

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Judgment Reserved On 18.09.2020	Judgment Pronounced On 29.10.2020
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T.C.A.No.822 of 2018

(Virtual Hearing Dates : 10.07.2020, 15.07.2020, 20.07.2020,
26.08.2020, 07.09.2020, 17.09.2020 & 18.09.2020)

M/s.Thanthi Trust,
46, E V K Sampath Road,
Chennai 600 007.

.. Appellant

-VS-

The Director of Income Tax (Exemptions)
121, Uttamar Gandhi Road,
Nungambakkam, Chennai 600 034.

.. Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act,
1961, against the order dated 08.05.2018 made in I.T.A.No.356/Mds/2010
on the file of the Income Tax Appellate Tribunal 'B' Bench Chennai.

For Appellant : Mr.V.S.Jayakumar
For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel

JUDGMENT

T.S.Sivagnanam, J.

This appeal filed by the assessee under Section 260A of the Income Tax Act 1961 ('the Act' for brevity) is directed against the order dated 08.05.2018, made in I.T.A.No.356/Mds/2010 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai to decide the following substantial question of law:

"Whether the Tribunal was right in law in holding that the appellant trust is not eligible for exemption under Section 12A of the Income Tax Act, 1961 without considering the merits of the case in a proper manner?"

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2. The assessee is a public charitable Trust, filed an application dated 20.07.1973 for registration under Section 12A(a) of the Act before the

Commissioner of Income Tax, Central-II, Chennai [CIT(A)]. The assessee Trust was constituted by a Memorandum of Association dated 01.03.1954 and subsequently by Supplementary Deed dated 28.06.1961. The CIT(A) by order dated 30.06.1989, granted registration to the assessee Trust under the said provision. Proceedings were initiated by the Director of Income Tax (Exemptions) ('DIT(E)') under Section 12A(a)(iii) of the Act, after noting that the assessee Trust was granted registration by the CIT(A) under Section 12A(a), by order dated 30.06.1989. The DIT(E) examined the records and noted the objects and activities of the assessee Trust. It was stated in the records that the assessee does not run any school or colleges, though such purposes have been formulated as the main objects of the Trust, the Trust engages itself in the business of publishing the Tamil news business commitments 'Dina Thanthi' and also job works for printing are undertaken as business commitments. The surplus of the income from the business after defraying all the expenses is utilized for donation to another Trust, 'Aditanar Educational Trust' only. The DIT(E) after analysis of the gross receipts of the Trust and the surplus of income from business and the donation to the 'Aditanar Educational Trust' for four assessment years, i.e., from 2006-07 to

2009-10, held that the only charitable activity done by the assessee is the donation to the other Trust year after year. The DIT(E) noted that the other Trust is running educational institution, it apparently may be covered by the object namely helping to run school or college or other educational institution for teaching arts and science as provided in the second object of the assessee Trust. The DIT(E) held that the assessee has not carried any other objects as provided in the Deed of Trust or Supplementary Deed. After referring to the definition of 'charitable purpose' as defined in Section 2(15) of the Act, it was held that the activity of the assessee Trust may not be covered as relief to the poor, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility. It was held that the activity of the assessee has to be examined as to whether it can be said that the assessee Trust is existing for the purpose of education or advancement or any other general public utility. The DIT(E) framed the question for consideration, whether the assessee Trust is engaged in educational activity or whether it is only doing business. It was held that the object of the Trust alone does not make the Trust eligible for exemption; the

activities are important in considering whether the Trust is eligible for exemption. In this regard, reference was made to the decision in ***Kirti Chand Tarawathi Charitable Trust vs. DIT(E) [(1998) 232 ITR 11 (Del)]***. The DIT(E) held that the only issue to be decided is as to whether the activities of the assessee of giving only donation to educational institution can be said to be educational. After referring to the decision in ***Sole Trustee, Loka Shikshana Trust vs. CIT [(1975) 101 ITR 234 (SC)]***; ***CIT vs. Oxford University Press [(1996) 221 ITR 77 (Bom)]***; ***CIT vs. Sorabji Nusserwanji Paarekh [(1993) 201 ITR 939 (Gujarat)]***; and ***ACIT vs. Victoria Technical Institute [(1979) 120 ITR 358 (Madras)]***, it was held that it is difficult to accept that the assessee's activity can be said to be educational in nature. The DIT(E), therefore, came to the conclusion that the assessee's activities can only be for advancement of general public utility. Further, the Trust is conducting business of running the newspaper and the turnover exceeds the threshold limit as per second proviso to Section 2 (15) of the Act. It was held that undoubtedly the assessee is conducting business of publication of newspaper and gross receipts running into hundreds of crores of rupees exceeding the threshold limit as provided under second proviso to Section

2(15) of the Act. Therefore, the first proviso to Section 2(15) of the Act is squarely applicable to the assessee's case and therefore the activities, *prima facie*, shall not be charitable in nature. Further, it was held that this position will not change whether the business is carried independently or given as corpus by the settlor. Thus, the DIT(E) held that it appears that the activity of the assessee is hit by proviso to Section 2(15) of the Act and the *prima facie* activities of the Trust are no longer charitable in nature.

3.The assessee was called upon to show cause as to why action under Section 12AA(3) should not be taken to cancel the registration granted to them under Section 12A(a) of the Act. The assessee was also afforded an opportunity of personal hearing through their authorized representative. The assessee submitted their reply dated 30.11.2011 through their Chartered Accountant in the form of written submissions.

4.The assessee contended that they claimed exemption under Section 11(1) of the Act and not under Section 10(23)(c) of the Act and the conditions mentioned in the amendment to Section 2(15) of the Act covers

only public utility services and not for application to educational purposes by a Trust holding property for such purposes. In this regard, the speech of the Hon'ble Finance Minister in the Parliament and Circular issued by the Central Board of Direct Taxes (CBDT) in Circular No.11 of 2008 were referred. The assessee referred to the decision in the case of **MP. Madhyam vs. Joint Commissioner of Income Tax [(2004) 89 TTJ Indore 770]**, in which, it was held that the provision of Section 12AA of the Act is not meant for withdrawal or cancellation of registration already granted; that benefit of the principle of promissory estoppel cannot be denied to the assessee enjoying the registration for the last several years under the same facts and circumstances, unless there is a breach of conditions laid down for granting registration in specific terms; that in such cases, the burden lies heavily on the Department to establish as to how the approach of the assessee was commercial; that where the predominant object is to carry out the charitable purpose and not to earn profit, the Society would not lose its charitable character merely because some profit arises from the activity; and that where the CIT(A) failed to specify as to how profit making was the predominant activity of the society instead of carrying out charitable

purpose, there was no justification in proposing cancellation of the registration. Further it was stated that the Department has not discharged the onus cast upon it to show as to how the conditions for grant of registration have been breached by the assessee. Further, CIT(A) has failed to specify as to how profit earning is the predominant activity of the assessee-Society. The assessee, further, stated that they are not challenging the powers of the Department to deny registration already granted to a Trust, but they submitted that the doctrine of promissory estoppel will come to their rescue when there is no change in circumstances not in law or in facts. Noting that in the show cause notice, the DIT(E) has stated that the registration was granted on the basis of the Memorandum of Trust dated 01.03.1954 and by Supplementary Deed dated 28.06.1961, the assessee stated that the Department is well aware that the assessee preferred appeals before the Appellate Assistant Commissioner (AAC) for the assessment year 1962-63 contending that they are entitled to the grant of exemption under Section 11 of the Act. The AAC accepted the plea of the assessee that the decree passed by this Court in C.S.No.90 of 1961 created a legal obligation on the Trustees to utilise the income from the Trust for the object set out in the

schedule to the decree. The decree passed by this Court in the said suit was mandatory in nature and that the assessee had credited in the books of accounts 75% of the income in favour of 'Aditanar College" and therefore, the assessee was entitled to the benefit of the exemption under Section 11 of the Act. It was further stated that aggrieved by the orders of AAC, the Revenue preferred appeals to the Tribunal contending that the Supplementary Deed dated 28.06.1961, which was subject matter of C.S.No.90 of 1961, was invalid and ineffective inasmuch as the founder who had divested himself of his interest in the newspaper business and had created an irrevocable trust in respect thereof, no power to alter the terms of the Trust Deed and that Clause 3(i) of the Original Deed dated 01.03.1954 only empowered the founder to confer additional powers on the trustees for the proper administration of the assessee Trust and had not conferred any powers on the founder of the Trust to alter the objects of the Trust; that the judgment and decree in C.S.No.90/1961 not being a judgment in *rem* was not binding on the Revenue; that the judgment was rendered in originating summon wherein complicated questions of law and fact could not be gone into without going into the validity of the Supplementary Deed dated

28.06.1961; the same cannot be relied on by the assessee and the institution of such a suit was not genuine but collusive and fraudulent; even if the Supplementary Deed dated 28.06.1961 was valid and effective, no property having been separately endowed for the said object; there was no scope for the application of Section 11 of the Act inasmuch as there was assignment for charitable purposes of the income only and not of the property which yields the income and that there being no application of the income for the assessment years in question for the objects contemplated in Section 11 of the Act, the assessee was not entitled to claim exemption. The assessee Trust contended before the Tribunal that in view of the judgment and decree of this Court in C.S.No.90 of 1961, it was no longer open to the Revenue to contend that the Supplementary Deed was not valid that as a result of the decree in the said Suit, the Trustees were under legal obligation to apply the income for the objects mentioned in the schedule to the decree and they had no discretion to apply the entire income for the maintenance of a newspaper business, that the Press already existing should be considered as one constituted by the Original Deed as modified by the decree of this Court and even if the original objects set out in the original Trust Deed continued to be

the object of the Trust, they were to be considered only as ancillary, in view of the modification made by this Court. The Tribunal decided the case in favour of the assessee holding that by reason of the judgment and decree in C.S.No.90 of 1961, the objects of the Trust are only those set out in the schedule to the said decree and they are charitable objects and that the assessee will be entitled to exemption from tax in respect of such income derived from the business as is shown to have been actually parted by it and actually spent on such charitable objects during the relevant previous years. With this finding, the Tribunal directed that the assessments for the two years in question should be modified. Aggrieved by such decision of the Tribunal, the Revenue as well as the assessee Trust sought for references to this Court and the following questions were referred for the opinion of this Court:

(1) Whether on the facts and circumstances of the case, by reason of the judgment and decree of the Madras High Court in C.S.No.90 of 1961, the objects of the trust are only those that are set out in the schedule to the said decree and not those for which the trust was originally founded and that such objects are charitable

objects within the meaning of section 2(15) of the Income Tax Act 1961?

(2) Whether on the facts and circumstances of the case, the trustees are not bound to apply the income that is left after meeting, the lawful and normal expenses for running the business for carrying out the objects set out in the schedule to the decree in C.S.No.90 of 1961?

(3) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the trust in respect of the entirety of the business for the objects mentioned in the schedule to the decree in C.S.No.90 of 1961 on the file of the High Court, Madras and not merely in respect of the income from the said business?

5.The questions which were referred for consideration were answered in favour of the assessee in ***CIT vs. Thanthi Trust [(1982) 137 ITR 0735 (Madras)]***. This decision was affirmed by the Hon'ble Supreme Court in ***(1999) 239 ITR 502 (SC)***. In the latter part of this judgment, we shall dwell deeper into the reasons assigned by the Hon'ble Division Bench for accepting the case of the assessee and rejecting that of the Revenue.

6.The assessee further stated that the Income Tax Act covers charity on two different fields, one is for application and another field covers generation of income. The application of surplus income is covered by Section 11(1) of the Act and the generation of income is covered by Section 10(22) of the Act.

7.It was further contented that the Division Bench of this Court in the decision reported in *123 ITR 611*, held that a Trust has an obligation annexed to the ownership by a specific property and not with a non existing property. It was explained that in the case of assessee Trust, the property held by the Trust is the business undertaking which was in existence at the time of creation of the Trust and after the judgment in C.S.No.90 of 1961, it became a legal obligation on the Trustees, a formal deed is not necessary, if it binds the trustee and as such the decree in C.S.No.90 of 1961 creates a legal obligation on the Trustees to spend the surplus income of the Trust only for educational purpose and not to any other purpose. It was further contended that the Department has attempted to import the conditions stipulated in Section 10(23)(C) into Section 11(1) which is not in

accordance with law. Further, it was pointed out that sub-Sections (1), (4) and (4a) of Section 11 of the Act were not omitted or amended and the same situation and circumstances continues, so far as the assessee Trust is concerned. With regard to the applicability of Section 11(4a), the assessee referred to the judgment of the Honble Supreme Court in their case reported in *ACIT vs. Thanthi Trust [(2001) 247 ITR 785(SC)]*. The assessee referred to the instrument of declaration of Trust dated 01.03.1954 registered as document no.136/1954 on the file of the Sub Registrar, Mylapore and the Supplementary Deed dated 28.06.1961 and submitted that the judgment in C.S.No.90 of 1961 validates the Supplementary Deed and has held that the Trustees are bound to apply the surplus income to the objects mentioned in the Supplementary Deed. Further, it was submitted that the Director/Trustee is the Chairman of the governing body of the College from the very inception, he is managing and running the newspaper as Director, chosen by other trustees and he is also the Chairman of the educational agency which is a Society which runs various Colleges in Thiruchendur and there is no other effective way to carry out the directions, of those contained in the judgment in C.S.NO.90 of 1961 and wishes of the

Founder of the Thanthi Trust. Therefore, it is submitted that it is not sustainable to contend that (a) Trust does not run any School or College; (b) only surplus income is held under Trust; (c) the property of running the business is not held for the purpose of Trust and only the surplus income is held under Trust. It is submitted that all these three aspects have been decided by the Courts and they are in favour of the assessee Trust. Further, it was pointed out that the registration under Section 12(A)(a) was granted to the assessee on the basis of declaration of Trust dated 01.03.1954 and the Supplementary Deed dated 28.06.1961 and mechanically without due application of mind, the registration cannot be proposed to be cancelled. Without prejudice to the above submissions, it was stated that in any event, the Department cannot cancel the registration retrospectively. Further, the decisions which were referred to by the DIT(E) relate only to Section 10(22) of the Act and they are not applicable to the assessee's case, as they claimed exemption under Section 11(1) of the Act and not under Section 10(23)(C) of the Act. Further, it was submitted that newly inserted proviso to Section 2(15) is applicable only to the objects of advancement of any other object of general public utility and the same is not applicable to the assessee's case

whose objects are solely for the purpose of education. With the above submission, the assessee prayed for dropping the proposal to cancel the registration granted to it under Section 12A(a) by invoking the power under Section 12A(A)(3) of the Act.

8.The DIT(E) by order dated 08.12.2011, cancelled the registration granted to the assessee Trust with effect from 01.04.2009 (AY 2009-10) i.e., from the date of introduction of the proviso to Section 2(15) of the Act.

9.The DIT(E) stated in its order that it is undisputed fact that the assessee is not running an educational institution by itself; it is only giving donation to another Trust; the word 'Education' is not defined under the Income Tax Act and therefore, have to rely on the decisions of various Courts for interpreting the word 'Education'. After referring to the judgment in *ACIT vs. Victoria Technical Institute [(1979) 120 ITR 358 (Madras)]*, it held that since the assessee was not running an educational institution, their activity will fall under the category of advancement of any other object of

general public utility as used in Section 2(15) of the Act and those activities would not fall within the scope of educational activity, as held in *Victoria Technical Institute (supra)*. Reference was made to the decision of the Hon'ble High Court of Gujarat in *Sorabji Nusserwanji Paarekh (supra)*. Relying upon the decision in the case of *Loka Shikshana Trust (supra)*, it was stated that the word 'Education' connotes the process of training and developing the knowledge, mind and character of students by normal schooling. Further, by once again referring to the above stated decision, it was held that it is necessary to run educational institution to qualify under the category 'Education' in Section 2(15) of the Act. It was further stated that the material differences between Section 2(15) and Section 2(22) as far as a education is concerned, is a use of the word 'solely'. Further, the DIT(E) accepted that there is no dispute that the objects of the Trust as per the Supplementary Deed dated 28.06.1961 were ratified by judgment in C.S.No.90 of 1961 and that the Department is accepting the objects as per the Supplementary Deed after series of litigations. However, none of the decision in the assessee's case had dealt with the issue that the Institution is not running educational institution even then it can be said to pursue objects

of education. While considering the contention raised by the assessee stating that the proposal to cancel the registration is hit by principles of promissory estoppel, the DIT(E) held that the decision in **MP. Madhayam** (supra) will not come to rescue the assessee, as there is a change of law from the date of registration under Section 12AA of the Act and proviso to Section 2(15) of the Act was inserted with effect from 01.04.2009. The DIT(E) after referring to the surplus and reserve in the Balance Sheet of the assessee, observed that there is a huge surplus and reserve available in the Balance Sheet invested in stocks, cash and bank balance and loans and advances. Thus, it was held that the assessee is engaged and pursuing objects of general public utility and not education and conducting business of newspaper having turnover running in to crores of rupees much more than the threshold limit provided in the second proviso. Therefore, the DIT(E) concluded that the objects and activities of the assessee is no longer chargeable in nature and therefore, cannot be said to pursue charitable activity and the registration can be cancelled under Section 12AA(3) of the Act. Accordingly, the registration was cancelled with effect from 01.01.2009.

10. Aggrieved by such order, the assessee filed appeal before the Tribunal. Before the Tribunal, among other things, the assessee contended that the DIT(E) failed to appreciate that the definition of term 'charitable purpose' is a condition precedent for grant of exemption and not a condition precedent for granting registration; that it failed to appreciate that the assessee is not carrying on any business activity as the activity of the Trust but is continuing to carry on the activities vested with the Trust by settlor; it failed to note that the two components of the activity namely (i) of continuing to carry on the obligation entrusted upon the Trust (ii) the obligation to utilise the funds being the resultant income over expenditure in accordance with directives of the settlor; that the principle of overriding title will apply to the resultant income of the newspaper activity and such amounts are bound to be applied only for chargeable purpose and hence the activities of the Trust are genuine; that the interpretation given to Section 2(15) of the Act is incorrect; DIT(E) failed to appreciate the findings of this Court in the assessee's own case, wherein it was held that the entire property were held under Trust and / or under legal obligation was the business itself and entire income from the business have to be utilised for the various

charitable objects set out in the schedule to the decree of this Court and therefore they cannot be denied the benefit of exemption under the Act. The other contents and decisions which were referred by the assessee while submitting their reply dated 30.11.2011 to the show cause dated 25.10.2011, were placed before the Tribunal. The Revenue contended that as per the Trust Deed dated 01.03.1954, the object of the Trust was to establish the newspaper as an organ of educated public opinion for the Tamil reading public and to disseminate news and to ventilate opinion upon all matters of public interest through it. It was further stated that the assessee does not run any school or college, though such purposes have been stipulated as a main objects of the Trust. The activities of the trust in conducting a newspaper business cannot be said as imparting education within the scope of charitable activity.

11. The assessee had not offered any donation to other educational trust but only to one Trust and therefore, the order of cancellation of a registration is proper. The Tribunal held that for the purpose of registration of the Trust, charitable purpose is an essential ingredient otherwise,

registration under Section 12A cannot be accorded to any Trust. After referring to some of the objects of the Trust as set out in the Deed of Trust and Supplementary Deed, the Tribunal stated that the original Trust Deed was executed for the purpose of establishment of newspaper and the surplus income from the business was to meet out the objects set out in the Supplementary Deed dated 28.06.1961 and since the main activity of the Trust is publishing newspaper, it would fall within the meaning of trade and commerce. The Tribunal faulted in not offering donation to other educational Trust or Societies but only 'Adhitanar Educational Trust' and that is the single activity of the assessee Trust. Referring to the decision in ***Yogiraj Charity Trust vs. CIT [(1976) 103 ITR 777 (SC)]***, it is held that if any of the objects of a Trust cannot be treated as charitable, the claim of the entire Trust for exemption has to fail. Further, the Tribunal held that the assessee has not carried out any other activity in the nature as provided in the Supplementary Deed and the only activity besides printing of the newspaper being, giving donation to a particular Trust. The said activity cannot be treated as activity for the advancement of any other object of general public utility, in the light of Section 2(15) of the Act, as it stood

amended from 01.04.2009. In ground no.1 placed in the impugned order, the Tribunal has faulted the assessee in offering donation only to one Trust, therefore, came to the conclusion that the same cannot be treated as a charitable activity, since the Trust has not carried out the main objects in the Supplementary Deed namely, establishing and running Schools or Colleges. The Tribunal came to the conclusion that the litmus test of a charitable institution is that it should primarily carrying on charitable activity which is not the case of the assessee Trust. There is distinction between carrying on of charitable activity and donations for charitable purpose and that the assessee Trust having not carried out any charitable activity but only carrying on business activity is not entitled for registration. With these observations and findings, the appeal was dismissed by the Tribunal.

12. Aggrieved by such order, the assessee has preferred this Tax Case Appeal.

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13. Mr. V.S. Jayakumar, learned counsel for the appellant with a view to assist this Court to take a decision in the matter and also to

assimilate all relevant facts and details regarding the past litigation between the assessee and the Department on the same subject matter, prepared his notes on submissions in the form of Power Point Presentation (PPT).

14.To the best of our knowledge, this is the first time, we have come across arguments advanced by the learned counsel by submitting a PPT before this Court. One school of thought seeks to condemn PPT presentations and have faulted the speakers who had used PPT as being monotonous and boring. The fault does not lie on the PPT but on the presenter, invariably the presenter reads out what is displayed in the presentation, forgetting that the Powerpoint Presentations give salient features and bullet points on which the speaker will elaborate. If the PPT is done in such a form, it is a very effective way of presenting any topic and in our view, Mr.V.S.Jayakumar, learned counsel has done this excellently, which has assisted this Court and we have no doubt in our mind, it has also assisted the learned Standing Counsel for the respondent/Revenue. For better appreciation, we would quote the PPT as presented before us to enable the Court to decide the appeal as hereunder:-

23/122

“Basic facts

•Thanthi Trust was formed on 01.03.1954 – Objects

- (1) to sustain the Dina Thanthi or Daily Thanthi as an organ of educated public opinion for the Tamil reading public;
- (2) To disseminate news and to ventilate opinion upon all matters of public interest through the said news paper;
- (3) to maintain the said newspaper and its Press in an efficient condition devoting the surplus income of the said newspaper and its Press after defraying all expenses, in improving and enlarging the said newspaper and its services and placing the same on a footing of permanency.

•Supplementary trust deed dt 28.06.1961

- 1) Establishing and running a school or college , for the teaching of journalism;
- 2) Establishing and running or helping to run schools, colleges or other educational institutions for teaching arts and science; 3) Establishing of scholarships for students of journalism, arts and science;
- 4) Establishing and or running or helping to run hospitals for students;
- 5) Establishing and or running or helping to run orphanages and
- 6)Other educational purposes;

•Decree in Civil suit No. 90/1961 dated 02.03.1962. Schedule to this decree is referred to in 137 ITR 735(Mad) which mentions the same six objects.

•Court observed: “It is clear that the object of the trust is not in any manner opposed to law and there is nothing illegal in the prayers being allowed....There can , therefore, be no objection to the aforesaid prayers being allowed. Ordered accordingly.”

- Registration u/s 12 A was granted by CIT on 30.06.89 though applied for in the year 1973 after a delay of 20 days. Delay was condoned.
- Assessments u/s 143(3) were made from A Y 56-57 till A Y 96-97 dealing with Sec 11 exemption. Refer Pg 139 of spiral binding. From A Y 97-98 till 08-09 there were no disputes.
- For AY 09-10 to 12-13- Exemption u/s 11 was denied by AO/CIT(A) and appeals before ITAT along with refusal of registration u/ s 12 A A were listed several times.
- Only the appeal relating to refusal of registration u/s 12 A r/w 12AA was disposed off which is the impugned order passed by the ITAT in this TC(A) 822 of 2018
- Donations list for various years from inception refer pg 22-23-spiral binding. Aditanar educational trust is the only donee
- Charitable activities of the assessee trust was questioned by the tax department from A Y 68-69 and 69-70 for the first time and exemption u/s 11 was denied. Refer 137 ITR 735(Mad)(see below).Other aspects like application of income etc were considered in earlier assessment years appeals.
- ITAT and HC upheld that supplementary deed was not valid as the trustees have no power under the deed to change the objects-but because of the Civil Court decree ordering the prayer to carry out six objects mentioned therein, there was a legal obligation on the part of the trustees to carry out the charitable activities which are six in numbers and so the trust is eligible for exemption u/s 11.
- Case law: (i) Sree Anjaneya Medical Trust v CIT 382 ITR 399(Ker) S.12A is one time registration. Exemption is annual -ACIT v Agra Dev

Authority (2018) 90 taxmann.com 282(All) at 203- 218 at pg 215 para 49 PB II ; 12 A- is a fait accompli per Justice Ashok Bhan-CIT v Surat City Gymkhana Trust - (2008) 300 ITR 214(SC) para B / 5 Addl typed set case law -I ; TNCA v CIT 360 ITR 633(Mad) and Gujarat Cricket Assn v CIT -419 ITR 561(Guj)- 12 A exemption is not an idle or empty formality- Addl typed set-I

- Sec.2(15) w e f 01.04.2009 by F A (No.2) 2009
- 2(15) Charitable purpose includes relief of poor, education, medical relief...and any other object of General Public Utility
- Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on any activity , in the nature of trade, commerce or business... ..
- Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is 25 lakhs rupees or less in the previous year ...
- 2(15)proviso is not attracted as the main object is education and hence not violated
- TNCA(2014) 360 ITR 633(Mad); Gujarat Cricket 419 ITR 561(Guj)PB-II, DIT(E) v Chartered Accountants Study Circle 347 ITR 321(Mad)
- Observations on “education” in Thanthi’ Trust’s reported cases.
- Hon’ ble Justice G.Ramanujam and Hon’ ble Justice Sengotuelan -137 ITR 735 (Mad) Pg 50 to 75
- (i) para 26 pg 66: In this case the founder of the trust has clearly evinced an intention to create a public charitable trust as seen from the preamble and cl3(k) of the original trust deed and the charitable objects referred to in the schedule to the decree in CS no. 90 of 1961 have to be fulfilled

from and out of the income from the business which is directed to be held under trust or other legal obligation. Those charitable objects fall within the first two categories referred to in S 2(15). Viz relief of the poor and education. It is to carry out and fulfill those objects the business is carried on.

•Thus the primary purpose is to carry out the charitable objects and the business is carried on as a means in the course of the actual carrying out that primary purpose and not as an end in itself. While the predominant object of the trust is the carrying out of the charitable objects referred to its two off the three categories of charitable purpose referred to in S 2(15), the carrying on of the business which is actually the property held under trust or other legal obligation is incidental and the profit resulting therefrom the business can be taken to be a by product.

•(ii)Page 65 para 22 end. The principle laid down by the SC(121 ITR1) in the said decision seems to squarely apply to this facts of the case. In this case the property held under trust or under legal obligation is the business itself and the entire income from the business has to be utilised for the various charitable objects set out in the schedule to the decree in CS No.90 of 1061. Thus, the objects will clearly fall under the head ‘ relief of the poor,education, medical relief etc, and merely because the trust is carrying on the charitable objects referred to in schedule to the decree, it cannot be deprived of S.11.

•(iii) Page 65-66 para 25 : As pointed out by the SC , if the contention of the revenue is accepted, no trust can carry on any business even for the fulfillment of the charitable objects, such as, relief of poor, education and medical relief, and, therefore, such a contention cannot be accepted. If the intention of the legislature were to prohibit a trust or institution

established for a charitable purpose or for the prohibition of an object of general public utility from carrying on any activity for profit , it would have provided in the clearest terms..

•iv) Pg 60 para 18:The supplementary deed as well as the decree in C S No.90 of 1961 proceed on the basis that as the original objects had since been achieved, new objects substituted for them. The new objects are purely charitable.

•(v) Pg 61 para 19 end : Once there is a surplus, there is no discretion left in the trustees to spend the same for any non-charitable purpose and they are bound to spend the same for any of the charitable purposes referred to in the schedule to the decree, all of which are admittedly charitable objects. Pg 61 para 19 end.

•(vi) pg65 para 25: In the case on hand the property held under trust is the business itself and the business is carried on only and exclusively, for carrying out the charitable objects set out in the schedule to the decree in CS No.90 of 1961

•(vii) Pg 185 238 ITR 635(Mad) Hon'ble Justice R.Jayasimhababu-@ 186: 137 ITR 735 followedthat those charitable objects fall under the relief to the poor and education referred to in S. 2(15) and that the primary purpose of the trust is to carry out the charitable objects and that business is carried on only as a means in the course of actually carrying out the primary purpose of the trust, and not as an end itself.

•viii) Pg-143 144- 91 ITR 261(Mad)- Hon' ble Justice G.Ramanujam and Hon' ble Justice V Ramaswami- In the original assessment for A Y 62-63 to 67-68,- In all these Ays the ITO has specifically found that 75% of the income of the trust had been applied for a recognized charitable purposes,namely, education.

- ix) Hon' ble Justice N.V.Balasubramaniam and Hon' ble Justice P Thangavel 239 ITR 510(Mad) pg 159 applied 137 ITR 735;
- X) 172 Hon' ble Chief Justice K A Swami and Hon' ble Justice K. Somasundaram J at 213 ITR 626(Mad) –para 14- 146 ITR(st) 187 SLP against 137 ITR 735 admitted on Qs 4,5 and 6 and Qs 1 to 3 were dismissed.
- Observations of Supreme Court in Thanthi Trust's case
 - Hon' ble Chief Justice of India Barucha, (2001)247 ITR 785(SC) at para 20- 21 pg 184 of PB- para21 end 11(4A)-“The trust, therefore , is entitled to the benefit of S.11 for the A Y 92-93 and thereafter. It is, therefore, we should add, not in dispute, that the income of its newspaper has been employed to achieve its objectives of education and relief to the poor and that it has maintained separate books of account in respect thereof.
 -Pg. 180 of PB – para 6 Court observes... 137 ITR 735 has become final and binding on the revenue, namely, that the primary purpose of the trust was to carry out the charitable objects and that the business carried on only as a means in the course of the actual carrying on the purpose of the trust.”
 -) Hon'ble Justice Jeevan Reddy-(1999) 239 ITR 502(SC) CIT v Thanthi trust- application of income aspect only-para 2-page 208PB-
 - “2. It appears that the Adityanar College was run, not by the assessee trust, but by another registered charitable society. In the circumstances, the HC was right in the conclusion which it arrived at.
 -It may also be mentioned that it is no part of the revenue's case at any point of time that the credit entries made in the assessee's books of account were not genuine or true or that they were mere make believe or bogus. It was never doubted. “

- Meaning of education/utilization of surplus
- “Meaning of education” is wider and not narrower- Justice Beg; Per Hon’ ble Justice Khanna meaning of “education” is narrower; Regarding Hon’ ble Justice Gupta’s view there is no indication in the judgment in (1975) 101 ITR 234(SC) Lok Shikshana Trust v ITO- Submission is the meaning of education is obiter dicta and is not a ratio decidendi ...in view of disapproval of this judgment in 121 ITR 1(SC) Surat Art Silk Association v ITO as noticed in 137 ITR 735(Mad) Thanthi Trust v CIT.
- Investor Financial Education Academy v ITO TC(A) 900/2018 dated 04.09.2020(unreported) is relied on.
- ICAI Accounting Research Foundation v DIT 321 ITR 73(Del) followed
- Gujarat State Co-op Union v CIT 195 ITR 279(Guj) and Ahmedabad Management Assn Followed.
- Alembic Chemical works Ltd v CIT- 177 ITR 377(SC)-modern developments should be judicially noticed.
- Utilization of surplus- reasonable to hold 15% with the assessee.
- Investor Financial Education Academy v ITO TC(A) 900/2018 dated 04.09.2020.(unreported)
- IT Act envisages 15 % being retained and 85% must be spent.
- Refer page for utilisation mentioned in the impugned order of DIT/ITAT as also the spiral binding at pages 22-23 of spiral binding.
- Diversion by over riding title/rule of consistency
- Diversion by overriding title- ground raised before the ITAT not answered.
- CIT v Tollygunge Club Ltd 107 ITR 776(SC)
- CIT v Bijili Cotton Mills P Ltd – 116 ITR 60(SC)

•Rule of consistency

•Radhsoami Satsang v CIT (1992) 193 ITR 321(SC)

•ACIT v Surat City Gymkhana (2008) 300 ITR 214(SC)

•Same issue considered in another facet of the income tax exemption u/s 11 which is relevant here also while considering rejection of registration u/s 12A.

•Case law on first three limbs

•121 ITR 1(SC) Surat Art Silk Association v CIT para 8 page 10 of PB –I - Sec 2(15) which gives an inclusive definition of charitable purpose. It provides that “charitable purpose” includes relief of poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. In the same para:

•It is now well settled as a result of the decision of this court in Dharmadeepti v CIT 114 ITR 454(SC) that the words “not involving the carrying on of any for profit qualify or govern only the last head of charitable purpose and not the earlier three heads.

•Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of charitable purpose would be satisfied, even if an activity for profit is carried on in the course of the actual carrying out the primary purpose of the trust or institution .

•Sree Anjaneya Medical trust v CIT 382 ITR 399(Ker) 12 A and 12AA deal with the registration only.

•Tamil nadu Kalvi Arakkatalai v CCI (2014) 90 CCH 184(Mad) –Income received by person on behalf of educational instn exemption allowed.

•Summing up of arguments up to this stage

1)In the impugned ITAT order and DIT(E) 's order they are reviewing the very same Issue once again ignoring the case laws cited before them by the assessee trust. Thanthi trust case in 137 ITR 735(Mad) has become final as observed in by the Hon' ble Supreme Court.

2)The lower authorities held that the trust is not doing any activity for charitable purpose as there is no educational activity as such was carried on by the assessee trust in the absence of any scholastic institution or university as such instead the assessee only donates to another trust/ institution which carried on educational institution. The assessee trust helped the other institution to run the educational institution.

3)In order to arrive at this observation the DIT(E) strongly relied on Lok Shsiikshana Trust case. Lower authorities misapplied the said case.

4)Lok Shikshana Trust in 101 ITR 234 (SC) is not a precedent at all as the said judgment is disapproved in 121 ITR 1 (SC)as applied in 137 ITR 735 in assessee's own case. Obiter/ratio decidendi

5)Refer Investor Financial Education Academy v ITO TCA 900 of 2018 dt 04.09.2020- which distinguishes Lok shikshana Trust. The word education needs to be widely interpreted. If the sitgma of Lok shikshana is eliminated there is no ground to ignore the accepted precedent of 137 ITR 735 as well as Hon'ble Chief Justice of India Bauchha's judgment in appellant's own case.

6)(1982)137 ITR 735 (Mad) dt 29.01.1981also refers to the provisions of UK Act 360(1) which is in par with Indian provisions which used the expression "applied". Refer page 73 para 34 IRC v Helen Slater Charitable trust (1980) 3 WLR 157; see also Jadi Trust (1982)133 ITR 494 –Refer PG 129 OF PB (Mum) Hon' ble Justice M.Chandurker relies

on the same decision-PG 134Para 14 dated 21.04.1981.

•Business undertaking can be Property Held Under Trust for Sec 11(4A)/11(4)

7) Business carried on itself is property held under trust

•121 ITR 1 (SC) Surat Art Silk Association v CIT at para 12 –Page 13 of typed set

•Para 12....Sec 11-sub-section(4) declares that for the purpose of S.11”property held under trust” shall include a business undertaking, and, therefore, a business can also be held under trust for a charitable purposes where it is so held, its income would be exempt from tax, provided, of course, the other requisite conditions for exemption are satisfied.

•Page 18 last para Lokshikshana Trust case discussed. Court disapproved some observations. Refer para 29 Hon’ ble Justice Pathak’s separate judgement – agrees with Hon’ ble Justice Beg.

•Refer pg 97-11(4)- Exemption u/s.11 read with Sec 2(15).

•“Education” is not the core issue in this case. The discussion on education is obiter...only. Hon’ ble Justice Beg says education is wider in Sec 2(15); Hon’ ble Justice H.R. Khanna says narrower . Hon’ ble Justice Beg compares it with Sec 10(22). -Refer Karnataka Ecumenical -139 ITR 226(Kar)at page 251 of typed set.

Business held under trust in Thanthi’s case

•Hon’ ble Chief Justice Baruch’s judgment-247 ITR 785(SC) for AY 79-80, 80-81,81-82,82-83, 83-84, 84-85, 85-86, 86-87, 87-88, 88-89, 89-90, 90-91 and 91-92.

•79-80 to 83-84 trust not entitled to exemption vide Sec 13(1)(bb).

• 84-85 to 91-92 not entitled to exemption as per Sec 11(4)/4A

•New 11(4A) from 01.04.1992 viz A.Y. 92-93 and thereafter the trust is eligible for exemption.

•Also education aspect is dealt with in this judgement.

•Sec 12AA(3) case law-

8)12AA(3) is not automatically to be invoked.

•CIT v Mumbai Metropolitan Region Development Authority (2020) 270 Taxmann 21(Mum)

•Goa Industrial Development Corporation v CIT (2020) 421 ITR 676(Mum)

•DIT(E) v Seervi Samaj Tambaram Trust 362 ITR 199(Mad)

•Industrial Infrastructure Ltd 403 ITR 1(SC)- retrospective cancellation not proper

•DIT v. Khar Gymkhana 385 ITR 162(Bom)

•ACIT v Agra Development Authority (2018)302 CTR 308(All)- retrospective cancellation of Sec 12 AA is not proper-Sec 13(8) and CBDT Circular discussed.

•Ananda Social & Educational Trust v CIT (2020) 272 Taxmann 7(SC)

•CIT v Sisters of Our lady of Providence educational society (2014) 89 CCH 132(All)- genuineness and activities of the trust should be tested on relevant material.

•CIT- Kutchi Dass 362 ITR 192(Guj)

•Donation by one trust to another

9) Donation by one trust to another is application of income.

•CIT v Matri Seva Trust 242 ITR 20(Mad)

•CIT v Aurobindo Memorial Fund society ltd 247 ITR 93(Mad)

- CIT v Shree Ram Memorial Foundation 269 ITR 35(Del)
- CIT v Jadi Trust 133 ITR 494(Bom)
- CIT v Sarala Devi Sarabhai Trust 172 ITR 698(Guj)
- CIT v J K Charitable Trust 196 ITR 31(All)
- CIT v Thanthi Trust 137 ITR 735(Mad)
- CIT v Hindustan Charity Trust 139 ITR 913(Cal)
- Case law in spiral binding
- All Thanthi Trust cases-
 - 137 ITR 735 (Mad);239 ITR 502(SC);91 ITR 261(Mad);239 ITR 510(Mad);215 ITR 879(Mad);213 ITR 626(Mad);247ITR 765(SC); 238 ITR 765(Mad); 213 ITR 639(Mad); 238 ITR 635(Mad);213 ITR 639(Mad);239 ITR502 (SC) Repeated; 137 ITR 735(Mad)Repeated
- Aditanar Educational Trust v ITO (1997) 224 ITR 310(SC)
- Hamdard laboratories India v ADIT 379 ITR 393(Del)
- TNCA v DIT -360 ITR 633 (Mad)
- Case law PB II CIT v Gujarat Cricket 419 ITR 561(Guj)-followed TNCA v DIT 360 ITR 633(Mad) (supra)
- CBDT Circulars- PB I
 - Genuine trusts are not hit-refer CBDT Circular 11/2008 analysed by this Hon' ble Court in Employees Federation of Union v CIT - Tax Case (A) No. 98 of 2018 dated 08.09.2020
 - Sec 13(8) CBDT Circular is referred to In ACIT v Agra Development Authority (2018) 90 taxmann.com 282(All) at 203- 218 at pg 215 para 49 PB II
 - S. 12AA is applicable with effect from Assessment Year 2011-12 and

subsequent years.

- Donation by one trust to another trust is valid. CBDT Circular PB-I referred to in Hamdard Laboratories India v ADIT 379 ITR 393(Del).

- Standing counsel's arguments

- (i)Written submissions of the Respondent does not anywhere mention as to how the activities of the appellant trust are non genuine or that the activities are carried out other than those covered by the trust deed or C S No.90 of 1961 being the Court decree of this Hon'ble Court.

- (ii)Case law cited by the Respondent : Some of the case laws contain observations which are helpful to the stand taken by the assessee trust.

- (iii)Other case laws are distinguishable on facts.

- (iv)Each judgment relying on Lok shikshana trust 101 ITR 234 is distinguishable.

- (v)Judgments in the context of Sec 10(22) are not relevant.

- (vi)Scope of restricted meaning of word "education" is misplaced. Sec 2(15) is an inclusive definition and not exhaustive.

- (vii)Rule of consistency and judicial discipline ignored. The impugned Tribunal order is perverse as the lower authorities have mixed up registration of a trust u/s 12 A with exemption under Sec 11 and judicial discipline is not adhered to by not following jurisdictional High Court decisions in rendered in Assessee's own case.

- Final arguments

- 1) Thanthi trust carries on business for carrying out its primary object of education on facts accepted by MDS HC and SC. This judgements have become final. Hence the last limb in S 2(15) is not attracted and so the proviso.

- 2) Registration u/s 12 A was validly granted as per the law that stood at that time and later amendment in S 12AA(3) is not automatic to withdraw the registration. Registration u/s 12 A is not an empty formality . It is a fait accompli.
- 3) Term “education” needs wider interpretation. Lok shikshana is misapplied. 137 ITR 735 has attained finality even in this aspect . 101 ITR 234 referred to in 137 ITR 735 as also 121 ITR 1(SC) which had disapproved 101 ITR 234(SC). Lok Shikshana is no longer a precedent as the said judgment is disapproved in 121 ITR 1(SC) – The observations are obiter dicta and is not a ratio decidendi.
- 4) TNCA v CIT-366 ITR 633 (Mad) and Gujarat Cricket Association 419 ITR 561(Guj)are applicable in full force on the issue of proviso to Sec 2(15) . Sec 12 A is a one-time registration whereas exemption u/s 11 is an annual affair. All the arguments raised in the impugned orders are misplaced in the present context.
- 5) CBDT circulars On Sec 2(15), 13(8) and donation aspects and 12AA aspect shows that 12AA cannot be invoked from 01.04.2009 but only from A Y 12-13.
- 6) 12 AA(3) direct case law of Mumbai High Court in Goa Industrial Development Corporation v CIT 421 ITR 676(Mum) and CIT v Mumbai Metropolitan Development Authority are applicable.
- 7) Donation by one trust to another is permissible in law.
- 8) Sec 11(4A) is applicable from AY 92-93.
- 9) All other aspects raised in SCN and DIT(E)’s orders are misplaced as they had totally ignored the reply filed to SCN wherein we had invited the attention of 137 ITR 735(Mad) and Supreme Court decisions in our own

case.

•10)ITAT went on a tangent. They had not bothered to consider High Court or Supreme Court decisions in our own case cited before it forming part of the paper book. They have lost sight of CS No 90 of 1961 which is the clincher to the whole case.

•11) All the citations given by the DIT(E) and standing counsel are distinguishable both on law and on facts. In fact some judgements support our stand.

•12)Written submissions given by the assessee is in order and the written submissions given by the respondent is distinguishable on law and facts.”

15.It is submitted that in the light of the decision in the assessee's own case pertaining to the very same issue, the respondent Department is estopped from cancelling the registration. The Hon'ble Supreme Court in the assessee's own case in **(1999) 239 ITR 502 (SC)** has specifically noticed that the educational activity has been carried on by the appellant trust through another entity and the Court has confirmed the decision of the Division Bench of this Court in **CIT vs. Thanthi Trust [(1982) 137 ITR 735 (Mad)]**. Hence, the objection raised by the respondent no longer survives in the eye of law.

16.It is submitted that in the decision of the Honble Supreme Court in ***Industrial Infrastructure Development Corporation (Gwalior) M.P Ltd. vs. CIT [(2018) 403 ITR 0001 (SC)]*** that the DIT(E) has held that the Commissioner had no power till 01.10.2004 to cancel registration under the Income Tax Act 1961 as per the relevant provisions that stood at that point of time to cancel the registration originally granted in terms of Section 12A. In the case before the Hon'ble Supreme Court, the assessee company a State Government undertaking applied to the CIT on 10.02.1999 for grant of registration under Section 12 A of the Income Tax Act, 1961 on the basis that the assessee is engaged in public utility activity it was for a charitable purpose under Section 2(15) of the Act. The CT granted registration but later issued a notice to the assessee asking it to file its reply. By order dated 29.02.2002, the CIT cancelled the certificate. The ITAT set aside the order of cancellation of registration passed by the CIT but the High Court restored the order of the CIT holding that when there is no express power in the Act for cancelling the registration certificate u/s 12A of the Act power to cancel can be restored to Section 21 of the General Clauses Act 1897. On appeal, the Supreme Court decided the issue in favour of the assessee holding that

there is no express provision in the Act vesting the CIT with power to cancel the registration certificate granted under Section 12A of the Act. However, the Supreme Court has held that the power was conferred on the CIT for the first time w.e.f from 01.10.2004 (AY 2004-05) only on and after 01.10.2004 because the amendment was prospective. It is submitted that any trust applying for registration after that date alone can be considered for cancellation under Section 12AA(3) of the Act and not any trust which has been in existence in the past several years.

17.It is submitted that the Tribunal committed serious error in law in holding that or claiming exemption under Section 11 and Section 12 of the Act, a Trust or Institution, should be engaged wholly for charitable or religious purposes to the extent to which such income is applied to such purposes. Thus, without charitable activity of a Trust or an Institution, no registration under Section 12A of the Act can be granted. The Tribunal failed to note that these facts are not relevant at that point of time, but would be relevant while completing the regular assessments for each assessment year, u/s.143(3).

18.It is submitted that the Tribunal confused itself with the definition of the term "charitable purposes" as if it is a condition precedent for grant of registration under Section 12A, whereas the said definition is relevant for computing the income of the trust income at the time of assessment proceedings under Section 143(3) for each assessment year and it is not a condition precedent for grant of registration and his interpretation of Section 2(15) is incorrect. Several decisions of different High Court as well as this Court has held so. Reliance is placed on *Tamil Nadu Cricket Association vs. DIT(E) (2014) 265 CTR 277 (Mad)*, where this Court has held at para 45 "We do not accept the submission of the learned Standing counsel appearing for the revenue. As rightly observed by learned Senior Counsel for the assessee, the revenue granted registration under Section 12AA of the Act satisfying itself as to the objects of the association befitting the status as charitable purpose as defined in Section 29(15), as it stood in 2003 and after granting the registration, if the registration is to be cancelled, it must be only on the grounds stated under Section 12AA(3) of the Act with reference to the objects accepted and registered under Section 12AA, as per the law then stood under the definition of Section 2(15) of the Income Tax

Act. Thus if a particular activity of the institution appears to be commercial in character, and it is dominant, then it is for the assessing officer to consider the effect of Section 11 of the Act in the matter of granting exemption on particular head of receipt. The mere fact that the said income does not fit in with Sec 11 of the Act would not, by itself, herein lead to the conclusion that the registration granted under Section 12AA is bad and hence to be cancelled. Further at para 51, this Hon'ble Court has observed that the cancellation of registration, in a given case could be done only under the stated circumstances under Section 12AA(3) of the Act and in the background of the definition relevant to the particular year of registration.

19.It is submitted that the Tribunals' further observation was "that for claiming exemption only the Trust is seeking Registration under the Act and therefore for the purpose Registration of the Trust, "Charitable Purposes" is an essential ingredient; otherwise, the registration under Section 12A of the Act cannot be accorded to any Trust or Institution" is misplaced. The DIT(E) is limited while granting registration and not an exhaustive one when one compares the powers of the AO who takes up

assessment and denies exemption of income on each year on the basis of available materials.

20.It is submitted that the order of the Tribunal is erroneous in law when it had not appreciated that business carried on by the appellant is "property held under trust" in terms of Section 11(4A) of the Act and the cancellation of registration is improper. The Hon'ble Supreme Court in ***Thanthi Trust [(2001) 247 ITR 785(SC)]*** has held that in view of the substituted sub-section (4A) of Section 11 with effect from 01.4.1992, the assessee trust was entitled to exemption under Section 11 for assessment year 1992-93 and therefore in respect of its income of news paper business which was employed to achieve its charitable objects.

21.It is submitted that the Tribunal in the impugned order also glossed over the fact that the denial of exemption is not automatic without any definite finding as to the nature of activity which infringed the relevant provisions of Section 2(15) of the Income Tax Act, 1961.

22.It is submitted that the Tribunal failed to appreciate that even assuming that the activity carried on by the assessee is of commercial nature, the dominant activity is of charitable one, namely, education *per se* and so that last limb of Section 2(15) of the Act is inapplicable and in the absence of any amendment in Section 11(A) the carrying on commercial activity to feed the educational activity is not hit by the amended Section 2(15) of the Act.

23.It is submitted that the Tribunal should have considered the principle relating to the powers of the DIT(E) under Section 12AA(3) while denying / cancelling the registration already granted under Section 12A and applied the judgment of the Hon'ble Supreme Court in ***Industrial Infrastructure Development Corporation (Gwalior) M.P.Ltd.*** (supra).

24.Mr.J.Narayanasamy, learned Senior Standing Counsel for the Revenue took us through the order passed by the DIT(E) as well as the Tribunal and sought to impress upon us that the decision of the Tribunal is based on the findings of fact and this Court would not interfere with such

findings in an appeal under Section 260A of the Act. Further it is submitted that the amendment to Section 2(15) of the Act with effect from 01.04.2009 gives importance to the attributes of the Trust. Therefore, the reasons assigned by the Tribunal is proper.

25.It is submitted that the assessee was originally granted registration under Section 12A of the Act in the year 1989 and the same was in force. During 2011, show cause notice was issued and orders cancelling/withdrawing the registration was passed, on 08.12.2011. The registration was withdrawn on the grounds that (i) Trust activities are not in the nature of charitable purpose as defined under Section 2(15) of the Act; (ii) business of newspaper is not an activity of education; (iii) business of newspaper is commercial in nature; (iv) mere diversion of income earned to its related Trust by way of donation does not amount to carrying on an educational activity by the Trust itself; and (v) activities of the Trust were not education, as no activity of charitable in nature was executed by the Trust as envisaged in its objects.

26.It is further submitted that as per the amended provision of Section 2(15) of the Act, the activities of relief of the poor, education, etc., need to be directly executed by the Trust to claim to be an activity of charitable purpose. The activity of the Trust in the nature of advancement of any other object of general public utility shall not be charitable, if it is in the nature of or in relation to trade, irrespective of the nature of application of income from such activity. Therefore, it is submitted that even charitable activity is not for the purpose of education, relief for poor cannot be treated as an activity of charitable purpose as per Section 2(15) of the Act. In the assessee's case, they are in the business of running a newspaper, which does not relate to any of the limbs of "charitable purpose" enumerated in Section 2(15) of the Act. Even assuming that the proviso to Section 2(15) is made applicable to the assessee and, their activity is treated as an activity with an object of general public utility, then also there is a restriction on the quantum of the benefit.

27. Referring to the decision in the case of *Yogiraj Charity Trust* (supra), it is submitted that the Hon'ble Supreme Court has held that in spite of all other independent objects, if any of the objects cannot be treated as charitable, the claim of the entire Trust for exemption has to fail, since the assessee had carried out the activity of trading in newspaper. Further, it is submitted that the registration granted to the assessee under Section 12A alone was cancelled and the registration granted to Aditanar Educational Trust is still in vogue.

28. The decisions rendered by the Hon'ble Supreme Court in the assessee's own case are distinguishable, because these decisions were rendered before the introduction of proviso to Section 2(15) of the Act. It is further submitted that the Tribunal, which is the fact finding authority, has concluded that the activity of the assessee is in the nature of services in relation to trade and, not education. Further, the objects of the assessee Trust, which have been noted by the authorities, clearly show that it does not fall under any of the main limbs including education, it does not involve any activities of formal education or running of any educational institutions

approved by the Authorities for School or College Education. The assessee Trust did not run any formal school or college imparting formal education to be in the field of education for the purpose of Section 2(15) of the Act.

29. Further, it is submitted that the decisions in *Loka Shikshana Trust* (supra), *Oxford University Press* (supra), *Sorabji Nusserwanji Parekh* (supra) and *Victoria Technical Institute* (supra) have held that the activities of general trading like that of newspaper or assisting, etc., cannot be treated as education and the assessee cannot claim any exemption. With the above submissions, the learned counsel prayed for sustaining the order passed by the Tribunal.

30. We have elaborately heard Mr. V.S. Jayakumar, learned counsel for the assessee and Mr. J. Narayanaswamy, learned Senior Standing Counsel for the Revenue and carefully perused the materials placed on record.

31. The substantial question of law to be decided is as to whether cancellation of the registration granted to the assessee under Section 12A(a) of the Act on 30.06.1989, by order dated 08.12.2011 under Section 12AA(3) of the Act is right in law. The subsidiary question, which falls for

consideration is whether, if the order of cancellation/withdrawal of registration is valid, whether can it be cancelled retrospectively with effect from 01.04.2009 (AY 2009-10). The DIT(E) held that the assessee is not running an educational institution, it is only giving donation to Aditanar Educational Trust and the word “education” has been defined in various decisions to mean conventional type of education given in class rooms and, since the assessee does not run any schools or colleges, they are not in the field of education and that their activity will fall under the category of “advancement of any other object of general public utility” as used in Section 2(15) of the Act. This finding was largely based upon the decision in the case of *Loka Shikshanan Trust* (supra). Further, by referring to the very same decision, the DIT(E) held that it is necessary for the assessee to run educational institution to qualify under the category of word “education” under Section 2(15) of the Act. The DIT(E) accepts that the objects of the Trust as per the Supplementary Deed, dated 28.06.1961 have been approved by the judgment of this Court in C.S.No.90 of 1961 and it also accepts the objects as per the Supplementary Deed. However, the DIT(E) with a view to get over the decision of the Hon'ble Supreme Court

in the assessee's own case, has made an observation that the decisions of the Hon'ble Supreme Court and this Court in the assessee's own case, have not dealt with the issue that the assessee is not running an educational institution and when the same is an undisputed fact, can it be stated that the assessee is pursuing the objects of education.

32. With regard to the binding nature of the earlier decisions of this Court and the Hon'ble Supreme Court in the assessee's own case and regard to the plea of promissory estoppel raised by the assessee, the DIT(E) seeks to get over the same by stating that those decisions were rendered prior to the insertion of the proviso to Section 2(15) of the Act. Apart from that, the DIT(E) was guided by the amount of revenue earned by the assessee in their newspaper business. Thus, they brought the activity of the assessee under the head 'objects of general public utility' and not 'education' and conducting business of newspaper having turnover running to crores much more than the threshold limit prescribed under the said proviso to Section 2(15) of the Act.

33. At the very outset, it needs to be pointed out that the DIT(E)

failed to take note of the legal principle of estoppel presumably, not fully aware about the effect of such principle with particular reference to the facts of the case, though not as a general proposition in tax law. Admittedly, the decisions rendered by this Court and the Hon'ble Supreme Court pertain to the very same subject matter and the parties to the litigations were the assessee and the Income Tax Department. In all these decisions of this Court and the Hon'ble Supreme Court in the assessee's own case, the only issue which fell for consideration, was with regard to the objects of the assessee as spelt out in the Trust Deed dated 01.03.1954, and the Supplementary Deed dated 28.06.1981 and it has been held that the activity of the assessee to be charitable. The amendment by way of insertion of the proviso to Section 2(15) which itself is a definition section, cannot take away or dilute the effect of the judgment inter-parties and therefore, if such is the finding in the earlier round of litigations, then undoubtedly, it would bind the Department. Therefore, the observation made by the DIT(E) with regard to the applicability of the doctrine of estoppel is an outcome of wrong understanding of the legal principle. While on this issue, we shall refer to as to how the activity of the assessee was found to be charitable

activity in the earlier round of litigations. The effect of the judgment and decree in C.S.No.90 of 1961, whether the assessee though being constituted as a Trust and its primary or dominant object being charitable, whether carrying on a business for profit and transfer of the amounts for charitable purpose is valid application, etc. In the assessee's own case in *[(1982) 137 ITR 735]* (supra), the following were the substantial questions of law framed for consideration:-

"(1) Whether, on the facts and circumstances of the case, by reason of the judgment and decree of the Madras High Court in C.S. No. 90 of 1961, the objects of the trust are only those that are set out in the schedule to the said decree and not those for which the trust was originally founded and that such objects are charitable objects within the meaning of section 2(15) of the Income-tax Act, 1961 ?

(2) Whether, on the facts and circumstances of the case, the trustees are not bound to apply the income that is left after meeting the lawful and normal expenses for running the business for carrying out the objects set out in the schedule to the decree in C.S. No, 90 of 1961 ?

(3) Whether, on the facts and circumstances of

the case, the Tribunal was right in holding that the trust is in respect of the entirety of the business for the objects mentioned in the schedule to the decree in C.S. No. 90 of 1961 on the file of the High Court, Madras, and not merely in respect of the income from the said business ?

(4) Whether, on the facts and circumstances of the case, the mere crediting of 75% of the assessee's income to the accounts of Adityanar College of Arts and Science in the assessee's books will amount to application within the meaning of section 11 of the Income-tax Act, 1961 ?

(5) Whether, on the facts and circumstances of the case, such application of income should take place during the relevant accounting years for claiming exemption under section 11 of the Act ?

(6) Whether, on the facts and circumstances of the case, the assessee is entitled to exemption in respect of Rs. 3,04,035 only for the assessment year 1968-69 ?"

34.The following was the finding rendered by the Hon'ble Division Bench:-

"18. The supplementary deed as well as the decree in C.S. No. 90 of 1961 proceed on the basis

that as the original objects had since been achieved, new objects had been substituted for them. The new objects are purely charitable. If the new objects have been substituted for the original objects set out in the original trust deed, then the property held for the original objects should be taken to have been held for the new objects. As a matter of fact the decree in C.S. No. 90 of 1961 specifically states that the trustees are bound to carry out the objects set out in the Schedule to the decree with the income from the Thanthi Trust. Therefore, it is not possible to say that no property is held under trust or other legal obligation for the new objects set out in the supplementary deed.

19. as per the decree of this court in C.S. No. 90 of 1961, the trustees are bound to spend the entire income after defraying the expenses in connection with the newspaper business for one or other of the objects referred to in the schedule to the decree, all of which are admittedly charitable and no discretion had been left to the trustees to spend the income for any non-charitable purposes. The question of claiming exemption will arise only when there is surplus income after defraying the normal expenses connected with the newspaper business. Once there is a surplus, there is no

discretion left in the trustees to spend the same for any non-charitable purpose and they are bound to spend the same for any of the charitable purposes referred to in the schedule to the decree, all of which are admittedly charitable objects.”

35. In the said decision, the Court considered the decision in the case of **Surat Art Silk Cloth Manufacturers' Association** (supra), which while considering the same issue, by majority, disapproved the view taken in **Loka Shikshana Trust** (supra) and the Court proceeds to analyse the law laid down in **Surat Art Silk Cloth Manufacturers' Association** (supra) and held as follows:-

“22. The Supreme Court held that the dominant and primary purpose of the assessee was to promote commerce and trade in art silk yarn etc., and the other objects specified in cls (b) to (e) of its memorandum of association were merely powers incidental to the carrying out of that dominant and primary purpose, that the dominant or primary purpose of the promotion of commerce and trade in art silk, etc., was an object of public utility not involving the carrying

on of any activity for profit within the meaning of s. 2(15) and that, therefore, the assessee was entitled to the exemption under s. 11(1)(a). The Supreme Court also held that as the words "not involving the carrying on of any activity for profit" qualify or govern only the last head of charitable purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. The principle laid down by the Supreme Court in the said decision seems to squarely apply to the facts of this case. In this case the property held under trust or under legal obligation is the business itself and the entire income from the business has to be utilised for the various charitable objects set out in the schedule to the decree in C.S. No. 90 of 1961. Thus, the objects will clearly fall under the head "relief of the poor, education, medical relief, etc.", and merely because the trust is carrying on an activity for profit for the purpose of carrying on the charitable objects referred to in the schedule to the decree, it cannot be deprived of the benefit of section 11."

36. With regard to the property held under the Trust, the business activities and the exclusivity of carrying on the charitable purpose etc., it was held as follows:-

“25. In the case on hand the property held under trust is the business itself and the business is carried on only, and exclusively, for carrying out the charitable objects set out in the schedule to the decree in C.S. No. 90 of 1961. As pointed out by the Supreme Court, if the contention of the Revenue that once a trust carries on a business activity, it does the benefit of s. 11 is accepted, no trust can carry on any business even for the fulfilment of the charitable objects, such as, relief of the poor, education and medical relief and, therefore, such a contention cannot be accepted. If the intention of the Legislature were to prohibit a trust or institution established for a charitable purpose or for the promotion of an object of general public utility from carrying on any activity for profit, it would have provided in the clearest terms that no such trust or institution should carry on any activity for profit. On the other hand the Legislature by enacting s. 11(4) under which the business may also be

the property held under trust appears to contemplate a trust actually carrying on a business for charitable purposes or for general public utility.”

37.Ultimately, the Court held that the objects of the assessee Trust fall within the first two categories referred to in Section 2(15) of the Act, by giving the following reasoning.

“26.In this case the founder of the trust has clearly evinced an intention to create a public charitable trust as seen from the preamble and cl 3(k) of the original trust deed and the charitable objects referred to in the schedule to the decree in C.S. No. 90 of 1961 have to be fulfilled from and out of the income from the business which is directed to be held under trust or other legal obligation. Those charitable objects fall within the first 2 categories referred to in s. 2(15), viz., relief of the poor and education. It is to carry out and fulfil those objects the business is being carried on. Thus, the primary purpose is to carry out the charitable objects and the business is carried on as a means in the course of the actual carrying out of that primary purpose and not as an end in itself. While the predominant object of the trust is

the carrying out of the charitable objects referred to in two of the three categories of charitable purposes referred to in s. 2(15), the carrying on of the business which is actually the property held under trust or other legal obligation is incidental, and the profit resulting from the business can be taken to be a by-product. In view of the said decision of the Supreme Court in Addl. CIT v. Surat Art Silk Cloth Mfs. Assn. , it is not possible to accept the case of the Revenue that the trust in this case cannot claim the benefit of exemption under s. 11 merely because it carries on a commercial activity for profit. We have to, therefore, agree with the conclusion of the Tribunal that the trust in this case can claim the benefit of s. 11, if 75% of its income has been applied for charitable purposes and answer questions Nos. 1 to 3 in the affirmative and against the Revenue.”

38.Next, the Court proceeded to consider as to whether there has been an application of income of the Trust for charitable purposes and after referring to earlier decisions, it was held as follows:-

“34. The conduct of the educational institution in drawing from the assessee trust larger sums

that what was been credited by the trust in its favour in 1969-70 shows that it was fully aware of its credit with the assessee-trust and the funds that had been made available to it by the trust. If the amounts had been actually handed over to the Adityanar College during the assessment years in question the assessee could claim the benefit of exemption under s. 11 as the college has been established only for educational purposes and no part of its fund can be utilised for non-charitable purposes, and the Revenue cannot insist that unless the educational institution expands the amount donated by the assessee within the assessment year, the assessee cannot claim the benefit of exemption under s. 11. In this connection it is pertinent to refer to the decision in IRC v. Helen Slater Charitable Trust Ltd. [1980] 3 WLR 157; 1 All ER 785, wherein while considering the assessee's claim for exemption under s. 360(1)(c) of the Income and Corporation Taxes Act, 1970, and s. 35(1) of the Finance Act, 1965, the court held that a charitable institution which makes an outright transfer of money applicable for charitable purposes to any other charity in such manner as to pass to the transferee full title to the money, must be said, by the transfer itself, to have applied such money for charitable purposes, within the meaning of s. 360(1) of

the 1970 Act and s. 35(1) of the 1965 Act, unless the transferor knew or ought to have known that the money would be misapplied by the transferee and that the trust which has applied the the money for charitable purposes was entitled to exemption without having to show how the money hadp been dealt with by the transferee-institution.....”

35. In our view, the credit entries in this case, when taken along with the conduct of the donee institution of drawing he amounts later, would amount to a gift of the money in favour of the educational institution and as such is a proper "application" as contemplated by s. 11. It is not a case of a mere credit entry which could be reversed at any time; nor is it a case where credit entry has been made without there being any cash on hand, so that it could be said that the assessee was not in a position to physically handover the money on the dates of the credit entries. We cannot agree with the view of the Tribunal that the amounts which had been credited in favour of the educational institution for the assessment years in question had not been applied for charitable purposes as contemplated by s. 11.”

39.The above findings are binding on the Department and the

argument that on the ground of insertion of a proviso to the definition of 'charitable purpose' as defined under Section 2(15), would nullify the effect of the judgment, which considered the conditions in the Deed of Trust, Supplementary Deed, which was affirmed by the judgment and decree of this Court in C.S.No.90 of 1961, cannot be taken away or diluted. In fact, the DIT(E) candidly admits that the judgment and decree in C.S.No.90 of 1961 has given a stamp of approval to the Deed of Trust and Supplementary Deed. Having accepted so, the observations made by the DIT(E) to get over the decisions in the assessee's own case are utterly perverse.

40.In (2009) 239 ITR 0502, the view taken by this Court was affirmed in the assessee's own case by the Hon'ble Supreme Court by holding as hereunder:-

“2.It appears that the Adityanar College was run, not by the assessee-trust, but by another registered charitable society. In the circumstances, the High Court was right in the conclusion which it arrived at. It may also be mentioned that it is no part of the Revenue's case at any point of time that the credit entries made in the

assessee's books of account were not genuine or true or that they were mere make-believe or bogus. It is also not brought to our notice that the ITO doubted the said entries and called upon the assessee to produce the accounts of the college and that the assessee failed to produce the same."

41. The Trust to which, the entire income earned by the assessee after defraying expenses viz., Aditanar Educational Trust's case was dealt with by the Hon'ble Supreme Court in ***Aditanar Educational Institution*** (supra). The Revenue contended that the plea of exemption under Section 10(22) of the Act would apply only to educational institution as such and not to the assessee which might be financing for running an educational institution, but it not being an educational institution itself. The Hon'ble Supreme Court while considering the question, held as follows:-

7. It will be rather unreal and hyper-technical to hold that the assessee-society is only a financing body and will not come within the scope of other educational institution as specified in s.10(22) of the Act. The object of the society is to establish, run,

manage or assist colleges or schools or other educational institutions solely for educational purposes and in that regard to raise or collect funds, donations, gifts, etc. Colleges and schools are the media through which the assessee imparts education and effectuates its objects. In substance and reality, the sole purpose for which the assessee has come into existence is to impart education at the levels of colleges and schools and so, such an educational society should be regarded as an 'educational institution' coming within s. 10(22) of the Act. We hold accordingly. In our view, the judgment of the High Court does not merit interference. The plea of the Revenue to the contrary is untenable and we repel the same.”

“8. After meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be non existing solely for educational purposes since the object is not one to make profit. The decisive or acid test is whether on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity.”

42. In the assessee's own case in *[(2001) 247 ITR 0785 (SC)]*, the Hon'ble Supreme Court examined the claim of the assessee Trust for exemption for the assessment years 1979-80 to 1983-84, which was rejected having regard to the provisions of Section 13(1)(bb) of the Act. The rejection was challenged by the assessee by filing a writ petition before this Court, which was allowed vide decision reported in *(1995) 213 ITR 626 (Madras)*. The Court while allowing the writ petition, took note of the decision in the assessee's case in *(1981) 23 CTR 153 (Madras) = (1982) 137 ITR 735*, which had become final and binding on the Revenue that the primary purpose of the Trust was to carry out its charitable objects and that the business is carried on only as means in the course of the actual carrying on the purpose of the Trust. The Revenue challenged the said order before the Hon'ble Supreme Court and it was held that the assessee Trust is entitled to the benefit of Section 11 for the assessment year 1992-93 and thereafter, it was specifically mentioned that it is not in dispute that the income of its newspaper business has been employed to achieve its objects of education and relief to the poor and it has maintained separate books of accounts in respect of thereof. Therefore, the Hon'ble Supreme Court had categorically

held that the primary purpose of the assessee Trust was to carry out charitable objects and the business of newspaper was only as means in the course of the actual carrying on the purpose of the Trust.

43.In the assessee's own case, [(1999) 238 ITR 0635], writ petition was filed challenging the action of the Revenue in attempting to levy tax on the income derived from the newspaper business by relying upon the provision, which was introduced under Section 11(4A). The Hon'ble Court after taking note of the decisions in the assessee's case in 137 ITR 735 (Madras) and 213 ITR 626 (Madras), held that the business of the assessee Trust continued to be outside the purview of sub-Section (4A) of Section 11, even after the amendment.

44.In the case of *Thanthi Trust vs. CBDT & Ors.* [(1995) 213 ITR 0639], the assessee filed a bunch of writ petitions to quash Circular No.372, dated 08.12.1983 issued by the CBDT and the orders of the Department denying exemption under Section 11 of the Act to the assessee Trust for the assessment years 1984-85 to 1991-92 and, to direct the

Department to consider the assessee's claim for exemption under Section 11, independent of Circular No.372, dated 08.12.1983. It was held that inasmuch as the business carried on by the assessee is itself held under 'Trust for public charitable purposes' and the business is carried on only for the purposes of carrying on the charitable objects as found by the Hon'ble Division Bench in *137 ITR 735 (Madras)*, the provisions of sub-Section (4A) of Section 11 cannot have any application. The appeal filed by the Revenue against the decision in *137 ITR 735 (Madras)*, in the case of *CIT vs. Thanthi Trust [(1999) 239 ITR 0502]* was considered by the Hon'ble Supreme Court wherein, it was held that the Aditanar College was run, not by the assessee Trust, but by another registered charitable society and in such circumstances, the High Court was right in its conclusion which it had arrived at holding that no part of the Revenue's case, at any point of time that the credit entries made in the assessee's books of account were not genuine or true or that they were mere make-believe or bogus. Further, it was observed that it was also not brought to the notice of the Hon'ble Supreme Court that the ITO doubted the said entries and called upon the assessee to produce the accounts of the College and that the assessee failed

to produce the same. With these observations, the appeal filed by the Revenue was dismissed. Thus, in the light of the above decisions in the assessee's own case, it will be too late in the day for the Revenue to now contend that the activities of the assessee are not charitable purposes. The attempt of the Revenue is to rake up a settled issue with an attempt to reopen the entire matter under the guise of introduction of the provision of Section 2(15), which defines 'charitable purpose'. Such attempt is wholly unsustainable and impermissible under law. The Revenue is estopped both on law as well as on facts from raising any contention as mentioned by the DIT(E) in its order dated 08.12.2011. The said order is an outcome of wrong understanding of the legal provisions, the effect of the judgment in C.S.No.90 of 1961 and the series of litigations between the Department and the assessee Trust all of which were in favour of the assessee. Thus, on the facts of the case, the principle of estoppel will hit the Revenue and they are not entitled to state that the assessee Trust is not carrying on a charitable activity and thus, it is not in the field of education, etc.

45.Having steered clear of this issue based on the decisions

rendered by the Hon'ble Supreme Court in the assessee's own case, we now move on to consider the other decisions on what is the meaning of 'education'. We have seen that the DIT(E) in its order dated 08.12.2011, has made an observation that the word 'education' has not been defined under the Act and therefore, he would refer to the decision in the case of *Victoria Technical Institute* (supra), *Oxford University Press* (supra), *Sorabji Nusserwanji Parekh* (supra) and *Loka Shikshana Trust*.

46.The argument of Mr.V.S.Jayakumar, is that the decision in *Loka Shikshana Trust* (supra) was rendered by a Three Judge Bench of the Hon'ble Supreme Court. As per the observation of Hon'ble Mr.Justice M.H.Beg, as could be seen from paragraph 32 of the judgment, it has been observed that although the term 'education', as used in Section 2(15) of the Act, seems wider and more comprehensive than education through educational institutions, such as universities, whose income is given an exemption from income tax separately under Section 10(22) provided the educational institution concerned does not insist “for the purpose of profit”, yet it seems that educational effects of a newspaper or publishing business

are only indirect, problematical and quite incidental so that, without imposing any condition or qualification upon the nature of information to disseminate or material to be published, the mere publication of news or views cannot be set to serve a purely or even predominantly education purposes in its ordinary usual sense. Hon'ble Mr.Justice H.R.Khanna in paragraph 41 of the judgment has held that what education connotes in clause (15) of Section 2 is the process of training and developing the knowledge, skill, mind and character of student by normal schooling. It is submitted that there is no separate view recorded by Hon'ble Mr.Justice A.C.Gupta, who was the third Hon'ble Judge in the Three Judge Bench. Therefore, it is submitted that one of the Hon'ble Judges of the Three Judge Bench has given a wider meaning to the word 'education' occurring in clause (15) of Section 2 whereas, the other Hon'ble Judge has given a narrower meaning to the word 'education' to mean normal schooling.

47.In *Surat Art Silk Cloth Manufacturers' Association* (supra),

the Hon'ble Supreme Court considered the decision in *Loka Shikshana Trust* (supra) and observed that while they agree with the decision that the

activity involved in carrying out the charitable purpose must not be motivated by a profit objective, but it must be undertaken for the purpose of advancement or carrying out of the charitable purpose, observed that it will be difficult to accept the views in *Loka Shikshana Trust* (supra) that whenever an activity is carried on which yields profit, inference must necessarily be drawn in the absence of some indication to the contrary that the activity is for profit and the charitable purpose involves carrying on an activity for profit. It was further pointed out that the Court would not be justified in drawing any such inference merely because, the activity results in profit. Further, it was observed that there is no necessity for a provision in the constitution of the Trust that the activity shall be carried on 'no profit no loss' basis or profit shall be prescribed. It was observed that even if there is no such express provision, the nature of the charitable purpose, the manner in which the activity for advancing the charitable purpose is being carried on and the surrounding circumstances may clearly indicate that the activity is not propelled by a dominant profit motive. Therefore, it is held that what is necessary to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is

profit making or carrying out a charitable purpose. If it is the former, the purpose would not be a charitable purpose, but if it is the latter, the charitable character of the purpose would not be lost. In paragraph 29 of the judgment, the Court expressed its view of disagreement with the views expressed by Hon'ble Mr.Justice H.R.Khanna and Hon'ble Mr.Justice A.C.Gupta in *Loka Shikshana Trust* (supra). The observation is as follows:-

*“The quantum of income is no test in itself. It may be the result of an activity permissible under a truly charitable purpose for, as has been observed, a profitable activity in working out the charitable purpose is not excluded. I am unable to agree, with respect, with all that has fallen from H. R. Khanna and A. C. Gupta, JJ. In *Sole Trustee, Loka Shikshana Trust v. Commissioner of Income-tax, Mysore* that the terms of the trust must impose restrictions on making profits otherwise the purpose of the trust must be regarded as involving the carrying on of a profit making activity. On the contrary, I find myself in agreement with Beg, J. to the extent that he says, in the same case, that it is the genuineness of the purpose, that it is truly charitable, which determines the*

*issue. It seems necessary to me that a distinction must constantly be maintained between what is merely a definition of "charitable purpose" and the powers conferred for working out or fulfilling that purpose. While the purpose and the powers must correlate, they cannot be identified with each other. Reference may, of course, be made to the nature and width of the powers as evidence of the charitable or non-charitable nature of the purpose. For the same reason, I a.m compelled, with respect, to hold that the observations of Krishna Iyer, J. speaking for the Court in *Indian Chamber of Commerce v. Commissioner of Income-tax, West Bengal-II(1)* do not accord with what I believe to be a true construction of s. 2(15). If that decision can be justified, it can be only on the basis that in the opinion of the court the true purpose of the trust or institution was not essentially charitable. I am unable to accept the proposition that if the purpose is truly charitable,, the attainment of the purpose must rigorously exclude any activity for profit. I am also unable to endorse the position that by permitting, the trust or institution to carry on an activity which brings in profit, although that activity is carried on in the course of the working out of the purpose of the trust or institution, "business men have a high road to tax avoidance". It was*

apparently not brought to the notice of the learned judges that a carefully enacted scheme has been incorporated in the Act which closely controls the utilisation of the trust income, and that the tax exemption is conditional on the observance of the statutory conditions stipulated in that schedule.”

48. Thus, it is argued that in the light of the observations in **Surat Art Silk Cloth Manufacturers' Association** (supra), the observations made by the Hon'ble Supreme Court in **Loka Shikshana Trust** (supra) giving a narrower and restricted meaning to the word 'education' is *obiter dicta*. While on this issue, it would be worthwhile to refer to a few decisions of the High Courts which had dealt with the aspect as to whether the word 'education' should be given restrictive meaning.

49. In **Gujarat State Cooperative Union vs. CIT [(1992) 195 ITR 0279 (Guj.)]**, the question which fell for consideration was whether the Tribunal was right in law in holding that the applicant therein was not entitled for exemption under Section 10(22) of the Act for the assessment

years 1972-73 to 1977-78. In the said case, the State Cooperative Union claimed that the activities carried on by it were covered by the provisions of Section 10(22), as it was an educational institution existing solely for educational purposes and therefore, they are entitled to exemption from income tax. The Division Bench noted the decision in **Loka Shikshana Trust** (supra) and held that the observations of the Hon'ble Supreme Court do not confine the word 'education' only when the scholastic instructions, but other form of education also are included in the word 'education'. The operative portion of the judgment reads as follows:-

“The Supreme Court has observed that the word "education" also connotes the whole course of scholastic instruction which a person has received. This clearly indicates that the observations of the Supreme Court were not intended to give a narrow or pedantic sense to the word "education". By giving further illustrations of a traveller gaining knowledge, victims of swindlers and thieves becoming wiser, the visitors to night clubs adding to their knowledge the hidden mysteries of life, the supreme Court has indicated that the word "education" is not used in a loose sense so as to include

acquisition of even such knowledge. The observations of the Supreme Court only indicate the proper confines of the word "education" in the context of the provisions of [section 2\(15\)](#) of the Act. It will not be proper to construe these observations in a manner in which they are construed by the Tribunal when it infers from these observations, in para 17 of its judgment, that the word "education" is limited to schools, colleges and similar institutions and does not extend to any other media for such acquisition of knowledge. The observations of the Supreme Court do not confine the word "education" only to scholastic instructions but other forms of education also are included in the word "education". As noticed above, the word "schooling" also means instructing or educating. It, therefore, cannot be said that the word "education" has been given an unduly restricted meaning by the Supreme Court in the said decision. Though, in the context of the provisions of [section 10\(22\)](#), the concept of education need not be given any wide or extended meaning, it surely would encompass systematic dissemination of knowledge and training in specialised subjects as is done by the assessee. The changing times and the ever widening horizons of knowledge may bring in changes in the methodology of teaching a shift for the

better in the institution set up. Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary methods of sitting in classroom may remain ideal for most of the initial education, it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel. Its progress lies in the acceptance of new ideas and development of appropriate means to reach them to the recipients.”

50.The above decision recognises the modern trend of education, which is not solely confined to class room teaching, in fact, the pandemic has shown that online teaching and virtual classes are the order of the day and found to be a new normal.

51.The above decision was noted by us in ***Investor Financial Education Academy vs. ITO*** in ***T.C.A.No.900 of 2018 dated 04.09.2020***, wherein it was held as follows:-

“12.The CIT and the Tribunal were guided by

*the decision of the Hon'ble Supreme Court in **Loka Shikshana Trust** (supra). This judgment has held the field since 1975. The judgment is heavily relied on by Mr.J.Narayanasamy, learned Senior Standing Counsel to state that the nature of activity done by the assessee cannot be an educational activity. We need not labour much to decide this issue, as we are benefited by the decision of the High Court of Gujarat in the case of **DIT (Exemption) vs. Ahmedabad Management Association [(2014) 47 taxmann.com 162 (Guj.)]**. The Court considered the decision in **Loka Shikshana Trust** (supra), as it was argued by the Revenue as is done before us that the activity is not education as explained in **Loka Shikshana Trust** (supra)*

13. the Court has pointed out that the observations of the Hon'ble Supreme Court in **Loka Shikshana Trust** (supra) only indicate the proper conscience of the word "education" in the context of the provisions of Section 2(15) of the Act and it will not be proper to infer that the word "education" is limited to schools, colleges and similar institutions and does not explain to any other media for such acquisition of knowledge. It has been further pointed out that it cannot

be said that the word “education” has been given an unduly restricted meaning by the Supreme Court in the said decision. The above position will apply with full force to the case on hand.

*14.In the case of **DIT(E), Chartered Accountants Study Circle [(2012) 23 taxmann.com 444 (Madras)]**, while considering the activities of the assessee therein, which was a society called the Chartered Accountants Study Circle, after analysing the objective, it was held that the activities of the assessee-trust cannot be construed to be one of trade or commerce or business and it would only be charitable in nature and merely because they were selling books and books of professional interest and other reference materials to the general public, it would not term their activity as “commercial”.*

*15.In **Gujarat State Co-operative Union vs. CIT [(1992) 195 ITR 279]**, the Court considered as to whether the co-operative union was entitled for exemption under Section 10(22) of the Act and one such activity being publication of journal on the subject of 'co-operative movement' and held in favour of the assessee.”*

52.While on this issue, it is beneficial to refer to the decision in the case of *Ecumenical Christian Centre vs. CIT [(1983) 139 ITR 0226]*. The Court while considering a writ petition, filed challenging an order refusing recognition and issuance of certificate under Section 80G of the Act, took note of the decision in *Loka Shikshana Trust* (supra) and held as follows:-

“9. The Commissioner observed that it was not necessary to consider these facts as, in his opinion, the matter was concluded by a decision of this court in the case of CIT v. Sole Trustee, Lokashikshana Trust [1970] 77 ITR 61. In my opinion, the Commissioner was in error in brushing aside the material that had been placed before him by the company as irrelevant. The view had taken by him on the basis of the decision above mentioned cannot also be said to be accurate. The facts in that case lay in a narrow compass. The matter had been taken up in further appeal to the Supreme Court and the decision thereof is . Actually in the memorandum of association the express "Education" had been used. One of the judges, Justice Beg, was of the opinion that the use

of that expression was only a camouflage and the only object was of a commercial nature. Mr. Justice Khanna and Justice Gupta delivered a separate judgment. They were also unable to uphold the contention on behalf of the trust that its main object was education. After discussing what education would comprise, the learned judges stated thus :

"What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."

Justice Beg stated as follows :

"Although the term 'education', as used in section 2(15) of the Act. Seems wider and more comprehensive than education through educational institutions, such as universities, whose income is given an exemption from income-tax separately under section 10(22) provided the educational institution concerned does not exist 'for purposes of profit'. Yet it seems to me that the educational effects of a newspaper or publishing business are only indirect, problematical, and quite incidental so that, without imposing any condition or qualification upon the nature of information to be disseminated or material to be published. The mere publication of news or views cannot be said to serve a

purely or even a predominantly educational purpose in its ordinary and usual sense."

53.In **ICAI Accounting Research Foundation & Anr. vs. DGIT(E) & Ors. [(2010) 321 ITR 0073 (Delhi)]**, imparting of education in the field of accountancy was held to be charitable purpose and the assessee foundation was held to be entitled to exemption under Section 10(23C)(iv) wherein, the Court after taking note of the decision in **ACIT vs. Hamdard Dawakhana (Wakf) [(1986) 157 ITR 637 (Delhi)]** where the unamended definition of charitable purposes contained in Section 2(15) was considered, it was held that dedication is of a business because, the dedicated property is neither any building nor a trade mark, but a business of the Hamdard Dawakhana. It was urged that it is not a charitable purpose at all and hence, no exemption can be granted. In the said case, out of the business of the Trust, the income is being earned by the Mutawalli, if this is so, there is no scope for showing that it is a charitable purpose. This argument by the Revenue was held to be incorrect and not proper construction of the Act and that is not the meaning to be given to the definition. It was held that in order to have a charity, you must have a source of income, the income may

come from gifts, or it may come from running a business. In the said case, the Trust is of a portion of the income of the Hamdard Dawakhana. Although the source of the income is a business, the object of the Trust is not to run the business, but to utilise the income of that business for a charitable purpose. Further, the Court taking note of the decision in the case of *Surat Art Silk Cloth Manufacturers' Association* (supra), held that merely because some remuneration was taken by the petitioner Foundation for undertaking of such action would not alter the character of the projects which remained research and consultancy work and the test is the application of the amounts received from those projects. The Court also considered the amended definition of charitable purpose as it stood at the relevant point of time and it was held as follows:-

“21. The amended definition of „charitable purpose” would not alter this position. No doubt, proviso to this definition clarifies that advancement of any other object of general public utility will not be treated as charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering service in relation to trade,

commerce or business. However, what is not appreciated by the respondent No.1 is that the merely on undertaking those three research projects at the instance of the Government/local bodies. The essential character of the Petitioner Foundation cannot be converted into the one which carries on , cannot be treated as the activity which carries on trade, commerce or business or activity of rendering any service in relation to trade, commerce or business.”

54.In *Alembic Chemical Works Co. Ltd. vs. CIT [(1989) 177 ITR 0377]*, the Hon'ble Supreme Court noted the rapid advances in research while considering a case whether a sum of money was a revenue expenditure admissible to the assessee for the purpose of computation of its total income wherein, the assessee entered into an agreement with the manufacture of antibiotics in Japan, it agreed to supply to the assessee the requisite technical know-how for manufacture of quantities of penicillin. The amount paid by the assessee to the Japanese company was claimed as a deduction, a revenue expenditure. The ITO held it to be a capital outlay, as it amounted to an acquisition of an asset or an advantage of an enduring

benefit. The Tribunal held it to be acquisition of a capital asset. On the question being referred to the High Court, the same was answered against the assessee. This order was challenged before the Hon'ble Supreme Court. While deciding the case in favour of the assessee, the Hon'ble Supreme Court observed that it would be unrealistic to ignore the rapid advances in research in antibiotic medical microbiology and to attribute a degree of durability and permanence to the technical know-how at any particular stage in the fast-changing area of medical science. It was further observed that rapid strides in science and technology in the field should make the Court little slow and circumspect in too readily pigeon-holing outlay such as the said case as capital. Thus, in the above decision, the modern development was judicially noticed and the case on hand itself is an example of the rapid strides in science and technology, as the entire hearing of this appeal was virtual. सत्यमेव जयते

55. The assessee in their arguments before the Tribunal raised a ground contending that the DIT(E) failed to appreciate that the principle of overriding title will apply to the resultant income of the newspaper activity

and as per that principle, such amounts are bound to be applied only for charitable purposes and hence, the activities of the Trust are genuine.

56. We find that though such ground was specifically raised by the assessee, the Tribunal did not consider the same. In the earlier paragraphs, following the decision in the assessee's own case, we have held that the activity of the assessee is charitable in nature. In fact, in the earlier round of litigations, the Revenue raised the very same contention as raised before us that the assessee does not run a school or college, but runs a newspaper earning huge revenue and the same is given to only one Trust and not to other Trusts or education institutions and therefore, it cannot be construed to be a genuine charitable activity. The decisions in the assessee's case had considered the very issue and rejected the stand of the Revenue and we had, following those decisions, rejected the stand of the Revenue. However, the ground with regard to the diversion of the income from the newspaper business to the Trust is contended as diversion by overriding. To understand this concept, it will be beneficial to refer to the decision of the Hon'ble Supreme Court in *CIT vs. Tollygunge Club Ltd.* [(1977) 107 ITR 0776

(SC)/. The question was whether, the receipts from surcharge levied on admission tickets for purposes of charity could not be included in the assessee's taxable income for the assessment year 1960-61. The assessee Club, a company limited, by guarantee charges for admission into the enclosures of the club, at the time of horse race, admission fee to the guests introduced by the members of the club as well as to the members of the public. There was no dispute between the parties that the admission fee received by the assessee constitutes trading receipt and exigible to tax. Pursuant to the decision taken in the general body of the said assessee, it levied a surcharge of eight "annas" over and above the admission fee, the proceeds of which were to give to the Red Cross Fund. The receipts from the surcharge were not credited to the profit and loss account, but they were carried directly to a separate account styled "charity account" and accordingly, not brought to tax as income of the assessee. The ITO did not agree with the assessee, held it to be revenue receipts, they could not be excluded from the total income of the assessee merely on the ground that they were applied for charitable purposes. ITO did not dispute that the surcharge was disbursed to the local charities, but treated the disbursement

as application of income belonging to the assessee. On appeal before the AAC, the order of the ITO was confirmed. On further appeal to the Tribunal, it held that the surcharge levied on admission tickets for the purpose of charity and the receipts in respect of surcharge were not income of the assessee at the point of time when they reached its hands and being earmarked for charity, they never belong to the assessee and were not includible in the taxable income of the assessee. The Revenue moved the Tribunal for referring the question formulated to the High Court for being answered. The High Court agreed with the view taken by the Tribunal, since surcharge on admission tickets was charged for a specific purpose of being applied to local charities and stood diverted to the local charities before they reach the assessee.

57. The correctness of the said decision was challenged before the Hon'ble Supreme Court, which dismissed the appeal filed by the Revenue. The Court applied the test laid down by the Hon'ble Supreme Court in *CIT vs. Sitaldas Tirathdas [(1961) 41 ITR 367 (SC)]* and held that the surcharge, being impressed with an obligation in the nature of trust for

being applied to local charities, was by this obligation diverted before it reaches the hands of the assessee and, at no stage, it became a part of the income of the assessee. Accordingly, it was held that the surcharge received by the assessee therein was not regarded as income assessable. While on this issue, it will be beneficial to refer to the decision in ***CIT vs. Bijli Cotton Mills (P) Ltd. [(1979) 116 ITR 0060 (SC)]***. The assessee therein was a private limited company engaged in the business of manufacturing and selling yarn. From its inception, it used to realise certain amounts on account of charity from its customers on sales of yarn and bales of cotton and these amounts were shown in a separate column headed 'charity' and the assessee did not credit in its trading account, but maintained a separate charity account. The Board of Directors of the assessee passed a resolution that the monies standing in the charity account be treated as trust fund of which, two Directors of the company were to be the Trustees and all monies realised in future from the purchase of yarn at one *anna* per bale or at such rate as may be decided in future, be handed over to the two Trustees for being used for charitable basis, as they may be decided upon by them and in particular, utilise such funds for the advancement of education and

alleviation of misery and sickness of public in general as they think fit. During the course of assessment, the assessee took a stand that the amounts earmarked for charity were not its income from business and not liable to be taxed. This was rejected by the ITO and confirmed by the AAC as well as the Tribunal. The High Court held in favour of the assessee by holding that the charity receipts on account of charity were never treated as trading receipts or as a surcharge on sale price and never credited to the trading account, nor shown in the profit and loss account for any year and following the decision in the case of *Agra Bullion Exchange vs. CIT [(1961) 41 ITR 472 (Allahabad)]*, allowed the assessee's appeal. The correctness of the judgment of the High Court was challenged before the Hon'ble Supreme Court wherein, it was held that amounts received by the assessee were held by the assessee under an obligation to spend the same for charitable purposes only with a result that the receipts cannot be regarded as forming any income of the assessee.

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58.The above referred decisions will be squarely applicable to the case of the assessee. In fact, the DIT(E) accepts this position with regard to

the finality of the judgment and decree in C.S.No.90 of 1961. In paragraph 7(b) of its order dated 08.12.2011, the DIT(E) accepts the objects as per the Supplementary Deed as ratified in C.S.No.90 of 1961. If such be the admitted factual position, then the Revenue cannot dispute the fact that the amounts, which were earned by the assessee Trust, have to be necessarily spent for a charitable purpose as per the mandate under the Supplementary Deed as confirmed in C.S.No.90 of 1961 and therefore, it is a case of diversion of income by overriding title. Therefore, it goes without saying that the Department should be consistent in their approach and change of officers cannot change the legal position which stood concluded in the assessee's case. The argument that the Revenue can take a re-look because of the amendment to Section 2(15) by amended proviso is an argument which has to be outrightly rejected especially, when the Department has accepted the finality of the judgment in C.S.No.90 of 1961. (To be noted, the Department has no other option, or else they may be liable for contempt of Court.)

59.The Hon'ble Supreme Court in *Radhasoami Satsang vs. CIT*

[(1992) 193 ITR 0321 (SC)], while considering the question whether, the income derived by the assessee therein, a religious institution, is entitled to exemption under Sections 11 and 12 of the Act, noted the contention raised by the assessee that in the absence of any change in circumstances, the Revenue should have felt bound by the previous decisions and no attempt should have been made to reopen the question. In support of such contention, the assessee relied upon the decision of the Full Bench of this Court in the case of *T.M.M.Sankaralinga Nadar & Bros. vs. CIT [(1929) 4 ITC 226 (Madras)]* and the decision of the Hon'ble Supreme Court in the case of *Parashuram Pottery Works Co. Ltd. vs. ITO [(1977) 106 ITR 1 (SC)]* wherein, it was held that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity and that assessments are certainly quasi-judicial and these observations equally apply. The Hon'ble Supreme Court held that strictly speaking *res judicata* does not apply to income tax proceedings, each assessment year being a unit, what is decided in one year may not

apply in the following year where a fundamental aspect permeating through different assessment years has been found as a fact one way or other and parties have allowed the position to be sustained, it would not be appropriate to allow the position to be changed in a subsequent year.

60. In *Surat City Gymkhana* (supra) the question was whether the appeals filed were covered by an earlier decision of the same High Court, which has not been challenged by the Revenue and has attained finality, therefore, the appeal is not maintainable before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the decision of the High Court having not been challenged by the Revenue and attained finality, the assessee was entitled to registration under Section 12A of the Act.

61. The above mentioned two decisions explain the rule of consistency. As referred to and pointed out in *Radhasoami Satsang* (supra), there must be a point of finality in all legal proceedings and stale issues should not be reactivated beyond a particular stage and this would apply to quasi-judicial matters as well income tax assessment being quasi-

judicial, the theory of finality is equally applicable. To say the least, the assessee cannot be harassed. This principle has to be necessarily transposed to the facts of the instant case on account of the various decisions of the Hon'ble Supreme Court in the assessee's own case, viz., **137 ITR 735, 239 ITR 503** and others wherein, the Hon'ble Supreme Court and this Court had considered the objects as spelt out in the Deed of Trust, as spelt out in the Supplementary Deed, the judgment and decree in C.S.No.90 of 1961, the finding rendered by the Division Bench in **137 ITR 735**, which was affirmed and all other subsequent decisions have clearly and consistently held that the activity done by the assessee Trust is charitable activity and they are entitled for registration/exemption. This issue cannot be reopened by the Revenue, that too, by a perverse interpretation of the amendment to the proviso to Section 2(15) of the Act.

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62.Moving a step further, we hasten to add that even such an argument is remotely possible, is not available to the Revenue on account of the earlier decisions of this Court and the Hon'ble Supreme Court which has attained finality and therefore, the issue cannot be reactivated and there can

be no re-look by the Revenue on the aspect of the charitable nature of the assessee Trust and therefore, curtain has to be drawn and finality should prevail. While on this issue, we would have been well justified in imposing exemplary cost on the Revenue for their unsustainable interpretation.

63.In the light of the above finding, we are not required to proceed any further to examine the other contentions raised by the Revenue which largely rest upon the observations in *Loka Shikshana Trust* (supra). We have explained as to how the case of the Revenue cannot be sustained with reference to the said decision. Nevertheless we also note the other arguments, which were submitted by the learned counsel for the appellant, which would go in a way to strengthen our conclusion.

64.In *Sree Anjaneya Medical Trust vs. CIT [(2016) 382 ITR 0399 (Ker)]*, it was held that from a plain reading of Sections 12A and 12AA of the Act, what is intended thereby is only a registration simpliciter of the entity of a trust. This has been made a condition precedent for claiming of benefits of provisions of the Act regarding exemption of

income, contribution, etc. No examination of the modus of the application of the funds of the trust or an examination of the ethical background of its settlers is called for while considering the application for registration. The stage for consideration of the relevance of the object of the Trust and application of its funds arise at the time of the assessment. Where benefits are claimed by the assessee in terms of Sections 11 and 12 of the Act, the question as to the nature of such contribution and income can be looked into. At the time of registration of the Trust, going by the binding judgments of the Hon'ble Supreme Court, what is to be looked into is whether the Trust is a genuine one and whether it is sham institution floated only to avail the benefits of exemption under the Act. Thus, the legal principle which is deducible from the above decision, which has been rendered following several decisions of the Hon'ble Supreme Court including that of *Surat Art Silk Cloth Manufacturers' Association* case, *CIT vs. Dharmadeepti [(1978) 114 ITR 454 (SC)]*, is that the DIT(E) while considering an application under Section 12AA of the Act is not expected to examine the modus of application of the funds of the Trust or the ethical background of the settlers and the stage for examining such issues will arise

only at the time of assessment when the assessee claims benefits under Sections 11 and 12 of the Act. Thus, in the instant case, the DIT(E) while passing the impugned order dated 08.12.2011 cancelling the assessee's registration, applied a wrong test and examined with regard to the application of the funds, which the authority is not expected to do while considering an application for registration. Therefore, the very issuance of the show cause notice dated 25.10.2011, proposing to cancel the registration on examination of the modus of application of funds of the Trust is without jurisdiction.

65. In *Tamil Nadu Kalvi Kapu Arakkattalai vs. CIT [(2014) 90 CCH 0184 ChenHC]*, it was held that while considering the claim for exemption, the substance of the claim would be more relevant than the form. In other words, the authority should not be solely guided by the objects set out in various clauses in the Instrument of Trust, rather should be guided by the activities of the Trust, as to how the funds are employed, since the exemption sought for is under Chapter III of the Act, which deals with incomes which do not form part of total income. Thus, under Chapter III,

more particularly, Sections 10 to 13A, the Act brings certain categories of exemption and incomes falling within those categories are completely exempt from the purview of the Act as they are not at all to be included in the total income of the assessee. Therefore, such type of exemption/s has/have to be distinguished from certain types of income which are included in the total income of the assessee, but in respect of which, statute provides relief by way of deduction in computing total income, by granting rebate of tax and by granting certain other reliefs to the tax payers.

66. While on this issue, it would be useful to refer to the decision of the Division Bench of this Court, to which, one of us (TSSJ), was a party in the case of *Tamil Nadu Cricket Association vs. DIT(E) [(2013) 40 taxmann.com 250 (Madras)]*. The substantial questions of law which fell for consideration were whether the cancellation of the registration under Section 12AA(3) on the ground that the activities of the assessee therein could not be genuine after the amendment to the definition of charitable purpose; whether the activities of the said assessee could be set to be not genuine when the assessee was carrying on activities in accordance with its

objects and similar to its activities in earlier years merely on account of the amendment to the definition of charitable purpose in the Act.

67.The amendment which was subject matter in the said case was the amendment by Finance Act, 2008 with effect from 01.04.2009. It does not make much of difference while considering the case on hand because, the legal issue as to whether the amendment to the definition of charitable purpose under Section 2(15) can be result in a Trust which was enjoying registration under Section 12AA to be held to be carrying on an activity which is not genuine and therefore, not entitled to registration. This question was answered in favour of the assessee in the said case in the following terms:-

“45. We do not accept the submission of learned Standing counsel appearing for the Revenue. As rightly observed by learned Senior counsel appearing for the assessee, the Revenue granted registration under [Section 12AA](#) of the Act satisfying itself as to the objects of the association befitting the status as charitable purpose as defined under [Section 2\(15\)](#), as it stood in 2003 and after granting the registration, if the registration is to be cancelled, it must be only on the grounds stated under

Section 12AA(3) of the Act with reference to the objects accepted and registered under Section 12AA, as per the law then stood under the definition of Section 2(15) of the Income Tax Act. Even therein, Courts have defined as to when an institution could be held as one for advancement of any other object of general public utility. Thus, if a particular activity of the institution appeared to be commercial in character, and it is not dominant, then it is for the Assessing Officer to consider the effect of Section 11 of the Act in the matter of granting exemption on particular head of receipt. The mere fact that the said income does not fit in with Section 11 of the Act would not, by itself, herein lead to the conclusion that the registration granted under Section 12AA is bad and hence, to be cancelled.

46. It may be of relevance to note the language used in the definition "charitable purpose" in Section 2(15) of the Act, which states that charitable purpose includes relief of the poor, education, medical relief and advancement of any other object of general public utility. The assessee's case falls within the phrase of the definition general public utility . In the decision reported in (2000) 246 ITR 188 in the case of Hiralal Bhagwati Vs. Commissioner of Income Tax, the Gujarat High court

considered the said phrase in the context of Section 12AA registration and held that registration of the charitable trust under Section 12AA of the Act is not an idle or empty formality; the Commissioner of Income-tax has to examine the objects of the trust as well as an empirical study of the past activities of the applicant; the Commissioner of Income-tax has to examine that it is really a charitable trust or institution eligible for registration; the object beneficial to a section of the public is an object of "general public utility". The Gujarat High Court held that to serve as a charitable purpose, it is not necessary that the object must be to serve the whole of mankind or all persons living in a country or province; it is required to be noted that if a section of the public alone are given the benefit, it cannot be said that it is not a trust for charitable purpose in the interest of the public; it is not necessary that the public at large must get the benefit; the criteria here is the objects of general public utility. Thus, the Gujarat High Court held that in order to be charitable, the purpose must be directed to the benefit of the community or a section of the community; the expression "object of general public utility", however, is not restricted to the objects beneficial to the whole of mankind; an object beneficial to a section of the public is

an object of general public utility; the section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature.

47. *The above said decision (2000) 246 ITR 188 - Hiralal Bhagwati Vs. Commissioner of Income Tax came up on April 18, 2000. Evidently, the Revenue has not gone on appeal as against this judgment. In the decision reported in (2008) 300 ITR 214(SC) in the case of Assistant Commissioner of Income Tax Vs. Surat City Gymkhana, reference was made about this decision and the Apex Court pointed out that the Revenue did not challenge this case and it attained finality.”*

68. The Revenue filed appeal to the Hon'ble Supreme Court against the above decision and leave has been granted – [2015] 57 taxmann.com 136 (SC).

69. The above decision was followed in ***Director of Income Tax (E) vs. Gujarat Cricket Association [(2019) 419 ITR 561 (Guj.)]***.

70. The last aspect to be considered is under what circumstances, the power under Section 12AA(3) can be invoked. The said provision states that where a trust or an institution has been granted registration under clause

(b) of sub-Section (1) or has obtained registration at any time under Section 12A and subsequently, the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or registration. In terms of the proviso, no order under sub-Section (3) shall be passed, unless such trust or institution has been given a reasonable opportunity of being heard. Thus, the power under sub-Section (3) of Section 12AA would be invocable under two circumstances mentioned in the provision and upon the Commissioner being satisfied that the activities of the trust are not genuine or the activities are not in accordance with the objects of the Trust.

71. In the case on hand, there is no allegation that the assessee Trust has not carried on its activities in accordance with the objects of the Trust as set out in the Deed of Trust and the Supplementary Deed. The Revenue has accepted the said fact and also acceded to the finality of the judgment and decree in C.S.No.90 of 1961. The DIT(E) seeks to bring the

assessee's case in the first limb of sub-Section (3) by stating that the activities of the Trust are not genuine.

72.We find that except for stating that the activities are not genuine because of the amendment to the proviso to Section 2(15), there is no other allegation, with regard to the genuineness of the Trust. We have referred to the decisions to show that the amendment to Section 2(15) cannot make activity of a trust not genuine, which was hither to genuine while enjoying the registration under Section 12AA prior to the amendment. Therefore, we are of the view that the DIT(E) failed to record his satisfaction as required to be done under sub-Section (3) of Section 12AA. The satisfaction should be on the activities of the Trust and finding should be rendered as to how such activities are not genuine. The activities of the assessee Trust have not been disputed, nor there is any allegation of non genuine activities. Therefore, by referring to the amendment to the proviso to Section 2(15) and referring to the meaning of the word 'education' as spelt out in certain decisions, cannot be construed to be a satisfaction, which is contemplated under sub-Section (3) of Section 12AA.

73.This very issue was considered in the case of ***CIT(E) vs. Mumbai Metropolitan Region Development Authority ([2020] 115 taxmann.com 71 (Bombay))*** wherein, it was held that the competent authority under Section 12AA(3) must be satisfied that the activities of the Trust are not genuine or that the activities are not being carried out in accordance with the objects of the Trust or the institution and such satisfaction must be recorded as a matter of fact on the basis of specific materials on record. Merely saying that the activities of the Trust are hit by the proviso to Section 2(15) would not lead to automatic cancellation of registration, as that is not a ground provided under Section 12AA(3) for cancellation of registration. In the said case, the DIT(E) took a view that the assessee was hit by the proviso to Section 2(15) and therefore, it was deemed that the Trust had become non-genuine. Such view was held to be wholly untenable, being contrary to the mandate of Section 12AA(3) and liable to be set aside.

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74.On the same point, is the decision in the case of ***Goa Industrial Development Corporation vs. CIT ([2020] 116 taxmann.com 42***

(Bombay)), wherein, it was held that Section 2(15) that by itself would not render activities of the assessee as non-genuine activities so as to entitle the Commissioner to exercise powers under Section 12AA(3) to cancel registration. In the said case, similar question arose where also, the registration was cancelled, as the assessee was hit by the proviso to Section 2(15). The Court referred to Circular No.21/2016 dated 27.05.2016, issued by the CBDT, which states that cancellation of registration has to be initiated strictly in accordance with the provisions under Section 12AA(3) and after carefully examining the application of the said provision. Further, merely because in a particular year, the limits may be exceeded, is not a good ground to cancel the registration itself.

75.In **DIT(E) vs. Khar Gymkhana [(2016) 385 ITR 0162 (Bom)]**, the Court considered Circular No.21/2016 and held that registration granted under Section 12AA could not be cancelled merely on the ground the receipts on account of business exceeded the cut-off specified in the proviso to Section 2(15) of the Act. The jurisdiction to cancel the registration only arises if there is a change in the activity of the institution or the activities of

the institution are not genuine. It was further held that Circular No.21 of 2016 directs the officer of Revenue not to cancel the registration only because the receipts on account of business are in excess of the limits in the proviso to Section 2(15) of the Act.

76.In ***DITE vs. Seervi Samaj Tambaram Trust [(2014) 362 ITR 0199 (Madras)]*** to which, one of us (TSSJ) was a party, the Court considered as to what is the nature of satisfaction that has to be recorded under Section 12AA of the Act in the following terms:-

*“9.In the present case also, the Revenue only questions the trust not having commenced its activity for the grant of registration. The provision under **Section 12AA** of the Income Tax Act does not stipulate such a condition for grant of registration. On the other hand, **Section 12AA (1)** contemplates satisfaction of the Commissioner about the objects of the Trust and the genuineness of the activities and make such enquiry as may be necessary for the purpose of grant of registration. In so considering the application, the Commissioner has to give an opportunity to the assessee*

as provided for under proviso to sub-section (1) of Section 12AA. Under sub-section (3) of Section 12AA, the Commissioner is given power to cancel the registration, if he satisfies that the objects of such trust are not genuine or not being carried on in accordance with the objects of the trust. When such an authority is vested with the Commissioner to cancel the registration in the event of the trust not being carried on in accordance with the objects of the trust, we do not find any ground to say that merely on the date of the application, the assessee trust had not commenced its activities, hence, registration could not be granted. It is not denied by the assessee that on the date of the application under Section 12AA, it was yet to commence its operation. But nevertheless the genuineness of the objects of the trust were not questioned by the Commissioner. Considering the fact that the continuance of registration is further a subject matter of scrutiny by the Commissioner as contemplated under Section 12AA(3) of the Income Tax Act, we do not think that the Revenue would be justified in refusing the registration at the threshold. The Tribunal had followed the decision of the Gujarat High Court in the case of CIT V. Kutchi Dasa Oswal Moto Pariwar Ambama Trust reported in

29 Taxman 228. We respectfully agree with the decision of the Gujarat High Court.”

77.In a recent decision of the Hon'ble Supreme Court in **Ananda Social & Educational Trust vs. CIT ([2020] 114 taxmann.com 693 (SC))**, the Hon'ble Supreme Court explained as to the duties cast upon the Commissioner under Section 12AA while considering the application for registration in the following lines:-

“9.Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

10.

11. The purpose of *section 12AA* of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.

12. Since *section 12AA* pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of *section 12AA* of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found

to have undertaken activities contrary to the objects of the Trust.”

78.The decision in ***CIT vs. Sisters of Our Lady of Providence Education Society [(2015) 122 DTR 0194 (Allahabad)]***, the Court has explained as to the nature of satisfaction that has to be recorded and held that merely because the exemption under Section 10(23C)(vi) is declined, it does not amount to refusal of registration under Section 12AA, nor a registration can be cancelled on that ground.

79.In ***CIT vs. J.K.Charitable Trust [(1991) 59 Taxman 602 (Allahabad)]***, it was held that contribution to another charitable trust is an application for charitable purposes, in other words, such contribution to another charitable Trust by the assessee Trust cannot be treated as income of the assessee Trust in the year of contribution. To the same effect is the decision in the case of ***CIT vs. Sarladevi Sarabhai Trust [(1988) 172 ITR 0698 (Guj.)]*** and also the judgment in the case of ***CIT vs. Trustees of the Jadi Trust [(1982) 133 ITR 0494 (Bom.)]*** and the decision in ***CIT vs. Shri Ram Memorial Foundation [(2004) 269 ITR 0035 (Delhi)]***.

80.In *CIT vs. Kutchi Dasa Oswal Moto Pariwar Ambama Trust [(2014) 362 ITR 0192 (Guj.)]*, the Revenue's appeal was dismissed holding that the CIT(A) was not justified in rejecting the registration to Trust under Section 12A merely on the ground that the activities of the Trust had not commenced. The CIT had also made a comment upon the activities of the assessee by stating that they are contributing only to one Trust and not to other Trust with similar objects. The question is whether this can be a reason for cancellation of the registration. The answer to the same should be in the negative because, this aspect was dealt with in the earlier round of litigation and held against the Revenue. While on this issue, it would be useful to refer to the decision in the case of *CIT vs. Hindusthan Charity Trust [(1983) 139 ITR 0913 (Cal.)]*. In the said case, donation was made by the assessee Trust to another Trust and the question was whether the assessee was entitled for exemption under Section 4(3)(i). It was held that donation made to another Trust, which was charitable or eligible was entitled for exemption under Section 4(3)(i).

81.In *Director of Income Tax (E) vs. Chartered Accountants*

Study Circle [(2012) 347 ITR 0321], the activities of the Trust in publishing and selling books of professional interest meant to be used as reference materials by the general public as well as by the professionals in respect of bank audit, tax audit, etc., was held to be not commercial in nature.

82.In the case of **CIT vs. Shri Aurobindo Memorial Fund Society [(2001) 247 ITR 0093 (Madras)]**, it was held that donation by a charitable Trust to another charitable Trust would amount to application of income for charitable purposes and the requirements of Section 11 are satisfied. In the said decision, the judgment of the assessee Trust in **137 ITR 735** was relied on.

83.In **CIT vs. Matriseva Trust [(2000) 242 ITR 0020]**, following the decision in the assessee's case in **137 ITR 735**, it was held that donation to another charitable Trust would be application of income for charitable purposes.

84.Finally, we have to consider as to whether the retrospective

cancellation of the registration with effect from 01.04.2009 would be valid. This issue is no longer *res integra*, as it has been held against the Revenue in the decision in ***Industrial Infrastructure Development Corporation (Gwalior) M.P Ltd.*** (supra) wherein, it has been held as hereunder:-

“21. In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under **Section 12A** till 01.10.2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under **Section 12A** of the Act. Second, the order passed under **Section 12A** by the CIT is a quasi judicial order and being quasi judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.

22. Indeed, the functions exercisable by the CIT under **Section 12A** are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature.

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27. *It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature.*

28. *The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi High Court in the case of Director of Income Tax (Exemptions) vs. Mool Chand Kairati Ram Trust, (2011) 243 CTR(Del) 245, Uttaranchal High Court in the case of Welham Boys' School Society vs. CBDT, (2006) 285 ITR 74(Uttaranchal) and Allahabad High Court in the case of Oxford Academy for Career Development vs. Chief Commissioner of Income Tax & Ors. (2009) 315 ITR 382 (All).*

29. *All the three High Courts after examining the issue, in the light of the object of Section 12A of the Act and Section 21 of the General Clauses Act held that the order of the CIT passed under Section 12A is quasi*

judicial in nature. Second, there was no express provision in the Act vesting the CIT with power of cancellation of registration till 01.10.2004; and lastly, Section 21 of the General Clauses Act has no application to the order passed by the CIT under Section 12A because the order is quasi judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 01.10.2004.”

85. In **ACIT vs. Agra Dev Authority** ([2018] 90 taxmann.com 282 (Allahabad)), it was held that the Commissioner was not authorized under Section 12AA(3) to cancel registration of charitable Trust retrospectively. In the said decision, the CBDT Circulars in Circular No.762 dated 18.02.1998 and Circular No.21 of 2016 dated 27.05.2016 were referred to.

86. The learned Senior Standing Counsel referred to the decision in **Yogiraj Charity Trust** (supra), in support of his contention that the business conducted by the assessee Trust in newspaper is a non-charitable

activity and therefore, the assessee is not entitled for registration. In this regard, the learned counsel referred to paragraph 12 of the judgment. However, on a reading of the judgment in its entirety, we find that it supports the case of the assessee, rather the Revenue.

87. Before we conclude, it would be relevant to take note of the CBDT instruction No.1132, dated 05.01.1978 with regard to the availability of exemption in hands of charitable Trusts of amounts paid as donation to other charitable Trusts. The CBDT has instructed as follows:-

“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 utilisation 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 Income-tax 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 your charge.”

88.Circular No.1 of 2011 dated 06.04.2011 issued by the CBDT deals with various aspects and clause 7 of the circular deals with 'cancellation of registration obtained under Section 12A of the Act', which reads as follows:-

“7.Cancellation of registration obtained under Section 12A

7.1. Section 12AA provides the procedure relating to registration of a trust or institution engaged in charitable activities. Section 12AA(3) previously provided that if the activities of the trust or institution are found to be non-genuine or its activities are not in accordance with the objects for which such trust or institution was established, the registration granted under Section 12AA can be cancelled by the Commissioner after providing the trust or institution an opportunity of being heard.

7.2. The power of cancellation of registration is inherent and flows from the authority of granting registration. However, judicial rulings in some cases have held that the Commissioner does not have the power to cancel the registration which was obtained

earlier by any trust or institution under provisions of Section 12A as it is not specifically mentioned in Section 12AA.

7.3. Therefore, Section 12AA has been amended to provide that the Commissioner can also cancel the registration obtained under Section 12A as it stood before amendment by Finance (No.2) Act, 1996.

7.4. Applicability – This amendment has been made applicable with effect from 1st June, 2010 and shall accordingly apply for assessment year 2011-12 and subsequent assessment years.”

89.Circular No.1 of 2011 will clearly show that the amendment brought out in Section 12AA is applicable with effect from 1st June, 2010, i.e., from the assessment year 2011-12 and subsequent years. Therefore, the retrospective cancellation of the registration of the assessee is wholly without jurisdiction and the assessee cannot be vexed repeatedly on the same issue and reason for invoking the power under sub-Section (3) of Section 12AA is wholly unsustainable, without any basis and suffers from perversity writ large on the face of the order. Unfortunately, the Tribunal misdirected itself by addressing a wrong question without taking note of the

earlier decisions rendered in the assessee's own case. The DIT(E) has not recorded his satisfaction that the activities of the assessee Trust are not genuine, nor he has made any observation that the assessee had carried out activities which are not covered in the Trust Deed or in the judgment and decree in C.S.No.90 of 1961. The decisions relied on by the Revenue, in fact, would go to assist the case of the assessee, rather the Revenue. The DIT(E) committed gross error in restricting the meaning of the word 'education' and did not appreciate the effect of the decision in *Loka Shikshana Trust* (supra), which was considered in several other subsequent decisions. Above all, the DIT(E) and the Tribunal violated the rule of consistency by showing utter disregard to the judgments of the Hon'ble Supreme Court and this Court in the assessee's own case on the very same subject and the orders of the DIT(E) and the Tribunal have to be termed to be 'utterly perverse'. The Tribunal lost sight of the distinction between a claim for registration under Section 12AA and a claim for exemption under Section 11 of the Act. To say the least, the Tribunal's justification would amount to judicial indiscipline for not following the decision of the Hon'ble Supreme Court and this Court in the assessee's own case. The DIT(E) failed

to adhere to the instructions issued by the CBDT which is binding on the DIT(E). As observed earlier, the recent pandemic has taught very many lessons and one of which is that, mode and method of education cannot be in any manner restricted, but should be given the widest meaning that is possible.

90.Thus, for all the above reasons, we hold that the assessee is entitled to succeed.

91.In the result, this tax case appeal is allowed, the impugned order of the Tribunal dated 08.05.2018 is set aside and the substantial question of law is answered in favour of the assessee. No costs.

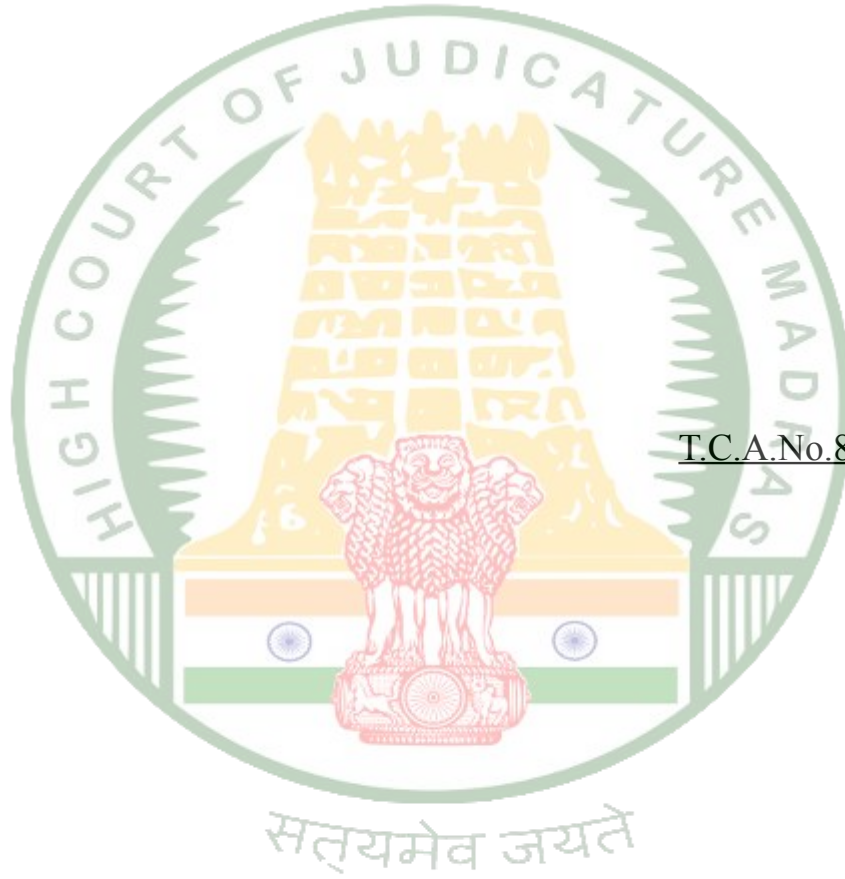
सत्यमेव जयते (T.S.S.,J) (V.B.S.,J)
29.10.2020

Index: Yes / No
Speaking Order/Non-Speaking Order
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T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

sk/abr



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29.10.2020