of the appellant trust are available at page 1-7 of the paper book declaring that the appellant trust was set up as charitable trust with the following predominant objectives:

- 1) Providing medical relief through yoga, naturopathy, acupressure and Ayurveda for the purpose of alienating all kinds of diseases;
- 2) Imparting education in the field of yoga,
- 3) Providing relief to the poor and
- 4) Undertaking research and development activities in the field of yoga, Ayurved, vedic literature to further the cause of alienating all kinds of diseases and provide medical relief to the public at large.

6.2. The first issue before us to be adjudicated upon is as to whether the appellant trust fall within the purview of providing "medical relief" , "imparting education " or "relief to the poor" ?

6.3. In the previous paragraphs we have discussed the approach of the authorities below on the above issue as well as submissions of the parties in this regard. The contention of the appellant remained that they are providing medical relief through yoga, naturopathy, acupressure and Ayurved for the purpose of alleviating all kinds of diseases ; they are imparting education in the field of yoga, providing relief to the poor and undertaking research and development activities in the field of yoga, ayurveda to all kinds of disease and provide medical relief. It was contended that on the basis of these objectives the appellant was granted registration u/s 12A of the Act which is in force till date. It was also contended that the appellant in accordance with the approved objectives has been consistently pursuing its charitable activities for the last 18 years including the assessment year under consideration and the appellant has always been allowed exemption u/s 11/ 12 including in various assessment completed u/s 143(3) of the Act. It was submitted that there has been no change in fact during the year under consideration. Before proceeding on the adjudication of the issue as to whether "yoga" as a system provide any

"medical relief" which remained the main objection of the revenue, we would like to point out over here that there is no dispute on this material fact that the appellant since its inception in the year 1995 has been engaged in the activity of providing 'medical relief' through ayurveda under the organization "Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan at Haridwar. This fact has been consistently accepted by the revenue in the assessment years 2004-05 to 2008-09 vide various assessments framed u/s 143(3) . There is also no change in the facts of this aspect of the matter. The revenue authorities are not disputing the fact that ayurvedic treatment is given by the assessee. This is medical relief. Yoga in this case is used by the assessee in addition to medical relief through naturopath and ayurveda. We find that there is also no dispute that the appellant has established (a) department of medical science and facilities known as Patanjali Hospital, (2) Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan (3) Patanjali Chikitsalay and (4) R & D yoga and ayurveda. (The appellant has also set up (1) Divya Nursery (dealing in cultivation, restoration and research in rare medicinal plants / herbs and selling these plants);(2) Divya Pharmacy (Ayurvedic pharmaceutical unit engaged in manufacturing of ayurvedic medicines as per tradition of sages and modern science); and (3) Divya Prakashan, etc. (it deals with publication and distribution of different types of literature relating to yoga and ayurved)

Department of Medical Science and Facilities commonly known as Patanjali Hospital run by the appellant trust is having various departments including dental department, radiology department, surgical department, ophthalmology department etc. The claim of the appellant that in this hospital the appellant provide medical relief to over 2000 patients every day and from its primary set up in Haridwar where around 2,39,000 patients were treated during the year under consideration the hospital also has its presence in Ranchi and Patna where more than 60,000 and 75,000 patients respectively are treated every year, has not been disputed by the revenue.

Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan i.e. an Ayurvedic College has been set up, which was under construction in the year under consideration and it has started operations w.e.f. 20.07.2009, for imparting education in the field of Ayurved. It has been set up at Haridwar and was approved and duly recognized by the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy systems of medicines (AYUSH) vide notification dated 20.7.2009. It is pertinent to mention over here that for the purpose of recognition and granting permission for establishment of medical college, the Department of AYUSH a body set up by the Ministry of Health & Family Welfare, Govt. of India mandates fulfillment of certain minimum standards and requirements as prescribed under the Indian Medical Central Council Act 1970 (IMCC Act). It is only on fulfillment of these conditions prescribed in the IMCC Act permission is granted to establish and run ayurvedic medical colleges. It is pertinent to state here that one of the primary conditions laid down in the IMCC Act for the grant of recognition is the existence of a medical hospital attached to the ayurvedic college with the prescribed bed strength alongwith outdoor patient department (OPD) and Indoor patient department (IPD) facilities. Thus there is no doubt in the present case before us that on fulfillment of all the mandatory requirements the ayurvedic medical college set up by the appellant has been duly recognized by the AYUSH. It is also imperative to state here that the Central Council of Indian Medicine under AYUSH conducts regular inspection of the ayurvedic colleges to verify that the prescribed minimum standards are complied with by such colleges and if the prescribed standards are not complied with by the medical colleges, the permission / recognition is either rejected or revoked by the AYUSH. All these material and undisputed facts lead us to a definite conclusion that it has been undisputed that appellant has been providing 'medical relief' through ayurveda and naturopathy system of medicine in its above stated hospitals and has also set up an ayurvedic

medical college (Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan) affiliated by Uttarakhand Technical University and recognized by AYUSH to impart education in the field of ayurveda and naturopathy etc. As discussed above it is also remained an undisputed fact that since its inception in the year 1995 the 'medical relief' provided through Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan' at Haridwar, has been consistently accepted by the revenue in the assessment years 2004-05 to 2008-09 as engaged in the activity of providing 'medical relief' in the assessment framed u/s 143(3) of the Act. Since there is no change in this object of the appellant trust, and the related facts during the year under consideration, we are of the view that ratio laid down by the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (supra) and others the revenue was not justified in refusing the claimed exemption u/s 11/12 of the Act during the year. The revenue is expected to be consistent with its own stand which has been taken in earlier years, when there is no change in the objects of the trust during the year. In view of these discussions we are in a definite position to hold that the appellant was entitled for the exemption u/s 11/12 of the Act on the basis that the appellant was engaged in the activity of providing 'medical relief' through ayurveda, naturopathy etc. during the year under consideration i.e. asstt. year 2009-10 and the authorities below were not justified in refusing the claimed exemption to the assessee in this regard. It is ordered accordingly.

"Medical Relief" through yoga

6.4.1. While examining the issue as to whether medical relief can be given through yoga on the basis of above submissions made by the parties we find that in the Clinical Establishment (registration and regulation) Act 2010, the legislature has defined "recognized system of medicine" in Section 2 (h) of the said Act. As per this definition "*(h) recognized system of medicine means allopathy, yoga, naturopathy, ayurved, homeopathy,*

siddha and unani system of medicines or any other system of medicine as may be recognized by the Central Government.” This bill was introduced by the Central Government in the year 2007 to provide for registration and regulation of all clinical establishments in the country with a view to prescribe the minimum standards of facilities and services provided by them. A copy of this Act has been made available at page Nos. 161 to 163 of the paper book.

6.4.2. A reference of the recommendation of the standing committee of Human Resources Development Department (HRD) made for making the yoga a compulsory for all school going children in the country, has also been made wherein it has been provided that the yoga is one of the core components of health and physical education. Full copy of the report has been made available at page nos. 177 to 192 of the paper book and para No.9.8 at page No. 181 thereof is relevant for the purpose. It reads as under :-

“9.8 The committee is of the opinion that yoga is one stream of education, which will make a permanent and positive impact on a student's life. Yoga has been gaining immense popularity due to the short term as well as long term benefits that it provides. Yoga helps one to achieve all round development. Considering the immense potential of this ancient knowledge of India, the Committee recommends that yoga be made compulsory for all school going children in the country.

ACTION TAKEN

The National Curriculum Framework in School Education – 2005 prepared by the National Council of Education Research and Training provides for Health and Physical Education as a compulsory subject from primary to secondary stage as an optional subject at higher secondary stage. Yoga is one of the core components of Health and Physical Education.”

6.4.3. On the contrary the Ld. CIT(A) for the purpose of determining whether yoga can be classified as a form of medical relief has placed reliance on the determination of the term "medical" as provided in Major Law Laxicon by P Ramanatha Aiyar (2010 edition) as per which "*pertaining to or having to do with the art of healing disease or the science of medicine ; containing medicine ; used in medicine*". We find that the term "medical" has been defined very broadly in this definition as per which the art of healing any disease constitute a medical relief and the same need not be restricted to conventional method of treatment. Ld. CIT(A) at page 15 of the first appellant order has also selectively quoted from the website of department of Ayush (Ministry of Health and Family Welfare) to come this conclusion that yoga is a discipline appears to address more the issues of spiritual well being rather address the problems associated with the more wordly "medical relief" and exercises forming part of the yoga system would at the best have indirect salutary benefit on the health of an individual. He held that yoga is a spiritual system more than a curative system for alleviating or even curing various ailments. It is not seen as a specific remedy for physical ailment at par with medical system like allopathy or even ayurveda. In this regard the Ld. CIT(A) has placed reliance on the decisions in the cases of Kasyap Ved Research Foundation vs. CIT 131 ITD 370 (Cochin) and CIT vs. Rajneesh Foundation, 280 ITR 533 (Bom). A complete information on yoga available on the website of the Ayush i.e., '[Http://www.Indiamedicine.nic.in](http://www.Indiamedicine.nic.in)' has been made available by the assessee at page Nos. 639 to 655 of the supplementary paper book No. 1 and at page No. 757 to 793 of the supplementary paper book No. 2 filed by the assessee. The Ld. AR has drawn our attention also on the following information on yoga available on the aforesaid website :

"Yoga

The concepts and practices of Yoga originated in India about several thousand years ago. Its founders were great Saints and Sages. The great

*Yogis presented rational interpretation of their experiences of Yoga and brought about a practical and scientifically sound method within everyone's reach. Yoga today, is no longer restricted to hermits, saints, and sages; it has entered into our everyday lives and has aroused a worldwide awakening and acceptance in the last few decades. The science of Yoga and its techniques have now been reoriented to suit modern sociological needs and lifestyles. **Experts of various branches of medicine including modern medical sciences are realising the role of these techniques in the prevention and mitigation of diseases and promotion of health.***

*Yoga is one of the six systems of Vedic philosophy. Maharishi Patanjali, rightly called "The Father of Yoga" compiled and refined various aspects of Yoga systematically in his "Yoga Sutras" (aphorisms). He advocated the eight folds path of Yoga, popularly known as "Ashtanga Yoga" for all-round development of human beings. They are:- Yama, Niyama, Asana, Pranayama, Pratyahara, Dharana, Dhyana and Samadhi. **These components advocate certain restraints and observances, physical discipline, breath regulations, restraining the sense organs, contemplation, meditation and samadhi. These steps are believed to have a potential for improvement of physical health by enhancing circulation of oxygenated blood in the body, retraining the sense organs thereby inducing tranquility and serenity of mind. The practice of Yoga prevents psychosomatic disorders and improves an individuals resistance and ability to endure stressful situations.**" (emphasis supplied)*

6.4.4. In the above said information it has been observed that experts of various branches of medicine including modern medical sciences are realizing the role of these techniques in the prevention and mitigation of diseases and promotion of health. It has been further observed that these steps are believed to have a potential for improvement of physical health by enhancing circulation of oxygenated blood in the body, retraining the sense organs thereby inducing tranquility and serenity of mind ; the practice of yoga prevents psychosomatic disorders and improves an individual's resistance and ability to endure stressful situations. Even in the extracts of the information available on the website of Ayush reproduced by the Ld. CIT(A) at page 15 of the first appellate order in the definition of yoga it has

been stated that yoga is a discipline to improve or develop one's inherent power in a balanced manner. It offers the means to attain complete self-realisation. As per literal meaning of Sanskrit word 'yoke' it has been noted that the yoga can be defined as a means of uniting the individual spirit with the universal spirit of God and according to Maharishi Patanjali, yoga is the suppression of fluctuations of the mind. The information given under the head "yoga as soul therapy" has also been extracted by the Ld. CIT(A) as per which all parts of yoga (japa, karma, bhakti) have healing potential to shelter out the effects of pains. It has been further noted therein that one especially needs proper guidance from an accomplished exponent, who has already treated the same track to reach the ultimate goal. If we read these informations available on the website of Ayush in its totality we find it difficult to concur with the view of Ld. CIT(A) that yoga as a system does not fit into the definition of medical relief as mentioned in section 2(15) of the Act. The very observation of Ld. CIT(A) in this regard at page No. 16 of the first appellate order that yoga is a discipline appears to address more the issues of spiritual well being rather than address the problems associated with the more wordly "medical relief" itself suggests that the Ld. CIT(A) remained of the view that yoga as a discipline addresses the problems associated with the medical relief but it address more the issues of spiritual well being. Thus he has not completely disagreed with the submission of the assessee that yoga as a discipline addresses medical relief also. So far as the decisions relied upon by the Ld. CIT(A) to arrive at a conclusion that yoga as a system does not fit into the definition of medical relief are concerned, we find that these are having distinguishable facts and issues hence are not helpful to the revenue. In the case of Kasyapa Veda Research Foundation vs. CIT (supra) it has been observed by the Cochin Bench that yoga is an ancient Indian science of meditation. There is no dispute on it. But only on the basis of such observations which is one of the aspects of the yoga it cannot be arrived at a conclusion that yoga as a

system does not clearly fit into the definition of "medical" which in turn leads to the term "medical relief". The issue raised before the Cochin bench of the Tribunal in this case was as to whether assessee trust forms for propagating of Vedas was entitled to registration u/s 12A in the status of a religious and charitable trust. Likewise the decision of Hon'ble Bombay High Court in the case of Rajneesh Foundation (supra) is not relevant as the said decision was rendered prior to introduction of proviso to section 2 (15), when there used to be no dispute in so far as classification of charitable objectives was concerned for the purpose of claiming exemption u/s 11/12 of the Act. The decision was referred in the context of classifying 'meditation' as a charitable objectives for the purpose of section 2(15) of the Act. The Hon'ble High Court has adjudicated only upon the issue of classification of 'meditation' , 'preaching/propagation of philosophy as a charitable object falling under the category of general public utility but has nowhere explicitly dealt with yoga except for making passing references in respect of the same. In the said decision the Hon'ble High Court has however also been pleased to observe that not only in India but in the western countries also meditation and yoga are being accepted as a great source of physical and mental health. Meaning thereby that yoga is a source for medical relief. For a ready reference the relevant extract of the said decision is being reproduced hereunder :-

Admittedly, main thrust of the respondent is on meditation and nobody can dispute that in India meditation has been very important source for physical, mental and spiritual ~ well-being of the human beings. Cognizance has to be taken that the meditation and Yoga I are becoming more and more popular among the Indians who are now becoming conscious about their physical, mental and spiritual health. **Not only in India, meditation and Yoga are being accepted in the Western Countries also as a great source for physical and mental health and spiritual attainment. When a large number of people feel that**

meditation is a great source for physical, mental and spiritual well-being, it must be held to be an activity for the advancement of general public utility".

(emphasis supplied)

6.4.5. Ld. AR has also referred the survey report of US National center for complementary and alternative medicine (NCCAM) based on survey conducted in December, 2008, made available at page Nos. 193 to 196 of the paper book (assessee) as per which yoga has been recognized as a complementary and alternative medicine to prevent and treat disease. NCCAM defines CAM as a group of diverse medical and health care systems, practices and products that are not generally considered part of conventional medicines. NCCAM found that yoga was the sixth most commonly used alternative therapy in the USA during 2007, with 6.1% of the population participating. The said study states yoga has been used as supplementary therapy for diverse conditions such as cancer, diabetes, asthma and AIDS and the scope of medical issues where yoga is used as a complementary therapy continues to grow.

A reference of the publication "yog in synergy with medical science: written by an ayurved acharya associated with the appellant, has also been made, relevant extracts of which ahs been made available at page Nos. 555 to 633 of the supplementary paper book (appellant). This publication has been documented on the basis of clinical tests conducted showing the clinical effect of yoga on the participants in various yoga camps.

As discussed above the Ld. CIT (DR) has basically placed reliance on the orders of the authorities below asserting that yoga is a way of meditation rather than a way of medication to qualify for 'medical relief'. A reference of contents of page No. 638 of the paper book has also been made to support his submission that in September, 2012. the Harvard University of USA came forward to introduce yoga and ayurved subject in

their university in collaboration with Swami Ramdevji in the wake of dreadful diseases being cured by Swamiji's Pranayam and his ayurved medicines.

6.4.6. In view of above discussions especially the recognition of yoga as a recognized system of medicine as per section 2 (h) of Clinical Establishment (Registration and Regulation) Act 2010 and the complete information made available by the ayush on its website we find no hesitation in coming to the conclusion that yoga can be safely accepted as a system fit into the definition of 'medical relief'. Yoga as a science is a well recognized system of medicine, which has therapeutic effects in treating various serious ailments. The predominant objective of the appellant trust as it is apparent from its objects, remained to provide medical relief through ayurveda and propagation of yoga for the purpose of treating / curing various diseases.

'Imparting Education'

6.5. The question now is as to whether the appellant trust falls within the purview of providing "imparting education". The grievance of the appellant is that the authorities below have failed to appreciate that the propagation of yoga by way of conducting yoga classes on a regular basis and in a systemized manner also falls under the category of 'imparting of education' as provided u/s 2(15) of the Act. Reliance has been placed on several decisions, which we will discuss hereunder. The contention of the Ld. AR remained that the predominant object of the appellant trust are to provide practical and theoretical training in the field of yoga, which would ultimately provide medical relief to the society at large. It was submitted that in pursuance of the said objective the appellant trust has made inter-trust donations to Patanjali Yog Peeth to support their endeavors of imparting yoga education by means of organizing yog shivirs/camps across the country on daily/weekly/monthly basis in a systemized/organized manner in order to provide medical relief to people who cannot afford

modern medical method or have been subjected to ill effects of modern medicine. It was submitted that imparting of yoga training through well structured yoga shiviirs/camps also falls under the category of imparting 'education' one of the charitable objects defined u/s 2(15) of the Act and accordingly the appellant's activities are not hit by the proviso inserted in the definition of charitable purpose as contained in the said section. During the course of hearing the appellant was directed to provide complete details of the Patanjali Bhartiya Ayurvigyan Avam Anusandhan Sansthan at Haridwar for imparting education in the field of ayurveda which started operations w.e.f. 20.7.2009. In compliance the Ld. AR submitted that during the year the appellant had applied substantial amount on construction of the ayurveda medical college which is affiliated to the Uttarakhand Technical University. It was submitted that ayurveda medical college set up by the appellant was approved and duly recognized by the Department of Ayurveda, yoga & naturopathy, unani, siddha and homoeopathy (AYUSH) vide notification dated 20.7.2009, a copy thereof has been made available at page No. 805 and 806 of the supplementary paper book –II. Department of Ayush is a body set up by the Ministry of Health & Family Welfare, Govt. of India with the primary objective of regulating and upgrading the educational standards, quality control and standardization of drugs, improving the availability of medicinal plant material, research and development and awareness generation about the efficacy of ayurveda, yoga and naturopathy, unani, siddha and homoeopathy systems of medicines. For the purpose of recognizing and granting permission for establishment of medical colleges, the department of AYUSH mandates fulfillment of certain minimum standard and requirements as prescribed under the Indian Medical Central Council Act 1970 (IMCC Act). One of the primary conditions laid down in the IMCC Act for the grant of recognition is the existence of a medical hospital attached to the ayurvedic college with the prescribed bed strength alongwith outdoor patient department (OPD)

and Indoor patient department (IPD) facilities. Ld. CIT(DR) on the other hand has placed reliance on the orders of the authorities below, as discussed above.

6.5.1. The expression 'education' has not been defined under the provisions of Income Tax Act. The Hon'ble Supreme Court in the case of Lok Shikshana Trust (supra), relied upon by the Ld. AR, has been pleased to explain the meaning of the word 'education' in the context of section 2(15) of the Act. As per this decision the education is the process of training and developing the knowledge, skill, mind and character of students by schooling by way of systematic instruction, schooling or training. The Hon'ble Delhi High Court in the case of Delhi Music Society vs. DGIT (supra) has been pleased to hold that since the assessee society was teaching and promoting all forms of music and dance, western, Indian or any other and was run like any school or educational institution in a systemic manner with regular classes, the same therefore meet the requirement of an educational institution within the meaning of section 10(23C)(vi) of the Act. In the case of ITO vs. SRM Foundation of India (supra) the Delhi Bench of the Tribunal, where the assessee was engaged in spreading the system of transcendental meditation (TM) has held that irrespective of the fact that the assessee has its own prescribed syllabus, trained teachers, branches all over India to spread system of transcendental deep meditation among people in all walks of life, the same constituted imparting of education and the assessee was entitled to exemption u/s 10(22) of the Act. We thus come to the conclusion that any form of educational activity involving imparting of systematic training in order to develop the knowledge, skill, mind and character of students, is to be regarded as 'education' covered u/s 2(15) of the Act. In view of these decisions we hold that imparting of yoga training through well structured yoga shivir / camps also falls under the category of imparting education which is one of the charitable objects defined u/s 2(15) of the Act. The

appellant's activities are thus not hit by the proviso inserted in the definition of charitable purpose in section 2(15) of the Act.

Relief to the poor

6.6. So far as question of providing 'relief to the poor' by the appellant trust to bring it within the purview of the same is concerned, we find that the contention of the assessee remained that the appellant through its hospital, Patanjali hospital and Patanjali Chikitsalaya at Haridwar, Ranchi and Patna has served more than 2.25 lacs, 0.60 lacs and 0.75 lacs patients during the relevant year. The hospitals have team of doctors, nurses and paramedical staff working round the clock. It was submitted that the hospital at Haridwar is well equipped with ultra modern diagnostic facilities like OPD and IPD, pathology lab, cardiology lab, panchkarma clinic, yoga and shatkarma clinic, surgical, dental and ophthalmological clinic and provides free yogic and Ayurvedic consultancy to all its patients. It was pointed out that during the year the appellant has provided free medical services/treatment to more than 38 lacs patients through Patanjali Chikitsalaya spread all across the country. It was submitted that all records of such treatments and activities of the trust has been examined in scrutiny assessment by revenue department over so many years and have never been disputed.

6.6.1. The trust deed in clause J and N has provided the objective of appellant to impart education and provide relief to the poor. The contention of the Ld. CIT(DR) remained that 7 out of 15 objectives in the trust deed of the appellant are in a nature of general public utility. The objects of the appellant are as under :-

- A. **"The main aim of the trust would be to impart the practical and functional training of astung yog, raj yog, hath yog, ashan and pranayam etc as received from the ancient tradition propounded by the Rishis and Munis to make an end of extreme sufferings to**

cure diseases and to receive a calm stage of mind and extreme happiness.

- B. To construct the building etc for boarding and lodging for those who are instructed III Yog and meditation.
- C. To organize Yoga camps in the country and abroad in order to propagate the yoga, training and Vedic Dharma.
- D. **To open and establish charitable hospitals for the treatment of the helpless poor, out caste and also to distribute medicines, clothes and food articles in the tribal area.**
- E. **To furnish and equip the charitable hospital with modern medical facilities.**
- F. To carry out conduct research on Yoga, Ayurveda and Vedic literature and also to organize scholarly seminars and competitions.
- G. **To prepare and to sale and purchase of the Ayurvedic medicines for the charitable hospitals, hospital colleges, schools and for the social and Yogic activities of the trust.**
- H. To make an arrangement for the study of Veds, the Geeta, the Philosophy and Upanishads, Grammer and Yogic scriptures for character building, moral cultural upliftment and imparting education for character building and upliftment of moral values.
 - 1. To prepare missionaries and facilitate them and sensitize people for uprooting jealousy, hate, evils, injustice, Tyranny and heavenly this on earth by keeping above the communalism, castes and the feeling of sex and creed.
- J. **To run the free educational centers and to facilitate the worthy poor helpless orphans, students by providing clothes, food, study material and lodging.**
- K. To establish and run stables for the poor cows to save them from victimization and killings.

- L. To carry out researches or agni hotra and perform scientific yajnas in order to solve the serious problems of environmental pollution of modern age.
- M. To give award and certificates to the trainees who undertake weekly, fortnightly, monthly, quarterly and annually Yog and Acupressure training.
- N. **To help and co-operate the relief activities related to flood, earthquakes, epidemic, drought etc.**
- O. **To co-operate other such institutions and organizations which match or aims and objectives, and order to fulfill these aims and objectives to accept the donating of money, land etc."** (emphasis supplied)

6.6.2. we find that the predominant objective of the appellant trust has been set out in clause A of the Trust deed as per which the object is to alleviate extreme sufferings and cure diseases by providing practical and functional training of Astang yog, Raj yog, Dhyan Yog, Hath Yog, Ashan and Pranayam etc. as received from the ancient tradition pronounced by the rishies and munis. Thus to know the mission and reason of the appellant trust we have to read its objectives in totality. The various other objectives provided in the trust deed are merely independent / ancillary to the main objection which is to provide medical relief and impart education and do not in any way constitute objectives of general public utility as contended by the Ld. CIT(DR). WE thus hold that the case of the appellant does not fall within the last limb of the definition of charitable purpose given u/s 1(15) of the Act. In the case of Thiagarajar Charities vs. ACIT (supra) before the Hon'ble Supreme Court, the main objects of the assessee trust were education, medical relief and relief to the poor. One of the objects contemplated the trust to engage in carrying on, help, aid, assist and promote rural reconstruction work, cottage industry and all matters

incidental thereto. The trustee carried on business by investing the corpus as per powers given under some clause of article of trust. The assessee claimed that the business carried on by it and from out of which it had derived income was held under trust and since the trust was for charitable purpose, the income was exempt from tax u/s 11. The AO rejected its claim. The Tribunal as well as Hon'ble High Court held that the object covered by clause 1(g) involved carrying on an activity for profit. On appeal the Hon'ble Supreme Court held in favour of the assessee by observing that clause I(g) referred by the lower authorities was not an object but was really in the nature of a power. The Hon'ble Court further held that the ancillary activity undertaken by the assessee was to afford relief to poor falling within scope of section 2(15) of the Act and was not an object of general public utility. It was further held that business being only a means of achieving the object of the trust, exemption could not be denied.

6.6.3. The contention of the Ld. CIT(DR) also remained that the predominant objective of the appellant trust is to prepare and sell medical formulations, which is apparent from the sheer magnitude of business, sales counters and volume of its promotion and publication house which is not incidental to the main objective of providing medical relief. She has further alleged that appellant has established a chain of retail outlets (seva Kendra) for selling its products all over India and has also collected security deposit of Rs. 6.21 crores from these seva kendras. She alleged further that the assessee is also engaged in export of its products and quantum of such exports aggregates to Rs. 5,15,64,050/- during the assessment year under consideration, which portrays that the appellant is pre dominantly engaged in undertaking commercial activities. In the rejoinder the submission of the Ld. AR remained that business undertakings were run by the appellant as an activity incidental to attainment of the main objects of the appellant and to feed charity, which is permitted u/s 11(4) / 11(4A) of the Act. It was

submitted that the ayurvedic preparations/medicines have been exported by the appellant at the request of the patients, in order to fulfill its predominant objective of making the world disease free. It was submitted that the said exports were made by the business undertaking held under the trust and there is no embargo under the provisions of the Act to restrict business undertaking from making exports in the course of undertaking its business activities. It was submitted that the Chikitsalays were set up by the appellant all across the country for providing free medical consultations to patients suffering from various diseases. More than 1000 vaidays are giving free consultation to over 50,000 patients for curable and incurable disease in about 1000 Patanjali Chikitsalays across the country. Further that acceptance of security deposit for setting up seva Kendras does not in any way impact the charitable nature of the activities undertaken by the appellant.

6.6.4. Further allegation of Ld. CIT(DR) remained that the appellant has applied minimum amount of income for charitable purpose and diverted substantial amount to its sister concern i.e. Patanjali Yogpeeth Trust with the intention of retaining funds within its own control. It was alleged by her that the appellant was charging exorbitant rates for accommodation fee in the name of participation fee. In alleging so the Ld. CIT(DR) has placed reliance on the statement of one Shri Balwant Singh Minhas, wherein he has alleged to have paid amount of Rs. 49,000/- as participation fee for the yoga shivir purportedly conducted by the appellant in the assessment year under consideration. The Ld. CIT(DR) has further alleged that appellant has collected a sum of Rs. 68.45 lacs under this head during the year. She alleged further that the assessee has charged Rs. 290.79 lacs from patients during the assessment year through medical hospital which was in addition to the price of medicine charged from patients. She alleged that the appellant was unable to produce during the appellate proceedings any documentary evidence to support the charitable activities in the form of

medical relief in the hospital run by the appellant. She alleged that the appellant was unable to produce the medical practitioner during the assessment proceedings. The rejoinder of the Ld. AR remained that there is no legal impediments in one charitable trust giving donation to inter charitable trust. It was submitted that it is a well settled position that when a charitable donation amount out of its current income is donated to inter charitable trust, the same constitute application of income u/s 11(1)(9) of the Act. A copy of certificate of registration of the donee trust u/s 12A of the Act has been placed at page 856 of the supplementary paper book – (III). The CBDT instruction No. 1132 dated 5.1.1978, extract of which has been made available at page No. 857 of the supplementary paper book-III has made it clear that payment of a sum by one charitable trust to another for utilization by the donee trust towards its charitable objects is proper application of income for charitable purpose in the hands of the donee trust and the donor trust will not loose exemption u/s 11 of the Income Tax Act 1961. We thus do not find substance in the contention of the Ld. CIT(DR) that the appellant has donated an amount to the donee trust to deviate from its objectives. Since it is not the case of the department that Patanjali Yog Trust, the donee has not applied such sums for charitable purposes, there is no substance in the allegation that the appellant has deviated the funds.

6.6.5. Against the allegation of charging exorbitant rates for accommodation fee submission of the Ld. AR in rejoinder remained that the allegation is based on the statement of one Shri Balwant Singh Minhas without appreciating that the appellant did not conduct any yog shivir/camps in the assessment year under consideration, thus the question of charging exorbitant fees for conducting yoga shivir does not arise at all. The further contention of the Ld. AR remained that reliance has been placed on the ex parte statement of Shri Balwant Singh recorded behind the back of the appellant without affording opportunity to cross examine him,

which itself is in violation of settled principles of natural justice. It was submitted that an amount of Rs. 68.45 lacs represents the amount of room rent charges received by the appellant from the patients who have availed in house facilities in the hospital run by the appellant at Haridwar. The amount of room rent charges received by the appellant in the assessment year is minuscule as compared to the number of patients who have treated in the hospital run by the appellant. Ld. AR submitted further that an amount of Rs. 2 .2 crores approximately has been charged from the patients who have been treated in the hospital run by the appellant, room rent charges, diagnosis and surgical services provided by the appellant which has also been charged at nominal rates in order to meet the actual costs incurred without any element of profit imbibed therein. In this regard attention was drawn on the income and expenditure statement of appellant trust placed at page 379 of the paper book, wherein appellant has incurred an expenditure of Rs. 5.1 crores as against income of Rs. 2.2 crores thereby resulting in a deficit of Rs. 2.8 crores. Regarding the allegation that the appellant was unable to produce any record in the form of medical prescriptions to substantiate that medical relief was provided in the hospital run by the appellant, Ld. AR submitted that as a matter of practice the prescriptions made by the medical practitioners in the OPD are never retained and are always given to the patients. Nonetheless the appellant maintains a record of the patients who have been treated in house which has nowhere been disputed by the department. Against the allegation of the department that appellant was unable to produce the medical practitioners for verification during the course of remand proceedings is erroneous. The Ld. AR submitted that the appellant has produced 15 out of 71 medical practitioners whose details and permanent residential addresses were made known to the revenue. It was submitted that in their statement recorded on oath , the medical practitioners who were in the employment with the hospital run by the appellant have categorically admitted to the

fact that there is no compulsion on the patients to buy medicines prepared / manufactured by the appellant only and that they also prescribed medicine manufactured by other pharmaceutical companies. These submissions of the Ld. AR have not been rebutted.

6.6.6. Considering above submissions in totality we hold that the appellant trust falls within the purview of providing 'relief to the poor'.

6.6.7. The first issue as to whether the appellant trust did fall within the purview of providing of 'medical relief' 'imparting education' or 'relief to the poor' is thus decided in favour of the appellant. In view of the above finding on first issue the second and third issue have become infructuous. In these issues the questions are as to whether the activity of the appellant were in the nature of providing general public utility or of advancement of any other object of general public utility as contained in section 2(15) of the Act. Relevant provisions u/s 2(15) are reproduced as under :-

"Section 2 (15) of the Act defines "charitable purpose" as under :-

"

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

....."

The proviso inserted in section 2(15) of the Act by the Finance Act, 2008, with effect from 1.4.2009, reads as under :-

"

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business , or any activity of rendering any service in relation to any trade, commerce or business, for a

cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;

.....” (emphasis supplied)

Therefore, the aforesaid proviso does not apply to a trust/institution engaged in the charitable object of providing relief to the poor, imparting education and providing medical relief.

The vision with which the applicant trust has been set up and which is being followed over the years are as under:-

- To make a disease free world through a scientific approach to Yoga and Ayurved and to fulfill the resolution of making a new world free from disease and medicine;
- To establish Pran as medicine for the treatment of all curable and incurable diseases by research on Pranayam /Yoga.
- To propagate Pranayam as a “free” medicine for treatment of diseases round the globe, through in-depth research in accordance with the parameters of modern medical science, so that the rich and poor may avail its benefits in order to attain sound health;
- To form a new integrated system of treatment, consisting mainly of the techniques of Yoga and Ayurveda, for Surgery and Emergency cases , Allopathy, Homoeopathy, Unani and Acupressure to soothe patients suffering from unbearable pains and rid them of disease.
- To evaluate methods of treatment of Physical Body, Etheric Body , Astral Body, Mental Body and Casual Body beyond the present incomplete system of treatment for cure of physical body alone;
- Imparting Yoga and health education and to begin degree and diploma courses for students in disciplines of Yoga and Ayurveda.

As discussed above the proviso to section 2(15) of the Act applies only to trusts/institution falling in the last limb of the definition of charitable purpose ; that too, if such trust / institution carry on commercial activities in the nature of business, trade or commerce. The said proviso does not apply to trust / institution engaged in the charitable object of providing relief to the poor, imparting education and providing medical relief. The last limb of

the definition of charitable purpose u/s 2 (15) talks about the advancement of any other object of general public utility. The aforesaid predominant objects and the vision make it clear that the objects of the appellant are to provide 'medical relief' 'impart education' to the society at large and 'relief to the poor' hence the proviso to section 2 (15) does not apply in the case of the assessee / appellant. The fourth issue as to whether donation of Rs. 38.35 crores made to Patanjali Yog Peeth for the purpose of setting up Yog Bhawan and other yoga related activities these amounts to application of money for the purpose of medical relief has also been discussed and decided while adjudicating upon the first issue under the head medical relief or relief to the poor, following the same the fourth issue is also decided in favour of the appellant.

Other objections of the revenue

6.7. Ld. CIT(DR) has also contended that the appellant has received membership fees aggregating to Rs. 283.38 lacs in the assessment year under consideration which is in violation of the trust deed. She has contended further that prescribing of allopathic medicines by one dentist Shri Kuldeep Singh in the medical hospital run by the appellant was also in violation of the objective of the trust. Rejoinder of the Ld. AR in this regard remained that clause O of the trust deed clearly empowers the appellant trust to accept voluntary donations. Thus there was no bar on the appellant to receive voluntary donations in the form of membership fees and thus the objection raised by the department does not survive. The Ld. AR submitted further that the predominant objective of the appellant trust is to provide medical relief to the society at large. Hence there is no specific restriction stipulated in the trust deed to prevent the appellant from prescribing allopathic medicines. He referred clause A & D of the trust deed in support. He however submitted that though the appellant primarily adopts ayurved and yoga as techniques to cure diseases but there is no embargo in the trust deed to prevent the appellant from prescribing allopathic medicines

to cure the patients of diseases. It was submitted further that this contention is also contrary to primary contention of the department that the appellant prescribed only medicines which are manufactured in house and made available in the sales counters managed by the appellant. We fully agree with the above submission that Ld. AR made in rejoinder that there is no substance in the allegations of Ld. CIT(DR) that there was violation of trust deed by the appellant in accepting membership fees and prescribing allopathic medicines to its patients.

6.7.1. In ground No. 10 of the appeal the appellant has taken alternative plea that the Ld. CIT(A) has erred in upholding the taxation of gross income and not directing the AO to allow deduction of "revenue expenditure" incurred during the assessment year 2009-10 while computing the taxable income. This ground has become infructuous as the AO in its rectification order dated 3.6.2013 u/s 154 of the Act has rectified the assessment order and allowed the deduction of revenue expenditure aggregating to Rs. 52,26,88,442/-. This ground is accordingly rejected.

6.7.2. The other contention of the Ld. CIT(DR) during the course of hearing of the appeal have also been met out by the Ld. AR in his rejoinder. On the issue of imparting of education the contention of the Ld. DR remained that ayurvedic medical college in the name of Patanjali Bhartiya Ayurvigyan Avam Anusandhan Sansthan at Haridwar was not in operation during the year. The submission of the Ld. AR remained that though the aforesaid medical college was not in operation in the assessment year under consideration but the appellant had applied substantial amount in setting up the ayurvedic college which amounts to application of income for the purpose of imparting education in the field of ayurveda. In the absence of rebuttal of this fact we do not find substance in the allegation of the Ld. CIT(DR).

6.7.3. The further contention of the Ld. CIT(DR) remained that the certificate of recognition granted by the Medical and Industrial Research

Organization (SIRO) was never filed before the lower authorities which constituted additional evidence at the second stage of appeal proceedings. In this context the Ld. CIT(DR) has objected further that the R & D activities undertaken by the appellant amounted to object of general public utility u/s 2(15) of the Act. She alleged further that comparative rate chart furnished by the appellant in the Paper Book was not filed before the authorities below hence the same constitutes additional evidence. Ld. AR has met out these contentions of the Ld. DR with this rejoinder that the notification granting recognition to the R & D Center of the appellant by the SIRO is available on the public domain and can be accessed at www.dsir.gov.in/direct/siro06.pdf. Thus the certificate does not constitute additional evidence. It was submitted further that the R & D activities undertaken by the appellant was only ancillary and incidental to the predominant objective of providing medical relief being pursued by the appellant. Hence does not fall to the objects of general public utility as defined u/s 2(15) of the Act. Regarding comparative rate chart furnished by the assessee before the Tribunal amounting to additional evidence, Ld. AR submitted that this fact was very much highlighted before the authorities below and reference of the contents of page No. 13 of the first appellate order has been made in support. It was submitted further that the chart filed is nothing but collation of the details of prices available in public domain and has been filed merely in furtherance of the contention taken before the authorities below. Considering the above submission we find substance in the submission of the Ld. AR and the same is accepted as such.

67.4. Besides, above, it is pertinent to note here that the appellant since its inception in the year 1995 has been engaged in the activity of providing medical relief through 'Patanjali Bhartiya Ayurvedigyan Avam Anusandhan Sansthan' at Haridwar which has been consistently accepted by the revenue in the assessment years 2004-05 to 2008-09 vide various

assessments framed u/s 143(3) of the Act and there is no change in the predominant objects of the appellant trust. We thus following the ratio laid down by the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (supra) and others hold that the revenue was not justified in refusing the claimed exemption u/s 11/12 of the Act during the year. The Hon'ble Supreme Court in the case of Radha Soami Satsang vs. CIT (supra) has been pleased to hold that where a fundamental aspect permitting through the different assessment years is accepted one way or the other a different view in the matter is not warranted, unless there is any material change in facts. In the case of DIT (Exemptions) vs Guru Nanak Vidya Bhandar Trust (supra) the Hon'ble Delhi High Court has been pleased to hold that the department is expected to be consistent with its own stand which has been taken in earlier years, when there is no change in the objects of the trust during the year and such objects when found permissible for exemption in the past notwithstanding the fact that it had many fold objects some of which are vulnerable. Similar view has been expressed by the other decisions relied upon by the Ld. AR.

6.7.5. We have also gone through the decisions relied upon by the Ld. CIT(DR) and find that the facts of those cases are distinguishable from the case of the assessee, hence these are not helpful to the revenue. In the case of Samajbadi Society vs. ACIT 79 ITD 112 (Cutt) the assessee was engaged in printing and publishing newspapers and periodicals on commercial lines and it claimed exemption on the ground that it was engaged in the charitable activity of "imparting education". The Tribunal by placing reliance on the decision of Hon'ble Supreme Court in the case of Sole Trustee, Lok Shikshana Trust vs. CIT 101 TR 234 (SC) held that the activities undertaken by the appellant were in the nature of "general public utility" as defined u/s 2(15) of the Act and since there was no tota of evidence to substantiate the charitable activities undertaken by the assessee no exemption was granted in the given assessment year. In the case of Aurolab Trust vs. CIT 46 SOT

125 (Chennai) assessee engaged in the singular activity of manufacturing and trading in ophthalmic and cardiovascular products and accessories, had not taken any charitable activity as provided in the trust deed. Even the sale price of the products sold by the assessee was higher than those available in the market. Taking into account these aspects the Tribunal held that since there was no element of chaity involved in the activities undertaken by the appellant the assessee was not entitled to claim exemption u/s 11/12 of the Act. In the case of CIT vs. ICAI 321 ITR 73 (Delhi) the assessee was pre-dominantly engaged in undertaking R & D activities on behalf of Government and other institution and providing consultancy services. In view of the primary activity undertaken by the assessee it was held to be in the nature of providing 'general public utility' as defined u/s 2 (15) of the Act. However the case was ultimately decided in favour of the assessee and exemption was granted u/s 10(23C)(iv) of the Act. In the case of CIT vs. Queen's Educational Society, ITA No. 103 (Uttarakhand High Court) decision was rendered in the context of allowability of exemption u/s 10(23C) of the Act on the facts of the case before the Hon'ble High Court. In this case profits of the assessee was considered without taking into consideration the capital expenditure incurred by the assessee for charitable purposes. This decision was subsequently been dissented from in several decisions including decision of Hon'ble Punjab & Haryana High Court in the cases of Pinegrove International Charitable Trust vs. UOI 327 ITR 73 (P & H) and CIT vs. Gaur Brahmin Vidya Pracharini Sabha 203 taxman 226 (P & H); Maa Saraswati Educational Trust vs. UOI 194 taxman 84 (H.P) ; DIT (Exemption) vs. Lilavati Kirtilal Mehta Medical Trust ITA(L) No. 2990/2009 (Bom) etc. in the case of Sanjeevamma Hanumantha Gowda Charitable vs. DIT(E) 9 SOT 293 (Bombay) the predominant activity undertaken by the assessee was letting out of marriage halls on purely commercial basis and not in furtherance of the charitable objectivities. Further the assessee had not undertaken any charitable activity in pursuance of the charitable objects

provided in the trust deed. The assessee was therefore denied registration u/s 12A of the Act. In the case of Daulatram Public Trust vs. CIT 244 ITR 514 (Delhi) there was no dominant charitable objective in the trust deed which the ancillary objects sub served. It was also observed that no amount was utilized for charitable purposes and the assessee was predominantly engaged in undertaking commercial activities for the purpose of generating profits. In the case of Jacob Thasildar, 176 ITR 243 (Kerala) decision was given in the context of the Kerala Building Tax Act 1975 wherein the scheme of that Act is completely different from the applicable provisions of the Income Tax Act. In the case of CIT vs. Jodhpur CAs Society 258 ITR 548 (Raj.) the assessee was engaged in organizing conference, seminars and workshops which was held to be in the nature of "general public utility" entitled to exemption u/s 11/12 of the Act. We thus find that these decisions relied upon by the Ld. CIT(DR) do not advance the case of the revenue and hence not helpful to the revenue.

Distinction between objects and business u/s 11 (4) /(4A)

6.7.6. The authorities below held that the activities of the appellant were merely sub serving the business of Divya Pharmacy. The contention of the appellant to it remained that the business undertaking was run by the appellant as an activity in incidental to the attainment of the main objects of the appellant and to give charity which is permitted u/s 11(4)/11(4A) of the Act.

6.7.7. Considering the submission of the parties on these issues we are of the view that it is a trite law that once registration u/s 12A of the Act has been granted by Ld. CIT, the AO could not question the charitable character of the institution during the course of assessment proceedings. It is not open to the AO in the assessment proceedings to hold that the objects of the assessee are not charitable in nature. The contention of Ld. AR remained tha the meaning of the expression 'not for purpose of profit' in the above provisions is no longer res integra, the test being, "what is the

predominant object of the activity – whether it is to carry out a charitable purpose or to earn profit” If the predominant object is to carry out a charitable purpose and not earn profit, the organization would not lose its charitable character merely because some profit arises from the activity. Ld. AR has placed reliance in this regard on the following decisions including the decision of Hon'ble Supreme Court in the case of ACIT vs. Surat Art Silk Manufacturers 121 ITR 124(SC) :-

- CIT vs. Andhra Pradesh State Road Transport Corporation: 159 ITR 1 (SC)
- Victoria Technical Institute vs. CIT: 188 ITR 57 (SC)
- Thiagarajar Charities VS. Addl. CIT: 225 ITR 1010, 1026 (SC)
- Aditanar Educational Institution vs. ACIT: 224 ITR 310 (SC)
- CIT v. Bar Council of Maharashtra: 130 ITR 28 (SC)
- American Hotel Lodging Association Education Institute vs. CBDT: 301 ITR 86 (SC)
- CIT VS. Delhi Kannada Education Society: 246 ITR 731(Del.)
- ACIT vs A.L.N. Rao Charitable Trust: 102 ITR 474 (Kar)
- CIT v. Pullikal Medical Foundation Pvt. Ltd: 210 ITR 299 (Ker)
- Umaid Charitable Trust VS. CIT: 125 ITR 55 (Raj)
- CIT VS. Sivakasi Hindu Nadars: 217 ITR 118 (Mad)
- CIT vs. Janakiammal Ayyanadar Charitable Trust: ITA No. 1566 & 1567 of 2005 (Mad)
- Samaj Kalyan Parishad vs. ITO: 291 ITR(AT) 1 (Del)

The relevant provisions u/s 11 (4) / 11(4A) of the Act are being reproduced for a ready reference :-

(4) For the purposes of this section "property held under trust" includes business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an

institution, being profits gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

6.7.8. We find that the section deals with cases where the business itself is settled to take care of interest for a charitable purpose. Sub section (4A) of section 11 also exempts income tax of a business carried on by the trust so long as the business carried on by the trust is (a) incidental to the attainment of main objects (b) feeds the charitable objects (c) separate books of accounts are maintained in respect of the same, even on fulfillment of the aforesaid conditions profit from such business are exempt u/s 11/12 of the Act. Thus it is clear that the charitable trust can carry on business and utilize its profits therefrom for the charitable purposes but a charitable trust cannot have its purpose, an activity that involves the buying and selling of goods and making profits. The business undertaking of the appellant as discussed above are thus the means for effectuating a charity, but not a charitable object itself. We find that in the case of appellant before us the activity of manufacturing and sale of ayurvedic preparations has been undertaken only for the purpose of effectuating the charitable objective of providing 'medical relief to the society at large on a genuine need was felt to provide superior quality ayurvedic preparations at economical prices in order to attain effective medical results. Only because the activity carried on yielded profits a negative inference cannot drawn that the activity was undertaken with the sole intention of earning profits. It is also pertinent to note that the total donations / voluntary contributions received by the appellant trust during the assessment year under consideration amounted to Rs. 3,89,14,100/- only. Whereas the total revenue expenditure incurred by the appellant trust in the assessment year under consideration for undertaking its charitable activities amounted to Rs. 48,54,93,383/- (excluding depreciation). Further it is apparent from page 26

of the paper book i.e. income and expenditure account for the year ending 31st March, 2009 that substantial capital expenditure has also been incurred by the appellant trust in pursuing its charitable activities. We also find that the donations / contributions received by the appellant trust constituted only a minuscule portion of the heavy outlay of expenditure incurred in pursuing the charitable activities. The meaning of expression not for purpose of profit is no longer res integra the test being what is the predominant object of the activity whether it is to carry out a charitable purpose or to earn profit ? If the predominant object is to carry out as charitable purpose and not to earn profit the organization would not lose its charitable character merely because some profits arises from the activity. The Hon'ble Supreme Court in the case of ACIT vs. Surat Art Silk Cloth Manufacturers 121 ITR 124 (SC) has been pleased to observe that the expression 'for the purpose of profit' implies that the predominant object should be to earn profit. Further to determine the predominant object, what is required to be examined is the objects of the society and not the quantum of surplus though such quantum may become relevant in certain circumstances. The same ratio has been laid down by the Supreme Court in the case of CIT vs. Andhra Pradesh State Road Transport Corporation 159 ITR 1 (SC), Victoria Technical Institute vs. CIT 188 ITR 57 (SC), Thiagarajar Charities vs. ACIT 225 ITR 1010 (SC), Aditanar Educational Institution vs ACIT 224 ITR 310 (SC), CIT vs. Bar Council of Maharashtra 130 ITR 28(SC), American Hotel Lodging Association Educaiton Institute vs. CBDT 301 ITR 86 (SC), CIT vs. Delhi Kannada Education Society 246 ITR 731 (Delhi), CIT vs. Samaj Kalyan Parishad vs. ITO 291 ITR (AT) 1 (Delhi SB) etc.

6.7.9. Thus we find that there is no bar in the charitable trust/institution carrying on business provided the conditions prescribed in section 11(4) / 11(4A) of the Act are satisfied. The Hon'ble Supreme Court in the case of CIT vs. P. Krishna Warriars 53 ITR 176 (SC) has been pleased to hold with reference to income tax Act 1922 that if the trust carried on business and

the business itself is held in trust and the income from such business is applied or accumulated for application for the charitable or religious purpose of the trust, the conditions prescribed in section 4(3)(i) and fulfilled and the income is exempt from taxation. In that case before the Hon'ble Supreme Court business of making and selling ayurvedic medicines was settled and held in trust and 60% of income from such business was applied for charitable purpose. The AO denied exemption on the ground that part of the income from business was not applied for charitable purposes, the Hon'ble Supreme Court held that where business is held for charitable purposes the conditions prescribed in proviso (b) to section 4(3) (i) of the Income Tax Act is not applicable and the assessee was held to be eligible for exemption. The decision of Delhi High Court in the case of Hamdard Dawakhana (Waqf) 157 ITR 639 (Del) though rendered in the context of the pre amended law i.e. before insertion of section 11(4A) in the 1961 Act. But the Hon'ble Court held that it was immaterial how money which was obtained by running of an activity for profit did not make the objective non charitable. If that money was used for charitable purpose and not for the carrying on any business at a profit, then the object of the trust was charitable notwithstanding the source of the income. The Hon'ble Supreme Court again in the case of DCIT vs. Thanthi Trust 247 ITR 785 (SC) held that the trust was entitled to exemption when the business of the trust was incidental to the attainment of the objectives of the trust, namely the objectives of education and relief to the poor. Their lordships observed that after amendment of section 11(4A) in 1992, all that is required for the business income of the trust or institution to be exempt from tax is that the business should be incidental to the attainment of the objects of the trust or institution. The Hon'ble Court further held that if business whose income is utilized by the trust or the institution for the purposes of achieving its objectives is a business which is incidental to the attainment of the objectives of the trust or institution. Respectfully following the ratio laid

down in the above cited decisions we come to the conclusion that the authorities below have failed to appreciate that incomes from business undertaken by the appellant fulfills the aforesaid conditions in as much as (a) all the business, including the business of Divya Pharmacy, were incidental to the attainment of main objects: (b) profits from business are applied for charitable objects ; and (c) separate books of accounts are maintained. They were thus not justified in holding that the charitable objects was sub-serving the business, whereas as a matter of fact it was the other way round. We find that in the case of *Bombay Keraleeya Samaj vs. ITO (supra)* the objects of the assessee registered u/s 12A was inter alia propagation of the Kerala system of Ayurveda and for this purpose the assessee ran five dispensaries rendering free consultation by Ayurved physicians. The assessee was obtaining ayurvedic medicines from an institution (A) at a discount of 11 % which was sold to the patients at the dispensaries as per the prescription of the doctors. The amount of discount which the assessee received from A was being used for running the dispensaries and for carrying out the other objects of the trust. The assessee also levied 11% service charge on the price of medicines from non-members and claimed to have utilized the amount so collected for running the dispensaries. In the preceding assessment years, benefit of section 11 was given to the assessee. The assessee claimed the benefit u/s 10(22A) which was refused by the assessing officer mainly on the basis that the dominant object of the trust was to sell medicines and derive profit therefrom. The first appellate authority rejected the assessee's appeal. The Tribunal has however given relief with this finding that the mere fact that the assessee trust has objects other than medical relief was not a condition aliunde to which the exemption u/s 10(22A) could be denied to the assessee. The surplus derived from running the dispensaries was utilised for philanthropic purposes. CBDT circular No. 194/16-17-II(A-1) makes it clear that if a surplus is used for philanthropic purposes the income of the

institution will be eligible for exemption u/s 10(22A). We are thus of the view that in the present case the authorities below have grossly erred in holding that the appellant's activities in relation to production and sale of ayurvedic preparations are not incidental to its main objective as the same are commercial in nature. Likewise in the case of Baun Foundation Trust vs. CCIT & Anr: 251 CTR 237 (Bombay), the Hon'ble Bombay High Court has been pleased to hold that activity of running chemist shop within the premises of the hospital was incidental or ancillary to the dominant object of running a hospital. We thus hold that in the present case the authorities below have failed to appreciate that the business set up and held by the appellant under trust is to sub serve the predominant charitable objects of providing medical relief education and relief to poor. Furthermore, since separate books of accounts were maintained and the entire profits are for charitable objects, the conditions prescribed in section 11(4A) of the Act, too were fulfilled. The authorities below have also failed to appreciate that out of total sales of Rs. 168.12 crores of Divya Pharmacy medicines of Rs. 4.2 crores only were sold from the hospital sales counter. As it is apparent from page No. 14 of the first appellate order there is no legal requirement that appellant must sell medicines manufactured by other manufacturers, despite that fact that the medicines manufactured by the appellant is far superior in quality and priced much less than similar products available in the market.

6.8. In the result the issues raised in the ground Nos. 1 to 9 are decided in favour of the assessee with this finding that the appellant was very much entitled to the claimed exemption u/s 11/12 of the ITA 1961. We thus while allowing these grounds in favour of the assessee direct the AO to allow the claimed exemption. So far as ground No. 10 is concerned it is rejected as having become infructuous in view of the order dated 3.6.2013 of the AO u/s 154 and the issues raised in ground Nos. 11 to 14 have become infructuous in view of our finding in favour of the appellant in

ground Nos. 1 to 9 , hence do not need adjudication. The issue of charging of interest under sections 234A, 234B, 234D and 244A of the Act raised in ground Nos. 15 and 16 are consequential in nature.

7. Consequently appeal is allowed.

The order is pronounced in the open court on 27thAugust, 2013.

sd/-
(J.S. REDDY)
ACCOUNTANT MEMBER

sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated 27th .August, 2013

SP / Veena

Copy of order forwarded to:

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

By Order

Deputy Registrar, ITAT