SC rulings on charitable trusts – key observations, notes and implications

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CHARTERED ACCOUNTANTS

Key provisions

- Erstwhile Sections 10(22) and 10(22A) now re-enacted as Section 10(23C)
- Section 10(23C)(iiiab)
- *any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government*
- *Section 10(23C)(iiiad)*
- *any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees*
- *Section 10(23C)(vi)*
- *any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the Principal Commissioner or Commissioner*

Key provisions

- Section 2(15)
- “Charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

  Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, ***irrespective of the nature of use or application, or retention, of the income from such activity***, unless—

  (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

  (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

New Noble Education Society – SC
Key facts and findings (1/2)

- Scope of the word ‘solely’ in section 10(23C)(vi)
- Appeal before SC was by NNES pursuant to ruling of Andhra Pradesh HC in 12 taxmann.com 267
- NNES was a society established to run educational institutions. It had multiple objectives such as "to maintain unity among members of the society", "to organize sports, games and cultural activities", and "to solve problems of the members on social grounds“
- AP HC held that the institution cannot be regarded as one existing solely for educational purposes under section 10(23C)(vi). Also, AP HC held that to obtain the registration under section 10(23C)(vi), NNES was required to register under the AP Charitable and Hindu Religious Institutions and Endowments Act, 1987
- Appeal was filed by NNES against above order.
- NNES submitted that there was no bar or restriction imposed by law on trusts involved or engaged in activities other than education, from claiming exemption under Section 10(23C)(vi), provided their motive was not-for-profit.
- For this proposition reliance was placed on American Hotel and Lodging Association (301 ITR 86), Queen’s Education Society (372 ITR 699) and Aditanar Educational Institution (224 ITR 310).

New Noble Education Society – SC
Key facts and findings (2/2)

- SC held that the term that term ‘solely’ is not the same as ‘predominant / mainly’. The term ‘solely’ means to the exclusion of all others.
- Hence, a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education.
- Further, charitable institutions and societies, which may be regulated by other state laws, have to comply with them just as in the case of laws regulating education (at all levels). Compliance with or registration under those laws, are also a relevant consideration which can legitimately weigh with the Commissioner or other concerned authority, while deciding applications for approval under Section 10(23C).

New Noble Education Society – SC
Key observations (1/5)

- The expression ‘solely’ has been interpreted, as noticed previously, by other judgments as the ‘dominant / predominant /primary/ main’ object. The plain and grammatical meaning of the term ‘sole’ or ‘solely’ however, is ‘only’ or ‘exclusively’.
- It is, therefore, clear that term ‘solely’ is not the same as ‘predominant / mainly’. The term ‘solely’ means to the exclusion of all others. None of the previous decisions – especially American Hotel or Queens Education Society – explored the true meaning of the expression ‘solely’.
- The applicable test enunciated in Surat Art (supra) i.e., the ‘predominant object’ test was applied unquestioningly in cases relating to charitable institutions claiming to impart education.
- The obvious error in the opinion of this court which led the previous decisions in American Hotel (supra) and in Queens Education Society (supra) was that Surat Art (supra) was decided in the context of a society that did not claim to impart education.
- It claimed charitable status as an institution set up to advance objects of general public utility.
- The Surat Art (supra) decision picked the first among the several objects (some of them being clearly trading or commercial objects) as the ‘predominant’ object which had to be considered while judging the association’s claim for exemption.

New Noble Education Society – SC
Key observations (2/5)

- The approach and reasoning applicable to charitable organizations set up for advancement of objects of general public utility are entirely different from charities set up or established for the object of imparting education.
- Thus, in the opinion of this court, a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education.
- This court is of the opinion that the interpretation adopted by the judgments in American Hotel (supra) as well as Queens Education Society (supra) as to the meaning of the expression ‘solely’ are erroneous.
- The trust or educational institution, which seeks approval or exemption, should solely be concerned with education, or education related activities.
- If, incidentally, while carrying on those objectives, the trust earns profits, it has to maintain separate books of account. It is only in those circumstances that ‘business’ income can be permitted- provided, as stated earlier, that the activity is education, or relating to education.
- The judgment in American Hotel (supra) as well as Queens Education Society (supra) do not state the correct law, and are accordingly overruled.

New Noble Education Society – SC
Key observations (3/5)

- The judgment in American Hotel (supra) dealt extensively with the effect of the provisos to Section 10(23C).
- While doing so, the court made certain remarks with respect to the effect of these provisos characterizing a few of them as those dealing with the stage of considering applications for approval or registration and other as those dealing with application of income or receipts of the trust.
- In respect of the latter, this court was of the opinion that the question of application of income or profits could arise only at the stage of assessment.
- The court was also of the opinion that the audited books of accounts would be of little or no relevance at the stage of registration or approval.
- Having regard to the plain terms of the second proviso to Section 10(23C), which refers to the procedure for approval of applications including those made by trusts and institutions imparting education, one can discern no such restrictions.
- From the pointed reference to ‘audited annual accounts’ as one of the heads of information which can be legitimately called or requisitioned for consideration at the stage of approval of an application, the inference is clear: the Commissioner or the concerned authority’s hands are not tied in any manner whatsoever.

New Noble Education Society – SC
Key observations (4/5)

- The observations to the contrary in American Hotel (supra) appear to have overlooked the discretion vested in the Commissioner or the relevant authority to look into past history of accounts, and to discern whether the applicant was engaged in fact, 'solely' in education.
- American Hotel (supra) excluded altogether inquiry into the accounts by stating that such accounts may not be available.
- Those observations in the opinion of the court assume that only newly set up societies, trusts, or institutions may apply for exemption.
- Whilst the statute potentially applies to newly created organizations, institutions or trusts, it equally applies to existing institutions, societies or trust, which may seek exemption at a later point.
- At the same time, this court is also of the opinion that the Commissioner or the concerned authority, while considering an application for approval and the further material called for (including audited statements), should confine the inquiry ordinarily to the nature of the income earned and whether it is for education or education related objects of the society (or trust).
- If the surplus or profits are generated in the hands of the assessee applicant in the imparting of education or related activities, disproportionate weight ought not be given to surpluses or profits, provided they are incidental.

New Noble Education Society – SC

Key observations (5/5)

- At the stage of registration or approval therefore focus is on the activity and not the proportion of income. If the income generating activity is intrinsically part of education, the Commissioner or other authority may not on that basis alone reject the application.

New Noble Education Society – SC
Facts and ruling in American Hotel (1/3)

- AHLA was a non-profit organization set-up in the USA and had been granted tax exemption as an educational institute in that country.
- It had a branch office in India, mainly to comply with its obligations under various agreements with the Government of India (Ministry of Tourism).
- In accordance with the terms of the MoU, AHLA was responsible, inter alia, for providing a full and complete curriculum, recognized throughout the world, for all hospitality educational programmes in India, making available text books, course materials and software programmes etc.
- AHLA got exemption under section 10(22) up to the year ending 31-3-1998.
- The branch office accounts during the said period showed the gross amounts collected on the income side and the costs for running the branch were shown on the expenditure side and the difference between those figures represented what was receivable by the head office (HO) from the branch for the provision of course materials and other services provided by the HO.
- Section 10(22) stood omitted by the Finance Act, 1998 with effect from 1-4-1999,
- On 7-4-1999, i.e., within 7 days, AHLA made an application to the CBDT, the prescribed authority, for initial approval in terms of the first proviso to section 10(23C).

New Noble Education Society – SC
Facts and ruling in American Hotel (2/3)

- The CBDT rejected said application holding that there was a surplus repatriated outside India and, therefore, the assessee had not applied its income for the purpose of education in India.
- On writ, Delhi HC upheld the order of the CBDT, holding that the gross receipts collected by the appellant's branch office in India was 'income' chargeable to tax. It further held that since the gross receipts constituted 'income' chargeable to tax, such 'income' was required to be applied to educational purposes in India and since the appellant had failed to do so, the CBDT was right in rejecting the application.

SC held that:

- Actual existence of the educational institution was the pre-condition of the application for initial approval under section 10(22).
- Once an applicant-institution came within the phrase 'exists solely for educational purposes and not for profit', no other conditions, like application of income, were required to be complied with.
- The prescribed authority was only required to examine the nature, activities and genuineness of the institution.
- The said phrase was the only requirement for initial approval. The mere existence of profit/surplus did not disqualify the institution if the sole purpose of its existence was not profit-making, but educational activities as section 10(22), by its very nature, contemplated income of such an institution to be exempted.

New Noble Education Society – SC
Facts and ruling in American Hotel (3/3)

- In deciding the character of the recipient, it is not necessary to look at the profits of each year, but to consider the nature of the activities undertaken in India. If the Indian activity has no correlation with education, exemption has to be denied. Therefore, the character of the recipient of income must have character of educational institution in India to be ascertained from the nature of the activities.
- Having analysed the provisos to section 10(23C)(vi), one finds that there is a difference between stipulation of conditions and compliance thereof.
- The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardized form in terms of the first proviso.
- It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance with requirements in the provisos would arise.
- In the instant case, AHLA had fulfilled the threshold pre-condition of actual existence of an educational institution under section 10(23C)(vi) and, therefore, on that count, the CBDT would not reject the approval application dated 7-4-1999.

New Noble Education Society – SC
Facts and ruling in Queen's Educational Society (1/4)

- Queen's filed its return for AYs 2000-01 and 2001-02 showing a net surplus of Rs.6,58,862/- and Rs.7,82,632/- respectively.
- Since Queen's was established with the sole object of imparting education, it claimed exemption under Section 10(23C)(iiiad).
- The exemption claim was denied; this was reversed by the CIT(A) which order was confirmed by the ITAT. The Uttarakhand HC set aside the judgment of the ITAT and affirmed the order of the Assessing Officer.
- Queen's argued that the AO applied the wrong test namely, that whenever a profit/surplus is made by an educational institution, it ceases to exist solely for educational purposes and becomes a profit-making enterprise.
- Revenue supported the Uttarakhand HC judgment by stating that the Section does not contemplate the making of large profits. If an educational institution in fact makes large profits then even though it may plough such profits back into the purchase of assets for education, yet such institution cannot be said to be existing solely for educational purposes. It would then become an institution which would really be for profit.

New Noble Education Society – SC
Facts and ruling in Queen's Educational Society (2/4)

SC held that

- Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.
- The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.
- A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.
- If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.
- The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.
- The High Court did not apply its mind independently. What has been copied is one paragraph from the Supreme Court judgment in Aditanar followed by a paragraph of faulty reasoning by the Assessing Officer and the said faulty reasoning of the Assessing Officer has been wrongly said to be the law laid down by the Apex Court.

New Noble Education Society – SC
Facts and ruling in Queen's Educational Society (3/4)

- The Uttarakhand HC has erred by quoting a non existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act would not be applicable.
- Quite apart from this, it also went on to further quote from a portion of a property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to Section 10(23C) (iiiad).
- The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of Section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case.
- It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit.
- In fact, S.RM.M.CT.M. Tiruppani Trust v. CIT [1998] 2 SCC 584 affirms this view.

New Noble Education Society – SC
Facts and ruling in Queen's Educational Society (4/4)

- We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit.
- In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down.
- Further, it is of great importance that the activities of such institutions be looked at carefully.
- If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn.

New Noble Education Society – SC
Facts and ruling in Aditanar (1/4)

- Aditanar is a society registered under the Societies Registration Act, 1960.
- Its objects are to establish, run, manage or assist colleges, schools and other educational organisations existing solely for educational purposes.
- Aditanar received donations from a trust called 'Thanthi Trust' a sum of Rs. 15,71,370 for AY 1965-66, a sum of Rs. 5,62,432 for AY 1966-67 and a sum of Rs. 4,78,900 for AY 1967-68.
- Aditanar filed nil returns for all these years since it was an educational institution existing solely for educational purposes. The ITO closed the assessments stating that there is no taxable income. There was no question of granting exemption under section 10(22) since it incurred loss for all the three years.
- The Commissioner initiated suo motu proceedings under section 263 of the Act as, in his opinion, the assessments made by the ITO were erro-neous and prejudicial to the revenue. He opined that the ITO failed to consider the question whether the assessee was entitled to exemption in respect of the receipts of voluntary contributions. According to him, the assessee was not entitled to any exemption.
- An order was passed on 30-3-1972 directing the ITO to make fresh assessments taking into consideration the voluntary contributions received from Thanthi Trust.

New Noble Education Society – SC
Facts and ruling in Aditanar (2/4)

- In the appeals filed before the ITAT for all the three years the ITAT held that Aditanar was an institution existing for educational purposes and not for purposes of earning any profit and it could be termed as an educational institution within the ambit of section 10(22).
- It is thereafter, at the instance of the revenue, the question of law mentioned hereinabove was referred to the Madras High Court for its decision.
- The HC opined that it is not possible to accept the contention of the revenue that Aditanar is only a financing body and does not, on the facts, come within the scope of 'other educational institution' occurring in section 10(22).
- It was found that the sole purpose for which the assessee has come into existence is education at the levels of college and school and that an educational society could be regarded as an educational institution if the society was running an educational institution not for the purpose of profit, but its existence was solely for the purpose of education.
- Basis the above, the HC answered the question in favour of Aditanar.

New Noble Education Society – SC
Facts and ruling in Aditanar (3/4)

- *'It passes our comprehension as to why the assessee filed the appeals at all from the judgment of the High Court dated 23-2-1979, which is in its favour. When questioned, the senior counsel appearing for the assessee stated that there are some observations of the High Court in the concluding portion of the judgment, which may prejudicially affect the assessee in future. We are of the view that this apprehension has no basis. All that the High Court has stated in the penultimate paragraph of the judgment is that counsel for the assessee gave a right answer to a hypothetical question put forward by the Court to the effect that the applicability of section 10(22) should be evaluated or investigated every year and only if it is found that the 'institution' exists for educational purposes in the relevant year and even if any profit results, which is only incidental to the purpose of education, the income would be exempt.*
- The language of section 10(22) is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for the purposes of profit.
- 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 one existing solely for educational purposes since the object is not one to make profit.

New Noble Education Society – SC
Facts and ruling in Aditanar (4/4)

- 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.

Ahmedabad Urban Development Authority – SC ruling
Facts and findings

- Following categories of taxpayers' cases which were termed as activities of general public utility or 'GPU' were considered:
  - Statutory corporations, authorities or bodies
  - Statutory regulatory bodies / authorities
  - Trade promotion bodies, councils, associations or organizations
  - Non-statutory bodies such as ERNET, NIXI and GS1 India
  - State cricket associations
  - Private trusts: (a) Tribune Trust; (b) Sri Balaji Samaj Vikas Samiti

Statutory corporations, authorities or bodies

- The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the state government or central governments, for achieving what are essentially 'public functions/services' (such as housing, industrial development, supply of water, sewage management, supply of food grain, development and town planning, etc.) may resemble trade, commercial, or business activities.

Ahmedabad Urban Development Authority – SC ruling
Facts and findings

- However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are prima facie to be excluded from the mischief of business or commercial receipts.
- At the same time, in every case, the assessing authorities would have to apply their minds and scrutinize the records, to determine if, and to what extent, the consideration or amounts charged are significantly higher than the cost and a nominal mark-up.
- If such is the case, then the receipts would indicate that the activities are in fact in the nature of “trade, commerce or business” and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to Section 2(15) of the IT Act.
- In Section 10(46)(b) of the IT Act, “commercial” has the same meaning as “trade, commerce, business” in Section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of “commercial activity”.
- However, in the case of such notified bodies, there is no quantified limit in Section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under Section 10(46)

Ahmedabad Urban Development Authority – SC ruling
Facts and findings

Statutory regulators

- The income and receipts of statutory regulatory bodies which are for instance, tasked with exclusive duties of prescribing curriculum, disciplining professionals and prescribing standards of professional conduct, are prima facie not business or commercial receipts.
- However, this is subject to the caveat that if the assessing authorities discern that certain kinds of activities carried out by such regulatory body involved charging of fees that are significantly higher than the cost incurred (with a nominal mark-up) or providing other facilities or services such as admission forms, coaching classes, registration processing fees, etc., at markedly higher prices, those would constitute commercial or business receipts.
- In that event, the overall quantitative limit prescribed in the proviso to Section 2(15) (as amended from time to time) has to be complied with, if the regulatory body is to be considered as one with 'charitable purpose' eligible for exemption under the IT Act.
- Like statutory authorities which regulate professions, statutory bodies which certify products (such as seeds) based on standards for qualification, etc. will also be treated similarly.

Ahmedabad Urban Development Authority – SC ruling
Facts and findings

Trade promotion bodies

- Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility.
- However, if such organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. then income or receipts from such activities, would be business or commercial in nature.
- In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to Section 2(15) of the IT Act.

Non-statutory bodies

- Non-statutory bodies performing public functions, such as ERNET and NIXI are engaged in important public purposes.
- The materials on record show that fees or consideration charged by them for the purposes provided are nominal.
- In the circumstances, it is held that the said two assessees are driven by charitable purposes.

Ahmedabad Urban Development Authority – SC ruling
Facts and findings

- However, the claims of such non-statutory organisations performing public functions, will have to be ascertained on a yearly basis, and the tax authorities must discern from the records, whether the fees charged are nominally above the cost, or have been increased to much higher levels.
- It is held that though GS1 India is in fact, involved in advancement of general public utility, its services are for the benefit of trade and business, from which they receive significantly high receipts.
- In the circumstances, its claim for exemption cannot succeed having regard to amended Section 2(15).
- However, the Court does not rule out any future claim made and being independently assessed, if GS1 is able to satisfy that what it provides to its customers is charged on cost-basis with at the most, a nominal markup.

Sports associations

- So far as the state cricket associations are concerned (Saurashtra, Gujarat, Rajasthan, Baroda, and Rajkot), this Court is of the opinion that the matter requires further scrutiny, in light of the discussion in paragraphs 228-238 of the judgment.
- Accordingly, a direction is issued that the AO shall adjudicate the matter afresh after issuing notice to the concerned assessees and examining the relevant material indicated in the previous paragraphs of this judgment.

Ahmedabad Urban Development Authority – SC ruling
Facts and findings

- Furthermore, if any consequential order needs to be issued, the same shall be done and resulting actions, including assessment orders shall be passed in accordance with the law under relevant provisions of the IT Act.

Private Trusts

- So far as the appeal by Tribune Trust is concerned, it has been held that despite advancing general public utility, the Trust cannot benefit from exemption offered to entities covered by Section 2(15) as the records reveal that income received from advertisements, constituted business or commercial receipts.
- Consequently, the limit prescribed in the proviso to Section 2(15) has to be adhered to for the Trust's claim of being as a charity eligible for exemption, to succeed.
- Therefore, despite differing reasoning, this court has held that the impugned judgment of the High Court does not call for interference.

Ahmedabad Urban Development Authority – SC ruling
Key observations

- The new provision, i.e., Section 2(15) of the IT Act, defined “charitable purpose” restrictively: to deny tax exemption to activities for profit which were carried on by a trust for the advancement of an object of general public utility.
- The reason for this change (discussed previously) was that the advantage of tax exemption was not intended to charitable trusts that were commercial concerns, which while ostensibly serving a public purpose, were fully paid for the benefits provided by them.

Binding nature of circulars

- Circulars are binding upon departmental authorities, if they advance a proposition within the framework of the statutory provision. However, if they are contrary to the plain words of a statute, they are not binding.
- Furthermore, they cannot bind the courts, which have to independently interpret the statute, in their own terms. At best, in such a task, they may be considered as departmental understanding on the subject and have limited persuasive value.
- At the highest, they are binding on tax administrators and authorities, if they accord with and are not at odds with the statute; at the worst, if they cut down the plain meaning of a statute, or fly on the face of their express terms, they are to be ignored.

Ahmedabad Urban Development Authority – SC ruling
Key observations

Understanding GPU restrictions

- As observed at the beginning of this judgment, GPU charities have been recognized as distinct from the 'per se categories' of charity (education, medical relief, relief to the poor; and later - preservation of water sheds, monuments, environment, and yoga).
- The judgment of this court in Dharmadeepti (supra) has clarified that the per se categories – are not subjected to the restrictive condition of eschewing activities of profit.
- Prior to 1991, the statute as it stood, did not restrict GPU category charities from carrying on activities of profit or from carrying on business. The decision in Surat Art Silk (supra) was binding which had ruled that:
    - A GPU category charity with a constitution granting discretion to the trustees to engage in charitable and non-charitable activities, could not claim the exemption;
    - The main or dominant purpose of the GPU category charity had to be essentially charitable. If it was so, and it incidentally entailed carrying on activities that led to profit, it was entitled to exemption.

Ahmedabad Urban Development Authority – SC ruling
Key observations

- This court's understanding of the law as expressed in Thanthi Trust was therefore, coloured by the statute as it existed, and the formulation in Surat Art Silk (supra).
- As a result, Thanthi Trust, interpreted Section 11(4A) in this background and held that the assessee in that case incidentally was engaged in activities for profit.
- The court was also of the opinion that Section 11(4A) was wider than the revenue urged it to be, in that activities by way of business could not be carried on incidentally by a Trust, which otherwise was a GPU category trust.
- Between Surat Art Silk (supra) and the decisions rendered thereafter (i.e., Bar Council of Maharashtra, Federation of Indian Chamber of Commerce and Industries and Thanthi Trust) there were two changes in law in 1983 w.e.f. 01.04.1984 – on the one hand deleting the restrictive words prohibiting GPU categories from carrying on profit, and deleting Section 13(1)(bb), and introducing Section 11(4A), on the other. There was otherwise no meaningful statutory change. The position therefore, continued as it was for about 25 years.

Ahmedabad Urban Development Authority – SC ruling
Key observations

- The position, therefore, with respect to what kind activities GPU charities could legitimately undertake, was in a state of flux till 2015. However, the amendments cumulatively point to prohibitions that were constant:
    - the prohibition applicable to such charities involved in carrying on activities “in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration
    - “irrespective of the nature of use or application, or retention, of the income from such activity” (i.e. activity in the nature of trade, commerce or business for a cess, fee or other consideration).
- The next important change took place through the Finance Act, 2015, which, w.e.f. 01.04.2016 substituted the two provisos to Section 2(15) with the following proviso:
    - “Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless:
        - Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
        - The aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year

Ahmedabad Urban Development Authority – SC ruling
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        - Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
        - The aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year

Ahmedabad Urban Development Authority – SC ruling

Key observations

- This substantial change brought about by the amendments of 2008-2012 and 2015 is the prohibition from engaging in any kind of activity in the nature of business, commerce, or trade or any rendering any service in relation thereto, and earning income by the way of cess, fee or consideration.
- In the opinion of this court, the express deletion of the reference to ‘activity for profit’ on the one hand, and the enactment of an expanded list of what cannot be done by GPU charities if they are to retain their characteristic as charities, is an emphatic manner in which Parliament wished to express itself.
- The impermissibility of any trade, or commercial activity or service, and income, from them, was intended to be conveyed through the prohibition, in the first part of the definition of GPU charities. The necessary implication which arises is that income (received as fee, cess, or any other consideration) derived from such ‘prohibited activities’ is necessarily motivated by profit.
- Therefore, what Parliament intended – through the amendments in question was to proscribe, involvement or engagement of GPU charities, from any form (“in the nature of”) of activities that were trade, business or commerce, or engage or involve in providing services in relation to trade, business or commerce- for a fee, cess or other consideration.

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- The inclusion of the term “in the nature of” was by design, to clarify beyond doubt, that not only business, trade or commerce, but all activities in the nature of, or resembling them, were proscribed. Likewise, service in relation to such activities, i.e., services relating, or pertaining to, such proscribed activities, too were forbidden.
- The reference to fee or cess, is in the opinion of the court, only to emphasize that even a statutory consideration, for a service to business, trade or commerce, would take the activity outside the definition of a GPU charity.
- The sense in which the expressions “cess, fee or other consideration” are used, is that if any amount, is received for trading, or business or commercial activity, or any services to such activity, then, notwithstanding their nomenclature (as fee or cess, i.e. that they are fixed under a law) the GPU charity cannot claim tax exempt status.
- To bring home this even more pointedly – and underline a break from the past – the application of such amounts (received in the course of trade, commerce, or business, or towards services in relation thereto) would be irrelevant, as evidenced by the term “irrespective”, in the fourth limb of reading Section 2(15).

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Key observations

- The paradigm change achieved by Section 2(15) after its amendment in 2008 and as it stands today, is that firstly a GPU charity cannot engage in any activity in the nature of trade, commerce, business or any service in relation to such activities for any consideration (including a statutory fee etc.).
- This is emphasized in the negative language employed by the main part of Section 2(15).
- Therefore, the idea of a predominant object among several other objects, is discarded. The prohibition is relieved to a limited extent, by the proviso which carves out the condition by which otherwise prohibited activities can be engaged in by GPU charities.
- The change brought about by the amendments in questions, however, place the focus on an entirely different perspective: that if at all any activity in the nature of trade, commerce or business, or a service in the nature of the same, for any form of consideration is permissible, that activity should be intrinsically linked to, or a part of the GPU category charity's object.
- Thus, the test of the charity being driven by a predominant object is no longer good law.
- Likewise, the ambiguity with respect to the kind of activities generating profit which could feed the main object and incidental profit-making also is not good law.

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- What instead, the definition under Section 2(15) through its proviso directs and thereby marks a departure from the previous law, is – firstly that if a GPU charity is to engage in any activity in the nature of trade, commerce or business, for consideration it should only be a part of this actual function to attain the GPU objective.
- Secondly – and the equally important consideration is the imposition of a quantitative standard - i.e., income (fees, cess or other consideration) derived from activity in the nature of trade, business or commerce or service in relation to these three activities, should not exceed the quantitative limit of ₹10,00,000 (w.e.f. 01.04.2009), ₹25,00,000 (w.e.f. 01.04.2012), and 20% (w.e.f. 01.04.2016) of the total receipts.
- Lastly, the “ploughing” back of business income to “feed” charity is an irrelevant factor – again emphasizing the prohibition from engaging in trade, commerce or business.
- So long as a GPU’s charity’s object involves activities which also generates profits (incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated), it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to Section 2(15) for receipts from such profits, is adhered to.

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- Yet another manner of looking at the definition together with Sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts.
- It may be useful to conclude this section on interpretation with some illustrations. The example of Gandhi Peace Foundation disseminating Mahatma Gandhi's philosophy (in Surat Art Silk) through museums and exhibitions and publishing his works, for nominal cost, ipso facto is not business.
- Likewise, providing access to low-cost hostels to weaker segments of society, where the fee or charges recovered cover the costs (including administrative expenditure) plus nominal mark up; or renting marriage halls for low amounts, again with a fee meant to cover costs; or blood bank services, again with fee to cover costs, are not activities in the nature of business.
- Yet, when the entity concerned charges substantial amounts- over and above the cost it incurs for doing the same work, or work which is part of its object (i.e., publishing an expensive coffee table book on Gandhi, or in the case of the marriage hall, charging significant amounts from those who can afford to pay, by providing extra services, far above the cost-plus nominal markup) such activities are in the nature of trade, commerce, business or service in relation to them. In such case, the receipts from such latter kind of activities where higher amounts are charged, should not exceed the limit indicated.

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