taxsutra All rights reserved

New Innings for Charitable Institutions!

Nov 08, 2022

Sachin Vasudeva
SCV & Co. LLP

Parul Jolly
SCV & Co. LLP

Aditi Gupta
SCV & Co. LLP

The year 2022 has been difficult for charitable organisations. First it was the bouncers in the form of amendments made by the Union Budget 2022 which the charitable organisations had to deal with, and now it is the googly in form of the Apex Court Judgement in the case of ACIT (Exemptions) v Ahemdabad Urban Development Authority [TS-814-SC-2022] which has put the charitable organisations on the back-foot. This was a batch of appeals before the Hon'ble Apex Court covering various Trusts, Authorities, Corporations, Institutions and Societies. The Apex Court clubbed the different entities on the basis their legal status and thereafter pronounced the judgement category wise. The decision of the Apex Court is of 149 pages and therefore an attempt has been made herein to highlight the salient aspects of the judgement.

Issue before the Apex Court

The issue before the Hon'ble Apex Court was the interpretation of the amendment made to section 2(15) of the Act vide Finance Act 2009 wherein a proviso was added to the said section restricting the applicability of the phrase 'general public utility' (hereinafter referred to as GPU). Till 2008-09, the revenue had accepted the charitable status of the entities concerned but post the amendment in all such cases the revenue took a stand that in all cases where the activity involved carrying on of trade, commerce or business, such entities would not be eligible for the charitable status if the monetary limit was breached as given in the proviso.

Section 2(15) as on 01.04.2009, read as follows:

(15) "charitable purpose" includes relief of the poor, education, medical relief, [preservation of

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm

taxsutra All rights reserved

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

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [ten lakh rupees] or less in the previous year

In the second proviso, the reference to ten lakhs was substituted, and the figure of rupees twenty-five lakhs, was inserted, by the Finance Act, 2011 (w.e.f. 01.04.2012). By Finance Act, 2015 (w.e.f. 01.04.2016), the first two provisos to Section 2(15) were deleted, and instead, the following proviso was inserted:

'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—

1. such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
2. the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year'

Contentions of the Revenue

The thrust of the arguments put forth by the Revenue was that the intent of the Parliament to change the law was to expressly forbid the tax exemption benefit if the entity was involved in carrying on trade or business. Reliance was placed on the decision of the Hon'ble SC in the case of Sole Trustee, Lok Shikshana Trust v. Commissioner of Income Tax [TS-5035-SC-1975-O]. The issue before the Court in the abovementioned case was interpretation of the words 'not involving the carrying on of any activity for profit' which were inserted to the definition of 'charitable purpose' by the 1961 Act. The claim made by the Trust was that the newspaper business was charitable in nature. The Hon'ble SC rejected the claim made by the Trust and held that 'activity for profit' means 'a motive which pervades the whole series of transactions effected by the person in the course of his activity'.

The Revenue further relied on the judgement of the Hon'ble SC in the case of Indian Chamber of Commerce v CIT [TS-5042-SC-1975-O] to argue that any element of commercial nature in the activities being carried on by a charitable entity would disentitle it from tax exemption. Attention of the Court was drawn to the provisions of section 2(15), Section 10(23C) and Section 13(1)(bb) [deleted vide Finance Act 1983] that only charities which were set up for the purpose of 'relief of the poor, education or medical relief, could claim exemption if they carried on business 'in the course of actual carrying out of a primary purpose of the trust or institution'. The omission of the GPU category charities, in section 13(1)(bb) meant that if such trusts or institutions carried on any business, even incidental to their objects, they would not be entitled to exemption.

The Revenue then assailed the decision of the Hon'ble Apex Court in the case of ACIT v Surat Art Silk [TS-5030-SC-1979-O] and argued that the Apex Court fell into error in holding that as long as the 'dominant' objective of the charity was to promote objects of general public utility, they were entitled to exemption. It was urged that if the history of the provision and amendments were kept in mind, the question of permitting activities that had any business or trade for consideration could not arise however, by later amendments, GPU category charities have been permitted to carry on activities in the nature of business, for consideration or service in relation to business and commerce, provided that is in course of actually achieving the charitable object and also that income from such activities does not exceed 20% of

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm

taxsutra All rights reserved

the total receipts.

In respect of statutory corporations, agencies, boards and authorities the Revenue argued that such entities might trace their origins to specific Central or State laws. However, if their activities are akin to or 'in the nature of business or trade or they provide services to businesses or trade, for consideration, fee or even cess they have to fulfil the mandate and restrictions under section 2(15). The Revenue relied on the decision of the SC in the case of New Delhi Municipal Council v State of Punjab to urge that state entities are not exempt from Union taxation if they engage in trade or business. It was further submitted that the effect of proviso (i) to Section 2(15) is that there can be no question of any incidental activity; nor can the proceeds of trade claim to be exempt merely because they are ploughed back to feed the charitable object.

Contentions of the assessee organisations

The legal and factual arguments put forth by the various organisations are summarised below:

In respect of developmental authorities and statutory corporations it was argued that such authorities were created under a special law and the functions that they were performing were pursuant to the objectives for which it was set up and therefore there could not be any element of trade, commerce of business nature in carrying on of those activities. In some cases the functions were sovereign in nature and were of general service to the public. The entities function on a no-profit no loss basis and even if any surplus is generated it is used for furthering the objectives of the entity. Another argument that was put forth was that the words 'trade', 'commerce' and 'business' always mean and have been interpreted to mean activities driven by profit. Thus if an entity is primarily set up for charitable purposes but it carries activities that generate surplus or money, they cannot be per se excluded from consideration for tax benefit.

It was canvassed by the trade promotion bodies that the proviso to section 2(15) only bars commercial/business activities undertaken for profit motive and mere earning of income or charging fees is not barred by the proviso. Whereas on behalf of the cricket associations, it was that the objects of a trust are decisive and every surplus cannot be construed as profit. Accordingly, profits from trade or business arising out of property held under trust for charitable purpose, if ploughed back to the extent of 100% cannot be termed as a commercial activity. It was also argued that any statutory cess, or fee, authorised or compelled by law, which is within the domain of the state legislature cannot be construed as taxable having regard to the principles laid down by the Apex Court in its earlier decisions. Another argument was put forth that cricket is a form of education and if it is not considered as a field of education, it is still an object of general public utility and therefore selling tickets for a sport performance or match is to promote cricket and not 'trade'.

For the professional bodies, it was submitted that the surplus generated due to the fees collected from the activities carried on is not business or commercial activity. It was urged that the same is wholly incidental and ancillary to the objects which is to provide education and conduct examinations of the candidates enrolled for the professional courses. It was argued that that the activities of such bodies fell within the ambit of 'education' and not the GPU category.

In respect of the Tribune Trust was submitted that collecting advertisements for consideration cannot be a business activity undertaken for profit because the sale price of the newspaper is Rs 2 whereas the cost of printing each newspaper is Rs 12 and the deficit could only be made up through advertisements. It was also argued that it was never intended and in fact, not run on profitable basis. No part of its income was ever disbursed to any private individual through profit sharing or otherwise, nor distributed for any purpose other than the activities of the Trust.

Decision of the Court for various assessee's

1. *Statutory Corporations, authorities or bodies, Commissions*

Statutory Corporations, Boards, Authorities, Commissions, etc. (by whatsoever names called) in the housing development, town planning, industrial development sectors are involved in the advancement of objects of general public utility, therefore are entitled to be considered as charities in the GPU categories.

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm

taxsutra All rights reserved

The determinative tests to consider when determining whether such statutory bodies, boards, authorities, corporations, autonomous or self-governing government sponsored bodies, are GPU category charities:

(a) Does the state or central law, or the memorandum of association, constitution, etc. advance any GPU object, such as development of housing, town planning, development of industrial areas, or regulation of any activity in the general public interest, supply of essential goods or services - such as water supply, sewage service, distributing medicines, of food grains (PDS entities), etc.

(b) Rendition of service or providing any article or goods, by such boards, authority, corporation, etc., on cost or nominal mark-up basis would ipso facto not be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce

(c) where the controlling instrument, particularly a statute imposes certain responsibilities or duties upon the concerned body, such as fixation of rates on pre-determined statutory basis, or based on formulae regulated by law, or rules having the force of law, setting apart amenities for the purposes of development, charging fixed rates towards supply of water, providing sewage services, providing food-grains, medicines, and/or retaining monies in deposits or government securities and drawing interest therefrom or charging lease rent, ground rent, etc., per se, recovery of such charges, fee, interest, etc. cannot be characterized as “fee, cess or other consideration” for engaging in activities in the nature of trade, commerce, or business, or for providing service in relation in relation thereto

(d) Does the statute or controlling instrument set out the policy or scheme, for how the goods and services are to be distributed; whether in case surplus or gains accrue, the corporation, body or authority is permitted to distribute it, and if so, only to the government or state; the extent to which the state or its instrumentalities have control over the corporation or its bodies, and whether it is subject to directions by the concerned government, etc.

(e) As long as the concerned statutory body, corporation, authority, etc. while actually furthering a GPU object, carries out activities that entail some trade, commerce or business, which generates profit (i.e., amounts that are significantly higher than the cost), and the quantum of such receipts are within the prescribed limit (20% as mandated by the second proviso to Section 2(15)) – the concerned statutory or government organisations can be characterized as GPU charities. It goes without saying that the other conditions imposed by the seventh proviso to Section 10(23C) and by Section 11 have to necessarily be fulfilled.

(f) If in the course of its functioning it collects fees, or any consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision) - such amounts are not consideration towards trade, commerce or business, or service in relation thereto. However, amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business. It is for those amounts, that the quantitative limit in proviso (ii) to Section 2(15) applies, and for which separate books of account will have to be maintained under other provisions of the IT Act.

2. *Professional Regulatory Bodies*

2.1 The CA Institute is a creature of the Institute of Chartered Accountants Act, 1949. By Section 4 of this Act, every person who qualifies in the examination conducted by the Institute has to seek registration as a Chartered Accountant. Only when members obtain certificates issued by the Council of the Institute under Section 6 can they be known as a ‘Chartered Accountant’ and be entitled to practice that profession (Sections 6 and 7). The Council of the Institute is constituted under Section 9 which defines such constitution and the manner for holding elections, etc. The functions of the Council by Section 15(2A) of the CA Act, include approving the academic courses and their contents, examining the candidates, regulation and articleship assistance, prescribing qualification for entry of persons in the register, collection of fees from members; the regulation and maintenance and status of the professional qualifications of the members of the Institute, etc. These provisions of the Act clarify beyond a doubt that the Institute performs statutory functions in the larger public interest of regulating the standards of education, leading up to the profession of Chartered Accountancy and also prescribing standards of professional etiquette, behaviour, and discipline of its members. No other entity or body has the authority

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm

in law to perform the functions that the Institute does. It, therefore, clearly falls in the description of a charity advancing general public utility.

2.3 Having regard to the previous discussion on the nature of charities and what constitutes activities in the 'nature of trade, business or commerce', the functions of the Institute ipso facto does not fall within the description of such 'prohibited activities'. The fees charged by the Institute and the manner of its utilisation are entirely controlled by law. Furthermore, the material on record shows that the amounts received by it are not towards providing any commercial service or business but are essential for the providing of service to the society and the general public.

2.4 Similarly, there are several other regulatory bodies that discharge functions which are otherwise within the domain of the State. A singular characteristic of ICAI and other statutory bodies which can be said to regulate specific functions and professions (including the profession of Cost and Work Accountants, and Company Secretary, etc.) is the powers conferred upon them by the statutes to prescribe standards and enforce them through disciplinary sanctions. Therefore, it is held that bodies which regulate professions and are created by or under statutes which are enjoined to prescribe compulsory courses to be undergone before the individuals concerned is entitled to claim entry into the profession or vocation, and also continuously monitor the conduct of its members do not ipso facto carry on activities in the nature of trade, commerce or business, or services in relation thereto.

2.5 At the same time, this court would sound a note of caution. It is important, at times, while considering the nature of activities (which may be part of a statutory mandate) that regulatory bodies may perform, whether the kind of consideration charged is vastly or significantly higher than the costs it incurs. For instance, there can be in given situations, regulatory fees which may have to be paid annually, or the body may require candidates, or professionals to purchase and fill forms, for entry into the profession, or towards examinations. If the level of such fees or collection towards forms, brochures, or exams are significantly higher than the cost, such income would attract the mischief of proviso to Section 2(15), and would have to be within the limits prescribed by sub-clause (ii) of the proviso to Section 2(15).

3. *Authorities under the Seeds Act*

3.1 These entities are set up as societies under Section 8 of the Seeds Act, and comprise of farmers, farmers co-operatives' representatives, seed certification authorities, etc. The task of these agencies and authorities is certification of seeds, to decide whether to certify supply of seeds of "any notified kind or variety", by applicants who may wish to offer them for trade. These agencies/authorities scrutinize the samples to ensure they conform to the requisite standards.

3.2 The functioning of the seed certification agency, is a crucial one, in those only seeds conforming to prescribed standards, are permitted to be traded and used, by farmers. Such standards are in the context of the fact that agriculture is one of the mainstays of the economy, and furthermore, pivotal for food security essential as they ensure efficacy of seeds and guarantee to the farmers that they can be relied upon. The essential nature of the regulatory function performed by these certification agencies is obvious. The nature of their activities is not by way of trade, commerce or business, nor service in relation to trade commerce, business, for some form of consideration.

4. *Trade promotion bodies, councils, associations and organisations*

4.1 Organizing meetings, disseminating information through publications, holding awareness camps and events, would be broadly covered by trade promotion. However, when a trade promotion body provides individualized or specialized services such as conducting paid workshops, training courses, skill development courses certified by it, and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective businesses, the claim for GPU status needs to be scrutinised more closely. Such activities are in the nature of services "in relation to" trade, commerce or business. These activities, and the facility of consultation, or skill development courses, are meant to improve business activities, and make them more efficient. The receipts from such activities clearly are 'fee or other consideration' for providing service "in relation to" trade, commerce or business.

4.2 Noting the facts of AEPC, the Court held that besides the above activities, it also books bulk space, which is then rented out to individual Indian exporters, who showcase their products and services, and

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm

taxsutra All rights reserved

ultimately secure export orders. Towards these services, i.e., booking and providing space, AEPC charges rentals. Now, these rents are not towards fixed assets owned by it. They are in fact charges, or fees, towards services in relation to business; likewise, the skill development and diploma courses conducted by it, for which fees are charged, are to improve business functioning of garment exporters. Furthermore, market surveys and market intelligence, especially country specific activities, aimed at catering to specified exporters, or specified class of exporters, is also service in relation to trade, commerce or business.

4.3 In the circumstances, it cannot be said that AEPC's functioning does not involve any element of trade, commerce or business, or service in relation thereto. Though in some instances, the recipient may be an individual business house or exporter, there is no doubt that these activities, performed by a trade body continue to be trade promotion. Therefore, they are in the "actual course of carrying on" the GPU activity. In such a case, for each year, the question would be whether the quantum from these receipts, and other such receipts are within the limit prescribed by the sub-clause (ii) to proviso to Section 2(15). If they are within the limits, AEPC would be for that year, entitled to claim benefit as a GPU charity.

5. *Non-statutory bodies- ERNET, NIXI and GSI India*

5.1 Having regard to the nature of ERNET's activities, it cannot be said that they are in the nature of trade, commerce or business, or service, towards trade, commerce or business. It has to receive fees, to reimburse its costs. The materials on record nowhere suggest that its receipts (in the nature of membership fee, connectivity charges, data transfer differential charges, and registration charges) are of such nature as to be called as fees or consideration towards business, trade or commerce, or service in relation to it. The functions ERNET performs are vital to the development of online educational and research platforms. For these reasons, it is held that the impugned judgment, which upheld the ITAT's order, does not call for interference.

5.2 Having regard to the findings on record and the materials placed by the parties, it is evident that NIXI carries on the essential crucial purpose of promoting internet services and more importantly, regulating domain name registration which is extremely essential for internet users in India. The Union Government's object of setting up of internet exchange is part of its essential function as a government to regulate certain segment of the communication networks. In the absence of a single entity authorized to register ".in" domain names, there is bound to be chaos or confusion. In view of the foregoing discussion, the Court held that the revenue's contention that NIXI does not merely carry-on public purpose of regulatory activity but is involved in trade, commerce, or business or in providing service in relation thereto, cannot be accepted.

5.3 In the opinion of this Court, GS1's functions no doubt are of general public utility. However, equally the services it performs are to aid businesses manufactures, tradesmen and commercial establishments. Bar coding packaged articles and goods assists their consigners to identify them; helps manufactures, and marketing organizations (especially in the context of contemporary times, online platforms which serve as market places). The objective of GS1 is therefore, to provide service in relation to business, trade or commerce for a fee or other consideration. It is also true, that the coding system it possesses and the facilities it provides, is capable of and perhaps is being used, by other sectors, in the welfare or public interest fields. However, in the absence of any figures, showing the contribution of GS1's revenues from those segments, and whether it charges lower amounts, from such organizations, no inference can be drawn in that regard. The materials on record show that the coding services are used for commercial or business purposes. Having regard to these circumstances, the Court is of the opinion that the impugned judgment and order calls for interference.

6. *State Cricket Associations*

6.1 While deciding the matter for the state cricket associations, the Apex court noted the facts relating to the Gujarat Cricket Association (GCA). The Court noted that the objects of GCA (and other associations) are to control, supervise, regulate, promote or encourage, and develop the game of cricket in the area under its jurisdiction. The association can also undertake any other and all activities which may be beneficial to it. GCA's objects include activities aimed at creating, fostering and maintaining friendly and cordial relationship through sports tournaments and competitions, to create a healthy spirit through the medium of sports in general, and cricket in particular.

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm

taxsutra All rights reserved

6.2 The Court relying on the decision of the Apex Court in the case of Lok Shikshana Trust (supra) concluded that the term 'education' it would entail scholastic education. Therefore, there is no doubt that the claim of the present sport associations will not fall within 'education' and will have to be examined under the fourth limb of Section 2(15) – i.e., GPU category, if it is to make a case for tax exemption.

6.3 The Court noted that game of competitive cricket, at the organizational level is structured in such a manner that BCCI has umbilical ties with the state associations and therefore, the state associations and BCCI are linked closely. In the course of conducting matches (which are scheduled by the BCCI as the national co-ordinating body), apart from amounts received towards sale of entry tickets, the state associations also receive advertisement money, sponsorship fee, etc. from the BCCI. Aside from these, media rights - i.e., broadcasting rights to each national or international event conducted at various locales owned by the state associations, and digital rights (all of which are exclusive, in nature) - are also auctioned by BCCI.

6.4 The Court further held that on a close scrutiny of the expenses borne, having regard to the nature of receipts, the expenditure incurred by Cricket Associations does not disclose that any significant proportion is expended towards sustained or organized coaching camps or academies. In each case, and for every year therefore, the tax authorities are under an obligation to carefully examine and see the pattern of receipts and expenditure. It goes without saying that there need not be an exact correlation or a proportionate division between the receipt and the actual expenditure. This is in line with the principle that what is an adequate consideration for something which is agreed upon by parties is a matter best left to them. These observations are not however, to be treated as final; the parties' contentions in this regard are to be considered on their merit.

7. Private Trusts

7.1 During the course of submissions, it was urged that advertisement revenue should not be treated as business or commercial receipts since that virtually is the lifeblood which sustains the activity of publication of newspapers. It was highlighted that the object of maintaining the activity of publishing and distribution of newspaper remains the advancement of general public utility, as it has the effect of both notifying and educating the general public about the current affairs and developments. The inclusion of advertisements also serves as information to the general public, especially in areas of employment, availability of resources, etc. Therefore, publication of advertisement is intrinsically connected with the activity of printing and publishing of newspapers.

7.2 The publication of advertisements for consideration, in the opinion of the court, by the newspaper, cannot but be termed as an activity in the nature of carrying on business, trade or commerce for a fee or consideration. That the newspaper published by the trust ("the Tribune") in this case is funded mainly through advertisement is no basis for holding that publishing such advertisements by the Trust does not constitute business. Publishing advertisements is obviously to garner receipts which are in the nature of profit. Now, by virtue of the amended definition of Section 2(15), GPU charities can engage themselves in business or commercial activity or profit, only if the receipts from such activities do not exceed the quantitative limit of the overall receipts earned in a given year. While the assessee's contention that publication of advertisement is intrinsically linked with newspaper activity (thereby fulfilling sub-clause (i) of the proviso to Section 2(15), i.e. an activity in the course of actual carrying on of the activity towards advancement of the object) is acceptable, nevertheless, the condition imposed by sub-clause (ii) of the proviso to Section 2(15) has to also be fulfilled. In the present case, that percentage had been exceeded, as evident from the record. In the light of the foregoing discussion, this court is of the opinion that the impugned judgment and order of the Punjab and Haryana High Court cannot be sustained, to the extent it holds that the Tribune trust is not a GPU charity.

Comments on the decision of the Apex Court

It is now clear that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration"); However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that:

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm

taxsutra All rights reserved

1. the activities of trade, commerce or business are actually carried out for advancement of its objects of GPU; and
2. the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit a specified.

The judgement of the Apex Court to a large extent hinges upon the fact whether the activity is being carried out by a statutory body which is providing public service or not. The Court has drawn a distinction that if there is a legal mandate imposed by a statute to carry out an activity then the rigours of the proviso to section 2(15) would not be attracted. With utmost respect to their Lordships, this does not seem to be the correct way forward. By taking this approach the Court has overlooked the advancement of general public utility work done by various other entities.

The Court in its judgement did lay down the principle that generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, could be considered to be “trade, commerce, or business” or any services in relation thereto. However, the moot question is that would this principle apply to all charities carrying on GPU or its application is restricted only to statutory corporations. What if trade promotion bodies were to ensure that the surplus that they earn is only nominal, then would a claim under GPU be tenable? The answer is that it should be because, ‘trade, commerce or business’ is essentially for profit. If the surplus is only nominal in the sense that it is mere recovery of costs then the whole argument of the activity being ‘trade, commerce or business’ falls flat. Likewise, in case of other private trusts wherein activities are being carried on to sustain the charitable work as donations are not sufficient, would the argument of a nominal surplus hold good. Instead of painting all entities with the same brush, the better course would have been to allow all the entities to demonstrate from their books of account whether the recovery is nominal or at market price.

The judgement is also regressive in its interpretation of the word ‘education’. By restricting education to only scholastic education, the Court has turned the clock backwards. There are many instances where the interpretation of taxing statute has changed over a period of time in order to keep pace with contemporary thinking and this was a perfect opportunity to do so with the interpretation of the term ‘education’. The Hon’ble Madras High Court in the case of CIT v Sri Thyaga Brahma Gana Sabha [TS-5377-HC-1990(MADRAS)-O] held that imparting education in music and dance was education for the purpose of section 2(15) of the Act. The High Court considered the Apex Court decision in Lok Shikshana Trust’s case and held that the Apex Court’s interpretation of the term ‘education’ was too restrictive. It would not be out of place to mention that even the New Education Policy 2022 of the Government of India has moved from the traditional concept of education to a more wholistic approach ton education. Therefore, if the tax laws do not keep pace with these concepts, then it will be a big blow to institutes which provide such education.

The Court has rightly held that professional bodies are not carrying on any ‘trade, commerce or business’. However, the ICAI provides opinions to business entities for a fee. The ICAI also holds events and is hosting the World Congress of Accountants in India for which it is charging a fee from its members who are taking up a stall besides registration fee. The fee is not nominal and therefore, such activities being undertaken by professional institutes, the ICAI in this case would come up for a closer scrutiny.

The Chambers of Commerce are non-statutory bodies but the work they perform is for public purpose. They would also be impacted by this judgement but again would the argument of generating a nominal surplus come to their rescue, only time will tell.

Assuming that an entity gets covered by the rigours of the proviso, then how would the same be dealt with by the tax authorities. By the amendments made by Finance Act 2022, it is clear that in such cases, the exemption under section 11 and 12 of the Act would not be allowed and the income would be computed as per sub-section (10) of section 13. Further, as long as the commercial activity is incidental or is being carried on as part of the objects of the entity, the Principal Commissioner cannot revoke the charitable status of the entity as per section 12AB of the Act. However, the question is whether this would be followed by the officers at the ground level? The CBDT should come up with a detailed guidance on how to apply the judgement of the Hon’ble Court such that across the Country there is uniformity in its application.

Downloaded by sachin.vasudeva@scvindia.com at 28/11/22 03:06pm