

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.07.2013

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W.P.(C) No.3147/2012

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND
ANR.** Petitioners

versus

**THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS), DELHI
AND ORS.** Respondents

AND

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W.P.(C) No.3148/2012

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND
ANR.** Petitioners

versus

**THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS), DELHI
AND ORS.** Respondents

AND

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W.P.(C) No.7181/2012

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND
ANR.** Petitioners

versus

**THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS), DELHI
AND ORS.** Respondents

Advocates who appeared in this case:

For the Petitioners

: Mr N. K. Poddar, Sr. Advocate with
Mr Promad Dayal, Mr Nikunj Dayal,
Ms Payal Dayal and Mr Ranjit Kumar Singh

For the Respondents

: Mr Abhishek Maratha, Sr. Standing Counsel
with Ms Anshul Sharma for respondents No.1 to 3.
Mr Amrit Pal Singh with Ms Sweety
Manchanda for respondent No.4.

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, THE ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These writ petitions have been filed by the Institute of Chartered Accountants of India. The petitioner has challenged the orders passed by the Director General Income Tax (Exemptions), (hereinafter referred to as “DGIT(E)”), refusing to grant exemption under Section 10(23C)(iv) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) to the petitioner. Whereas writ petition No.3147/2012 impugns the order dated 13.04.2012 declining the exemption with respect to the assessment years 2006-2007, 2007-2008 and 2008-2009, the writ petition No.3148/2012 has been preferred against the order dated 13.04.2012 passed by the DGIT(E) refusing to grant the exemption to the assessee under Section 10(23C)(iv) of the Act for the assessment years 2009-2010 and 2010-2011. The assessee has preferred the writ petition No.7181/2012 against the order dated 28.09.12 passed by the DGIT(E) declining exemption for the assessment year 2011-2012. All the three orders impugned in the three petitions are similarly worded. As the three petitions raise common issues the same have been considered together.

2. The petitioner has been incorporated by virtue of Section 3 of the Institute of Chartered Accountants Act, 1949 (hereinafter referred to as the “ICAI Act”) as a body corporate which is constituted by all members whose names are entered in the register of members maintained under the ICAI Act.

3. The Income Tax Authorities have, since incorporation of the petitioner, considered the petitioner as having been formed for charitable purposes as defined under Section 2(15) of the Act. Declarations that the petitioner is entitled to the exemption under Section 10(23)(iv) of the Act subject to fulfilment of certain conditions have been notified by the Income Tax Authorities from time to time until the assessment year 2005-2006. The last notification in this regard was dated 18.10.2004 and is quoted below:-

“GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES
NEW DELHI, THE 18.10.2004
NOTIFICATION
(INCOME TAX)

S.O. No. In exercise of the powers conferred by sub clause (iv) of clause (23C) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies “The Institute of Chartered Accountants of India, New Delhi for the purpose of the said sub clause for the assessment years 2003-2004 to 2005-2006 subject to the following conditions, namely:-

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

separate books of accounts are maintained in respect of such business.

(iv) the assessee will regularly file its return of income before the Income Tax Authority in accordance with the provisions of the Income Tax Act, 1961.

(v) that the event of dissolution, its surplus and the assets will be given to a charitable organization with similar objectives.

Sd/-

Deepak Garg

Under Secretary to the Government of India
(F.No.197/115/2004-ITA-I)”

4. The petitioner applied for the renewal of the exemption under Section 10(23C)(iv) of the Act in the prescribed form (Form No.56 prescribed under rule 2C of the Income Tax Rules, 1962) for the assessment years 2006-2007, 2007-2008 and 2008-2009. However, the petitioner received no response to the said application.

5. The petitioner, filed its return of income for the assessment year 2006-2007 on 31.10.2006 and the return of income for the assessment year 2007-2008 on 31.10.2007. In both the returns, the assessee showed its taxable income as nil and claimed exemption as available under Section 11 of the Act.

6. On 07.05.2008, the petitioner once again made an application in the prescribed form for renewal of the exemption under Section 10(23C)(iv) of the Act for the assessment year 2009-2010. No response to this application was also received by the petitioner at the material time. However, the Assessing Officer took up the return filed by the petitioner for the assessment year 2006-2007 for scrutiny and determined the total taxable income of the petitioner at

₹33,47,92,000/- and computed the tax payable thereon at ₹14,96,59,474/- and raised a demand accordingly.

7. The petitioner was denied exemption under the Act on the ground that the petitioner was holding coaching classes for preparing students for the examinations being conducted by the petitioner and was charging fees for the same. The Assessing Officer concluded that the activity undertaken by the petitioner of providing coaching to students amounted to carrying on business and income from the same was liable to be treated as business income. As the petitioner was not maintaining separate books of accounts with respect to the activity of coaching students, the Assessing Officer denied the petitioner's claim under Section 11 of the Act. The Assessing Officer further held that the petitioner had violated the provisions of Section 13(1)(d) of the Act as a balance of ₹5,65,48,000/- was outstanding against ICAI Accountant Research Foundation in the books of the petitioner. The Assessing Officer held that this represented an amount invested or deposited which is not in accordance with the form or modes specified under Section 11(5) of the Act and thus, the benefit of the exemption under Section 11 of the Act was not available to the petitioner.

8. It was contended on behalf of the petitioner before the Assessing Officer that the petitioner was not carrying on any business and providing coaching to the students was a part of its function of conducting a course in accountancy which was not business and thus, would not disqualify the petitioner from the exemption as available under Section 11 of the Act. The petitioner also contended that the amount outstanding against the ICAI Accountant Research Foundation was not an investment but the amount expended by the petitioner in establishing another institute in furtherance of its object. The petitioner explained that ICAI Accountant Research Foundation was a company registered under Section 25 of the Companies Act, 1956 and intended to establish a university in

Rajasthan for education in the field of Accountancy. Research and imparting education in the field of Accountancy was one of the objects for which the petitioner had been constituted, accordingly, it was contended that the amount expended by the petitioner and standing to the debit of ICAI Accountant Research Foundation amounted to applying funds of the petitioner towards its object and could not be considered as a deposit or investment made by the petitioner. Both the contentions raised by the petitioner were rejected by the Assessing Officer by the order dated 31.12.2008. The assessment order dated 31.12.2008 was carried in appeal by the petitioner before the CIT (Appeals).

9. With respect to the assessment pertaining to the assessment year 2007-2008, the Assessing Officer adopted a similar view as was adopted by the Assessing Officer for the Assessment year 2006-2007 and denied the petitioner benefit of exemption available under Section 11 of the Act and passed an assessment order dated 30.12.2009 assessing the petitioner's taxable income at ₹35,34,12,000/-. This assessment order was also carried in appeal by the petitioner before the CIT (Appeals).

10. In the meantime, the Commissioner of Income Tax passed an order dated 29.03.2010 under Section 263 of the Act holding that the Assessment order dated 21.08.2007 passed by the Assessing Officer with respect to the assessment year 2005-06 was prejudicial to the interest of the revenue and the petitioner could not be allowed exemption under Section 10(23C)(iv) of the Act as the petitioner was conducting coaching classes which according to the Commissioner of Income Tax was not a charitable activity and would disentitle the petitioner from claiming exemption under Section 11 of the Act.

11. The petitioner approached the Income Tax Appellate Tribunal for setting aside the said order and the Tribunal passed an order dated 18.10.2010 allowing

the appeal of the petitioner. The Tribunal held that the activity of the petitioner revolved around the education and training for Chartered Accountancy and that the view that coaching activity was not permissible under the Act was contrary to the Act. The relevant extract of the decision of the Tribunal is quoted below:-

“15. The Institute as such merely it is receiving coaching fee from students for imparting education, cannot be said to have been carrying on business and accordingly it is not required to maintain separate books of accounts as alleged by DIT(E). The income of the coaching classes earned by the assessee institute is within its objects and its Regulations and further these activities are educational activity within the definition of section 2(15) of the Income Tax Act, 1961, and consequently therefore cannot be activity of business for which separate books of accounts are required to be maintained. The order of the learned DIT(E) is therefore not sustainable as the income of the Institute is exempt not only u/s 10(23C)(iv) but also under section 11. The institute is an educational institute and hence its income will also be exempt under section 11 as education falls within the meaning of charitable purpose under section 2(15) of the Act.”

12. An appeal was preferred on behalf of the revenue against the order dated 18.10.2010 passed by the Tribunal. This court rejected the appeal vide its decision dated 19.09.2011 which is reported as **Director General of Income Tax (Exemptions) v. Institute of Chartered Accountants of India: [2012] 347 ITR 86 (Del)**. We are informed that a special leave petition has been preferred against the order dated 19.09.2011 which is pending.

13. The CIT (Appeals) also allowed the appeals preferred by the petitioner against the assessment orders passed in respect of the assessment years 2006-07 & 2007-08. The revenue filed appeals before the Income Tax Appellate Tribunal against the orders dated 31.12.2010 and 24.01.2011 passed by CIT (Appeals) in respect of assessment years 2006-07 & 2007-08. The said appeals were also

dismissed by the Tribunal vide orders dated 09.01.2012 & 16.06.2011 respectively.

14. The revenue filed an appeal under Section 260A of the Act against the order dated 16.06.2011 passed by the Tribunal in respect of the assessment year 2007-08. The said appeal was disposed of by this court by an *ex-parte* order dated 11.05.2012. This court held that the dominant purpose and objective of the institute was to regulate the profession of Chartered Accountants in India. The coaching facilities provided by the petitioner for its members and other students are with the pre-dominant object of maintaining and upholding standards of the profession of chartered accountancy and is in furtherance of the object for which the petitioner has been established. This court further held that there was no finding by the Assessing Officer that the pre-dominant object of the petitioner in holding coaching classes was to generate profits. Special leave petitions have been preferred both by the petitioner as well as by the revenue in the Supreme Court which, we are informed, are pending.

15. The DGIT(E) passed an order dated 19.05.2009 rejecting the application dated 07.05.2008 filed by the petitioner seeking the notification under Section 10(23C)(iv) of the Act. The petitioner preferred the writ petition against the order dated 19.05.2009 passed by DGIT(E) which was allowed by this court by the judgment dated 19.09.2011 which is reported as **The Institute of Chartered Accountants of India and Anr v. Director General of Income Tax (Exemptions) and Ors: [2012] 347 ITR 99 (Del)**. This court set aside the order dated 19.05.2009 passed by DGIT(E) and remanded the matter for consideration of certain facts and aspects as well as further developments which had taken place subsequent to the passing of the order dated 19.05.2009. The DGIT(E) passed a remand order dated 13.04.2012 once again rejecting the petitioner's application for exemption under Section 10(23C)(iv) of the Act and the said order is the

subject matter of challenge in Writ Petition No. 3148/2012. In the meantime, the Assessing Officer has also passed an order dated 26.12.2011 denying the exemption under Section 11 of the Act to the petitioner. The petitioner has preferred an appeal against the assessment order dated 26.12.2011 which has been allowed by CIT (Appeals) vide its order dated 31.01.2013.

16. In respect to the assessment year 2008-2009, the Assessing Officer passed an assessment order dated 27.12.2010 under Section 143(3) of the Act and allowed the petitioner the exemption under Section 11 of the Act. The Assessing Officer categorically found that the activities of the petitioner fell within the ambit of Section 2(15) of the Act and further that the petitioner had complied with the provisions of Section 11 of the Act. The Assessing Officer further held that no violation of Section 13 of the Act was found. Although the proceedings under Section 263 of the Act were initiated by the Commissioner of Income Tax in respect of the assessment order dated 27.12.2010, however, it has been stated by the learned counsel for the petitioner that the said proceedings have been dropped and no order under Section 263 of the Act has been passed by the Commissioner of Income Tax.

17. In the myriad of all the proceedings as noted above, the central issue remains the same, which is, whether the petitioner is an institution established for charitable purposes having regard to the objectives of the institution. Charitable purpose has been defined under Section 2(15) of the Act and the controversy revolves around the question whether activities carried out by the petitioner fall within the ambit of the definition of “charitable purpose”. Another issue that also needs to be considered is whether funds paid by the petitioner to ICAI Accounting Research Foundation is in violation of Section 13 of the Act which would disentitle the petitioner from claiming exemption under the Act.

18. The course of Chartered Accountancy is a distance education programme where study material is provided by the petitioner institute to all the students undergoing the pre-qualification course. In order to facilitate further learning, the petitioner institute also organizes class room instructions by way of coaching/revisionary classes for students enrolled with it. The coaching and revisionary classes are with respect to the curriculum approved by the petitioner institute for various examinations. These coaching classes are with the object to prepare the students for the examinations being conducted by the petitioner institute.

19. The petitioner institute charges fees ranging between ₹ 1,500/- to ₹ 2,500/- for one group and ₹ 4,000/- to ₹ 6,000/- for both groups depending on the places or cities where such classes are held. The Board of studies of the petitioner – institute has an expert faculty who conducts oral classes.

20. The petitioner has contended that the coaching and revisionary classes are conducted without any commercial motive and are a part of its object of imparting education to the students registered with it. It is further contended that students enrolled with the petitioner institute are provided with comprehensive study material including model test papers and question banks for which no separate fee is charged. These activities of the petitioner institute are stated to be undertaken without any profit motive and in discharge of its statutory duties under the ICAI Act.

21. The petitioner institute has also asserted that it incurs administrative expenses which include salaries paid to the staff employed at various branches of the petitioner institute as well as depreciation on the assets situated at various branches. The branches of the institute are the main centres for holding coaching and revisionary classes. It is contended that the common administrative expenses

(including salaries and depreciation) incurred by the petitioner institute exceed the surplus generated from the coaching facilities provided to the students.

22. It has been contended on behalf of the petitioner that a large number of students are enrolled with the petitioner and during the financial year ending 31.03.2012, 10,70,839 students appeared for examination conducted by the petitioner institute. It has been further contended on behalf of the petitioner that providing education to the students enrolled with the institute at the pre-qualification stage as well as to member chartered accountants is the primary and the main object of the petitioner institute and the activity of controlling and regulating the conduct of the profession of chartered accountants is wholly ancillary and incidental to its main object of providing formal education. It is, thus, contended that the first proviso to Section 2(15) of the Act is wholly inapplicable to the activity for providing education, thus, the exemption under Section 10(23C)(iv) of the Act cannot be denied to the petitioner on account of the petitioner institute holding coaching classes or carrying on certain incidental activities for a fee.

23. In the alternative, it is submitted that the objects and activities carried on by the petitioner fall in two categories specified in the definition of the expression “charitable purposes”. The first category being “education” insofar as the petitioner institute provides formal education and training to the students undergoing the chartered accountancy course as well as post-qualification courses such as corporate management, tax management, information system, audit etc. The other category being “advancement of any other object of general public utility” insofar as the petitioner controls and regulates the profession of chartered accountants. It is contended that the activity of holding coaching classes is an integral part of providing formal education and, thus, is relatable to

the first object of providing education to which the first proviso to section 2(15) of the Act is wholly inapplicable.

24. It is submitted by the petitioner that the amount expended by the petitioner on account of ICAI Accounting Research Foundation does not violate Section 13 of the Act as ICAI Accounting Research Foundation is itself a charitable institution as being the company incorporated under Section 25 of the Companies Act, 1956 which cannot distribute profits to its members. It is further pointed out that Section 15(2)(k) of the ICAI Act authorises the petitioner for giving financial assistance to persons other than members of the council for carrying out research in accountancy. The balance outstanding against ICAI Accounting Research Foundation, thus, represents application of funds towards the objectives of the petitioner institute and cannot be stated to be violative of Section 13 of the Act. The petitioner has further placed reliance on assessment order dated 27.12.2010 wherein the Assessing Officer has accepted that the petitioner has not violated section 13 of the Act.

25. We have heard the counsel for the parties.

26. Section 2(15) and Section 10(23C)(iv) of the Act are relevant and are extracted hereunder:-

“2. - Definitions.-In this Act, unless the context otherwise requires,—

XXXX XXXX XXXX XXXX XXXX

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

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.”

XXXX XXXX XXXX XXXX XXXX

“10. Incomes not included in total income.-In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

XXXX XXXX XXXX XXXX XXXX

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

XXXX XXXX XXXX XXXX XXXX

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

27. A plain reading of Section 2(15) of the Act indicates that expression “charitable purpose” has been divided into six categories, namely, (i) relief to poor, (ii) education, (iii) medical relief, (iv) preservation of environment including water sheds (forest and wildlife), (v) preservation of monuments and places or objects of artistic or historical importance, and (vi) advancement of any other object of general public utility.

28. Section 2(15) was substituted w.e.f. 01.04.2009. Prior to its substitution by the Finance Act, 2008, section 2(15) as amended by the Finance Act, 1983 read as under:-

“15:- ‘Charitable purpose’ includes relief to the poor, education, medical relief and the advancement of any other object of general public utility.”

29. Section 2(15) was substituted by the Finance Act, 2008 by introducing the proviso, the effect of which was to exclude from the ambit of the expression “charitable purpose” any activity which is in the nature of a trade, commerce or business or any activity of rendering service in relation to any trade, commerce or business for a fee or any other consideration.

30. The issue whether the income of the petitioner is exempt under Section 10(23C)(iv) of the Act has to be considered by examining the provisions of the ICAI Act, the functions performed and the activities carried on by the petitioner and determining whether the same fall within the definition of the expression ‘charitable purpose’.

31. The petitioner - Institute of Chartered Accountant of India is a statutory body established by the ICAI Act. Prior to enactment of the ICAI Act, in 1932 the Government of India had framed the Auditors Certificates Rules in 1932 in exercise of the powers conferred by section 144 of the Indian Companies Act, 1913 and the profession of accountancy in India was regulated by those rules. The Indian Accountancy Board used to advise Government in all matters relating to the profession and assisted the Government in maintaining the standards of the professional qualifications and the conduct required of the members of the profession. The ICAI Act was enacted to constitute an autonomous association of accountants to maintain standards of professional competence and regulate the profession of chartered accountants. The Statement of objects and reasons for enactment of the ICAI Act clearly indicates the object and purpose for which the Petitioner Institute has been established and is quoted hereunder:

“STATEMENT OF OBJECTS AND REASONS

The accountancy profession in India is at present regulated by the Auditors Certificates Rules framed in 1932 in exercise of the powers conferred on the Government of India by section 144 of the Indian Companies Act, 1913, and the Indian Accountancy Board advises Government in all matters relating to the profession and assists it in maintaining the standards of the professional qualifications and conduct required of the members of the profession. The majority of the Board's members are elected by Registered Accountants members of the profession from all parts of India. These arrangements have, however, all long been intended to be only transitional, to lead up to a system in which such accountants will, in autonomous association of themselves, largely assume the responsibilities involved in the discharge of their public duties by securing maintenance of the requisite standard of professional qualifications, discipline and conduct, the control of the Central Government being confined to a very few specified matters.

The Bill seeks to authorize the incorporation by statute of such an autonomous professional body and embodies a scheme which is largely the result of a detailed examination of the whole position by an *ad hoc* expert body constituted for the purpose, after taking into account the views expressed by the various Provincial Governments and public bodies concerned.”

32. The preamble of the ICAI Act also indicates that the purpose of the ICAI Act was to make provision for the regulation of the profession of Chartered Accountants. The relevant extract from the preamble of the ICAI Act is as under:-

“WHEREAS it is expedient to make provision for the regulation of the profession of chartered accountants and for that purpose to establish an Institute of Chartered Accountants;”

33. The petitioner has been incorporated by virtue of Section 3 of the ICAI Act as a body corporate constituted by all members whose names are entered in

the 'register'. The register is defined under Section 2(i)(g) of the ICAI Act to mean 'register of members' maintained under the Act. Section 19 of the ICAI Act provides for maintaining of register of members of the institute wherein, the particulars of the members of the petitioner as specified are to be included. Section 20 of the ICAI Act provides for power to remove the names of the members from the register. By virtue of Section 7 of the ICAI Act, the constituent members of the petitioner who are in practice are required to use the designation of 'Chartered Accountant' and no member of the petitioner is entitled to practice the profession of Accountancy unless he has obtained a certificate for practice from the petitioner.

34. The petitioner institute functions through a Council constituted in terms of Section 9 of the ICAI Act. The Council includes elected members of the petitioner and also persons who are nominated by the Central Government. The petitioner functions under the overall control, guidance and supervision of the Council which is vested with the obligation to carry out the provisions of the ICAI Act including the functions as specified under section 15(2) of the ICAI Act. Section 15 of the ICAI Act is quoted below:-

“15.- Functions of Council. - (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include:

- (a) to approve academic courses and their contents ;
- (b) the examination of candidates for enrolment and the prescribing of fees therefor.
- (c) the regulation of the engagement and training of the articled and audit assistants;

- (d) the prescribing of qualifications for entry in the Register;
- (e) the recognition of foreign qualifications and training for the purposes of enrolment ;
- (f) the granting or refusal of certificates of practice under this Act.
- (g) the maintenance and publication of a Register of persons qualified to practice as chartered accountant ;
- (h) the levy and collection of fees from members, examinees and other persons ;
- (i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;
- (j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute ;
- (k) the carrying out by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;
- (l) the maintenance of a library and publication of books and periodicals relating to accountancy ;
- (m) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;
- (n) to enable functioning of the Quality Review Board;
- (o) consideration of the recommendations of the Quality Review Board made under Clause (a) of Section 28B and the details of action taken thereon in its annual report ;and
- (p) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time.”

35. The petitioner conducts academic courses which leads successful students completing the courses to be eligible for being inducted as members of the

petitioner. The petitioner has specified the code of conduct and ethics which are required to be followed by its members in practice of the profession of accountancy. In addition, the petitioner as an expert body also prescribes the accounting principles, practices and standards which are required to be followed by various entities in reporting their affairs.

36. The functions of the Council as are listed in Section 15(2) of the ICAI Act are not exhaustive as indicated by the opening words of Section 15(2) of the ICAI Act and the Council, thus, has the power to take all necessary actions and conduct all activities that are necessary for developing and regulating the profession of public accountants in India.

37. The petitioner is the only body that can confer the qualification of a Chartered Accountant to any person successfully undergoing courses which are designed and conducted by the institute. No other person is entitled to confer any degree, diploma or bestow any designation which would indicate attainment of any qualification or competence as similar to that of a member of the petitioner. Section 24A(1)(ii) of the ICAI Act is relevant and is quoted below:-

“24A. Penalty for using name of the Council, awarding degrees of chartered accountancy, etc.- (1) Save as otherwise provided in this Act, no person shall-

- (i) xxxxx xxxxx xxxxx xxxxx
- (ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute: or
- (iii) xxxxx xxxxx xxxxx xxxxx”

38. Section 30 of the ICAI Act empowers the council to make regulations for carrying out the objects of the ICAI Act, *inter alia* with respect to the matters as specified in Section 30(2). Section 30 of the Act is relevant and is quoted below:

“30. - Power to make regulations. – (1) The Council may, by notification in the “Gazette of India”, make regulations for the purpose of carrying out the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters :—

- (a) the standard and conduct of examinations under this Act;
- (b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;
- (c) the conditions under which any examination or training may be treated as equivalent to the examination and training prescribed for members of the Institute;
- (d) the conditions under which any foreign qualification may be recognised;
- (e) the manner in which and the conditions subject to which applications for entry in the Register may be made;
- (f) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates;
- (g) the manner in which elections to the Regional Councils may be held;
- (h) the particulars to be entered in the Register;
- (i) the functions of Regional Councils;
- (j) the training of articled and audit assistants, the fixation of limits within which premia may be charged from articled assistants

and the cancellation of articles and termination of audit service for misconduct or for any other sufficient cause;

- (k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (l) the carrying out of research in accountancy;
- (m) the maintenance of a library and publication of books and periodicals on accountancy;
- (n) the management of the property of the Council and the maintenance and audit of its accounts;
- (o) the summoning and holding of meetings of the Council, the times and places of such meetings, the conduct of business there at and the number of members necessary to form a quorum;
- (p) the powers, duties and functions of the President and the Vice-President of the Council;
- (q) the functions of the Standing and other Committees and the conditions subject to which such functions shall be discharged;
- (r) the terms of office, and the powers, duties and functions of the Secretary and other officers and servants of the Council; and
- (s) XXXX XXXX XXXX XXXX XXXX
- (t) any other matter which is required to be or may be prescribed under this Act.

39. All regulations made by the council under the ICAI Act require publication and prior approval of the Central Government. In exercise of the powers, the council has published the Chartered Accountants Regulations, 1988 which provide for regulations for training of the students, their examination, award of the certificates, and enrolment of the members of the petitioner institute.

40. The present scheme for a student to be enrolled as a chartered accountant is as under:-

- (i) A student has to enroll with the institute for Common Proficiency Test (CPT) after passing class 10th examination conducted by an examining body constituted by law in India or an examination recognised by the Central Government as equivalent thereto.
- (ii) On enrolment a student is provided with the study material for the Common Proficiency Test.
- (iii) A student may take the CPT Examination after he has appeared in Sr. Secondary Examination (10+2) Examination and after completing the period of 60 days from the date of registration for CPT with the board of studies.
- (iv) After clearing the CPT, a student joins the Integrated Proficiency Competence Court (IPCC) /Accounting Technician Court (ETC) and registers for 100 hours of Information Technology Training (ITT).
- (v) A student has to undergo 100 hours of ITT and appear in IPCC examination which is divided into two groups. The student can appear for IPCC after completion of a specified period of study course. After clearing group I of IPCC a student is eligible to enroll as an article clerk for practical training, the duration of which is three years.

(vi) After the student has cleared both the groups of IPCC, he has to enroll for the final course with the board of studies and he is provided study material for the final examination. Student also has to undergo the course of General Management Skills while studying for his final course and can appear for the final examination which serving the last six months of his article training or thereafter.

(vii) On passing the final examination and completing the article training or thereafter, a student is eligible to be enrolled as a member of the petitioner institute.

41. The petitioner institute has not only approved and designed the course and the training required to a student to obtain the proficiency in accountancy but also imparts education in the subjects comprising the curriculum for the examinations conducted by the petitioner institute. In addition, the petitioner institute also conducts post qualification courses in Corporate Management, Tax Management and Information System Audit and awards certificates/degrees to the students on successfully completing the said courses. There are several other workshops and post qualification courses that are conducted by the petitioner institute for the benefit of its members for maintaining and improving the professional standards of chartered accountants.

42. Indisputably, substantial activity of the petitioner institute revolves around providing education to students for the purposes of feeding the profession of Chartered Accountancy in India. It is only those students who successfully undergo the courses conducted by the petitioner who are eligible to practice the profession of a Chartered Accountant in India. The special programmes also include providing coaching classes to students to enable them to attain the requisite level of proficiency in various subjects forming the course as approved

by the petitioner. This Court in the case of **Institute of Chartered Accountants of India v. Director General of Income Tax (Exemptions)** (*supra*) while disposing of writ petition no. 1927/2010 and remanding the matter to the respondent DGIT(E) also held that the petitioner was providing education and the conduct of the courses by the petitioner could not be equated or categorized as coaching classes conducted by private institutions for students to appear in entrance examination or for pre-admission in examinations being conducted by universities and other Institutions. This Court further held that a private coaching institute does not have any statutory or regulatory duty to perform and in this aspect, the case of the petitioner was different and the activities undertaken by the petitioner satisfied the term 'education'. The relevant extract of the said judgment is as under:-

“36. It may be noted that the petitioner-Institute provides education and training in their post-qualification courses, corporate management, tax management and information system audit. It awards certificates to members of the Institute who successfully complete the said courses. Post-qualification diploma courses are also conducted in several fields. The examination conducted by the petitioner institute consists of Common Proficiency Test, Professional Education Examination, Professional Competence Examination, Accounting Technician Course, Integrated Professional Competence Course, final and post-qualification courses. The conduct of these courses cannot be equated and categorized as mere coaching classes which are conducted by private institutes to prepare students to appear for entrance examination or for pre-admission or examinations being conducted by the universities, school-boards or other professional examinations. The courses of the institute, per se, it does appear cannot be equated to a private coaching institute. There is a clear distinction between coaching classes conducted by private coaching institutions and the courses and examinations which are held by the petitioner-Institute. The decision, in the case of Bihar Institute of Mining and Mine Surveying [1994] 208 ITR 608 (Patna) is not applicable. A private coaching institute has no statutory or regulatory duty to perform. It cannot award degrees or

enroll members as Chartered Accountants. These activities undertaken by the petitioner-institute satisfies the requirement of the term “education” as defined by the Supreme Court in Sole Trustee, Loka Shikshana Trust [1975] 101 ITR 234 (SC).”

43. Although, this Court has held that the activities of the petitioner fell within the term “education”, it was nonetheless held that the petitioner institute fell under the category of “advancement of any object of general public utility” as the petitioner is a statutory body constituted under the ICAI Act and its fundamental or dominant object was to exercise control and regulate the activities of Chartered Accountants in India. The relevant finding of this court is as under:

“6. The petitioner-institute will fall under the sixth category, i.e., advancement of any other object of general public utility. The petitioner-institute cannot be regarded as an educational institute as the petitioner's main or predominant objective is to regulate the profession of, and the conduct of, Chartered Accountants enrolled with them. The petitioner is a statutory authority under the Chartered Accountants Act, 1949 ("the CA Act") and its fundamental or dominant function is to exercise overall control and regulate the activities of the members/enrolled chartered accountants. This is apparent from the CA Act and the regulations framed under the said Act.”

44. This Court while dismissing the appeal (ITA no. 274/2012) preferred by the revenue under section 260A of the Act against the order dated 16.06.2011 passed by the Tribunal in relation to the Assessment year 2007-08 by its judgment dated 11.5.2012 held as under:

“As held by this Court in its decision dated 19.9.2011 in Writ Petition No.1927/2010 entitled as Institute of Chartered Accountants of India v. DIT, Delhi and Others, the dominant purpose and objective of the Institute is to regulate the profession of chartered accountants in India and for this purpose it holds entrance examination, regulates the conduct of the members and prescribes and fixes the accountancy standards etc. No doubt, the assessee

holds classes and provides coaching facilities for the members and articled clerks etc. who want to appear in the examination conducted by the Institute of Chartered Accountants, but these classes are not held for coaching or for appearance in an examination conducted by some other entity / body. Conducting of coaching classes is with the predominant object of maintaining and upholding the standards of the accountancy profession and in furtherance of the object and purpose for which the institute is established, i.e., professional excellence and promotion of accountancy as a preferred profession. Members of petitioner Institute attend courses/lectures etc. to sharpen their skill and knowledge. These are ancillary activities to the main activity performed and the object for which the institute has been established.”

45. Given the aforesaid findings, the issue whether the petitioner was entitled to exemption under section 10(23C)(iv) of the Act prior to 01.04.2009 is no longer *res integra* and the said issue stands concluded in favour of the petitioner as its activities fell within the definition of ‘charitable purpose’ as it existed prior to 01.04.2009. The only question that remains to be considered is whether the activities of the petitioner fall in the proviso to Section 2(15) as introduced w.e.f. 01.04.2009.

46. The first proviso to Section 2(15) of the Act carves out an exception which excludes advancement of any other object or general public utility from the scope of charitable purpose to the extent that it involves carrying on any activity in the nature of trade, commerce or business or any activity of rendering certain services in relation to any trade, commerce or business, for a cess or fee or any other consideration is irrespective of the nature of the use or obligation, or retention of the income from such activity.

47. This court on the earlier occasion had considered the entire controversy and after elucidating the legal principles had remanded the matter to the respondent for a limited purpose for considering and examining the submissions

made by the petitioner with regard to the expenses incurred by the petitioner and for answering the question whether the petitioner was carrying on any business, trade or commerce in the light of the observations and finding made by this court in its judgment **The Institute of Chartered Accountant of India v. Director General of Income-tax (Exemption)** (*supra*). This court had remanded the matter, *inter alia*, on the grounds that the figures with respect to the fee charged, expenditure and profits had been disputed by the petitioner institute. We find from the impugned order that DGIT(E) has failed to follow the legal principles and the observations made by this court while remanding the matter. The DGIT(E) was required to consider the submissions made by the petitioner which had been quoted by this court while remanding the matter and are quoted hereunder for convenience:-

“31. The assessee-Institute does not get any grant from any source and the only source of its income is fees received from its members and students. For providing quality education to its students, the assessee-Institute charges very nominal fees from its students and in turn provides them with the study material, course modules, infrastructural facilities, library services, books/reading material, web based teaching e-learning, facility of interaction with faculty, etc. This is done purely on a charitable basis, without any profit motive, and in terms of its statutory duties and obligations under the Chartered Accountants Act, 1949, and the Regulations made there under.

32. The receipts from holding such coaching/revisionary classes are also accompanied with various expenses, which are shown as coaching/revisionary expenses in the financial statements. These expenses are in the nature of rental of premises, payment of faculties, hiring charges of projectors, etc., printing and stationery, cost of study material, entertainment expenses, etc. Further, the amount of expenditure incurred for these classes are not inclusive of other common expenditure, which includes the cost of free study material issued to the students for the purpose of coaching/revisionary classes.

33. Such common administrative expenses also include, inter alia, depreciation on assets installed and salaries paid to the staff employed by the branches of the Institute, which are the main centres for holding coaching and revisionary classes for the students enrolled for the chartered accountancy course throughout the country, as per details given in paragraph 4 of the supplementary affidavit sworn on behalf of the Institute on March 17, 2010, and already filed in this Hon'ble court earlier, which details are again set out hereunder for ready reference:

Financial years	Salaries	(Rs. in lakhs) Depreciation	Total
2003-04	55.27	51.64	106.91
2004-05	66.38	54.32	120.70
2005-06	85.96	73.04	159.00
2006-07	81.51	118.77	200.28
2007-08	98.40	226.54	324.94
2008-09	136.94	467.48	604.42

34. The common administrative expenses referred to hereinabove are far more than the so called surplus directly arising in providing the coaching facilities to the students, as set out in the table appearing under paragraph 5 of the impugned order dated May 19, 2009, passed by respondent No. 1 herein under section 10(23C)(iv) of the Income-tax Act, 1961 (kindly see pages 76-83 of the instant WP, and in particular at page 80 thereof. The said table is also set out hereunder for ready reference:

Assessment year	Fees charged for providing coaching (Rs. in lakhs)	Direct expenditure incurred in coaching (Rs. in lakhs)	Direct surplus arising in providing coaching*(Rs. in lakhs)
2002-03	115.36	68.03	47.33
2003-04	178.51	96.63	81.88
2004-05	192.08	110.46	81.62
2005-06	237.11	133.14	103.97
2006-07	228.40	139.95	88.45
2007-08	301.90	164.75	137.15
2008-09	385.99	172.18	213.81

35. The surplus generated out of the activities of the institute is utilized towards the infrastructure development and other students/members related activities. It is not a commercial or business income and no part of the surplus is being utilized for the purposes other than the purposes specified in the Chartered Accountants Act. The whole of the income is utilized directly or indirectly for the development and benefits of the persons pursuing and who have already pursued the chartered accountancy course.

36. No amount of the surplus, in any manner, can be distributed or utilized for any activity other than the activities specified within the charter of the assessee-Institute.

37. In the facts and circumstances stated hereinabove, holding of these coaching and revisional classes is not a business or commercial activity; it is wholly incidental and ancillary to the objects of the assessee-Institute for providing education and conducting examinations of the candidates enrolled for chartered accountancy course, so as to bring out the true professionals, as part of its main objectives."

48. In addition, the DGIT(E) was also required to examine the facts relating to the funds paid by the petitioner institute to Jaipur Development Authority and the Government of Rajasthan which had been reflected as debit balance against ICAI Accounting Research Foundation. ICAI Accounting Research Foundation had been incorporated by the petitioner institute with the object to impart training, promote knowledge, learning and education in various fields relating to accountancy and the funds paid by the petitioner were for the purposes of establishing a university in Rajasthan. In the impugned order, the DGIT(E) has not given any finding that the funds paid by the petitioner institute violate Section 13 of the Act.

49. On remand, the DGIT(E) has passed the impugned order dated 13.04.2012, holding that the petitioner's activity of conducting classes is purely a commercial activity. The DGIT(E) has proceeded on the basis that the functions

of ICAI are similar to the functions performed by UPSC and held that the position of ICAI, in providing coaching classes to its students was similar to the position of private organisations imparting similar training to the aspirants. The relevant extract from the impugned order is as under:-

“8. The function of ICAI may be considered similar to functions in the administrative governance which are performed by UPSC. At state level the State Public Service Commissions are rendering such services. This examination conducted by UPSC is the backbone of civic governance. The functions of ICAI are in the field of financial governance of the country and economy. Now just imagine a situation wherein UPSC also starts coaching for the aspirants of civil services with the arguments that this is being done in order to improve the quality of the administrators or civil servants. It is well known fact that many of such institutes in the private capacity are working in this field. Coaching by UPSC itself to the aspirants of civil services can be a very reprehensible act and will not be acceptable to the society or the government. This may also undermine the dignity of the UPSC and also affect the quality adversely. Since those aspirants who get training in the branches of training centers managed by UPSC will have special advantages in much respect like probable questions, change of trend & so on. These candidates will have access to the inner policies and perspectives of the UPSC and will be in special advantageous position vis-à-vis the other candidates who are not availing such grooming/training or are being trained by other private organization/institutes. The importance of the work can be judged from the fact that a special place has been assigned to the UPSC in constitution. This is also the case with ICAI which has been created by the Act of Parliament. When ICAI is also conducting classes by recruiting/engaging the teachers locally and charging fees for the services which is also being done by other private persons/organizations for a fee or profit motives, then there is no difference between this activity of ICAI and the private business organizations. This is not the case that ICAI is upgrading the skill

of the Chartered Accountants who have already qualified the examination and are regular chartered accountant, by seminars and such training which upgrades their skill and so there is spread of higher level of learning or training. In fact, once the examinations are conducted the examination body should not have any connection with such type of training to avoid the kind of bias which may creep in unknowingly for training and improvement of the skills may be necessary as in the case of civil servants which should affect the examination part. So, the above comparison clearly indicates that the sort of action/conducting of classes for preparing the aspirants for chartered accountant examination are purely commercial activities and there is no difference between the activity done by ICAI and such other private organization/individuals who are also imparting training to such aspirants.”

50. The DGIT(E) held that the petitioner institute had received fees for holding interviews with respect to campus placement program and this also amounted to the petitioner working as a service provider between the members and the industry and were similar to the activities undertaken by any placement agency providing manpower to the industry.

51. The DGIT(E) further held that the petitioner's contention that it was charging very nominal fee could not be considered as a charitable purpose as there was no specific arrangement for poor or needy candidates to get coaching from the institute without payment of fees. The DGIT(E) held that in order to fall within the definition of charitable purpose under the Act, it was necessary that the welfare and interest of public and specially poor section of the public be taken care of and since the fees structure of the petitioner institute remained the same for all categories of students and no arrangement was made by the petitioner institute for providing free coaching or coaching at concessional rate to poor

section of the society, the petitioner could not be stated to be involved in charity.

In this regard the relevant extract from the impugned order is quoted below:-

“The applicant's contention that it provides coaching at a very nominal fee cannot be ground for regarding it as a Charitable Institution. Section 2(15) defines "charitable purpose" for availing the benefits of section 11 & 12 of the I.T. Act, 1961 that an assessee must be carrying on charitable activities. The inclusive definition of charitable purpose states among other things, relief of the poor, education, and medical relief etc. are in the nature of charitable purpose. The concept of charitable purpose may be manifested in different forms like relief of the poor; education, medical relief etc. but a charitable purpose should always take care of the welfare and interest of the public and especially the poor section of the public. The fee structure for coaching as explained by the institute is for all categories of students/candidates enrolled with the institution. In other words, there is no arrangement made by the institute to provide free coaching or coaching at concessional rates to the poor section of the society. If fee is similar to all the candidates, then how it can be said that the institute is doing charity in the field of education by taking care of the welfare and interest of the students enrolled from poor section of the society. It cannot be ruled out that many candidates/students enrolled with the institution must have come from remote areas and do not have enough money to compete with the candidates coming from urban areas and having strong financial backgrounds. The institute has no specific arrangement for these candidates to get coaching from the institute without paying any fees or fees at concessional rates. Therefore, it cannot be said that the institute is doing any charity in the field of education. As explained above, it is only working like a private organization / institute providing coaching to its students / candidates for preparing for CA examination for which fee is charged. The coaching is being provided against fee and is

therefore squarely covered by the proviso to section 2(15) of the Act."

52. The DGIT(E) vide impugned order held that the ratio of the decision of the Patna High Court in the case of **Bihar Institute of Mining and Mine Surveying v. CIT: (1994) 208 ITR 604 (Patna)** squarely covered the facts of the petitioner institute and therefore, the petitioner was liable to be taxed as a commercial establishment. The relevant finding of the DGIT(E) is as under:-

"As it is on the same line as any other coaching institute, the case of Bihar Institute of Mining and Mine Surveying v. CIT (1994) 208 ITR 604 (Patna) squarely covers of the fact of the applicant and therefore to be taxed as commercial establishment."

53. We find that the entire approach of the DGIT(E) in passing the impugned order is erroneous and runs contrary to the findings and observations of this court while remanding the matter to DGIT(E). This court held that the petitioner institute fell within the category of "advancement of any object of general public utility". As such the petitioner would be an institution established for charitable purposes unless it is excluded by the application of the first proviso to Section 2(15) of the Act. The first proviso carves out an exception and excludes "advancement of any object of general public utility" from the ambit of charge to the extent any activity is carried on 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 a fee or any other consideration. This court had while remanding the matter examined in detail the meaning of the terms "trade", "commerce" and "business" and directed the DGIT(E) to apply the said principles. This court has expressly held that the decision in the case of **Bihar Institute of Mining and Mine Surveying** (*supra*) was not applicable. The private

coaching concerns did not have a statutory or regulatory duty to perform and thus, coaching classes being provided by the petitioner could not be categorised as mere coaching classes conducted by a private institute. This court had set aside the order dated 19.05.2009 passed by DGIT(E) wherein reliance had been placed on the decision of Patna High Court in the case of **Bihar Institute of Mining and Mine Surveying** (*supra*). However, we find that despite an express finding of this court that the said decision was not applicable to the facts of the present case, The DGIT(E) has proceeded to hold to the contrary. It is, thus, apparent that DGIT(E) has failed to comprehend the decision or the directions of this court while remanding the matter.

54. The expression “trade” was discussed by the Supreme Court in its decision in the case of **Khoday Distilleries Ltd. v. State of Karnataka**: (1995) 1 SCC 574. In the said case, Supreme Court held as under:-

“68. There is no doubt that the word “business” is more comprehensive than the word “trade” since it will include manufacture which the word “trade” may not ordinarily include. The primary meaning of the word “trade” is the exchange of goods for goods or goods for money.”

55. The Supreme Court has further considered the expression “business” in the case of **State of Andhra Pradesh v. H. Abdul Bakhi and Bros.**: (1964) 15 STC 644 (SC), wherein it was held that the expression business was of indefinite import and in the taxing statute it is used for the sense of occupation and profession which occupies time, attention or labour of a person and is clearly associated with the object of making profit.

56. In the case of **Institute of Chartered Accountants in England & Wales v. Customs and Excise Commissioners** : (1999) 1 W.L.R. 701, the House of Lords

also examined the expression 'business' with reference to the question whether the Institute of Chartered Accountants in England & Wales was carrying on "economic activity" for the purpose of the Value Added Tax, 1994 and held as under:-

"Although differences between them may arise, it seems to me that the Appellants were right in their case to accept that "The expression business, it is accepted, represents economic activity". It is not necessarily sufficient (though it may often be sufficient in different contexts) that money is paid and a benefit obtained, performing on behalf of the state this licensing function is not the carrying on of a business.

In relation to the Directive, the tribunal said: "Any regulatory activity carried out under a statutory power for the purpose of protecting the public by supervising and maintaining the standard of practitioners in, for example, the Financial Services field fall on the other side of the line from economic activities.

In the present case, I agree that that is entirely right and the same goes for "business" in the context of these three Statutes."

57. After discussing various decisions with regard to the scope of the words trade, commerce & business, this court in **The Institute of Chartered Accountant of India v. Director General of Income-tax (Exemption)** (*supra*) held that while construing the term business for the purpose of Section 2(15) of the Act the object and purpose of the Section must be kept in mind and a broad and extended definition of business would not be applicable for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act. The relevant extract of the said judgment is as under:-

"Section 2(15) defines the term "charitable purpose". Therefore, while construing the term "business" for the said section, the object and purpose of the section has to be kept in mind. We do not think that a very broad and extended definition of the term "business" is intended for the purpose of interpreting and applying the first

proviso to section 2(15) of the Act to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not be determinative. Normally, the profit motive test should be satisfied but in a given case activity may be regarded as business even when profit motive cannot be established/proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is infact in the nature of business. The test as prescribed in Raipur Manufacturing Company [1967] 19 STC 1 (SC) and Sai Publication Fund [2002] 258 ITR 70 (SC) ; [2002] 126 STC 288 (SC) can be applied. The six indicia stipulated in Lord Fisher [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts.”

58. In the case of **Commissioner of Sales Tax v. Sai Publication Fund:[2002] 258 ITR 70 (SC)**, the Supreme Court while interpreting the word “business” in the context of Section 2(5A) of the Bombay Sales Tax Act, 1959 held that the inclusion of incidental or ancillary activity in the definition of business pre-supposes the existence of trade, commerce and business. Thus, if the dominant activity of the assessee was not business then any incidental or ancillary activity would also not fall within the definition of business. In that case, the Supreme Court was examining the issue whether the activity of the trust in bringing out and selling a publication to spread the message of Sai Baba would make the assessee trust a dealer. The Supreme Court also referred to various other decisions wherein it was held that if the principal object or purpose of an assessee was not business then an incidental activity would also not be exigible to sales tax and constitute the assessee as a dealer. In the case of **State of Gujarat v. Raipur Manufacturing Co. Ltd.:(1967) 19 STC 1 (SC)**, the Supreme Court held that in order for any activity to be considered as business, there must be a course

of dealings either actually continued or contemplated to be continued with the motive to earn profit and not for sport or pleasure.

59. This court while remanding the matter quoted the relevant passages from the decisions of the Supreme Court in the case of **Raipur Manufacturing Co.** (*supra*) and **Sai Publication Fund** (*supra*) and held that the test as prescribed in the said decisions can be applied to determine whether the petitioner institute was carrying on any business, trade or commerce. The DGIT(E) has completely ignored the said observations of this court and has proceeded to mechanically hold that the activities of the petitioner institute amounted to carrying on business. This, in our view, is completely erroneous.

60. The petitioner institute has been constituted under the ICAI Act with the object to regulate the profession of Chartered Accountants in India and to ensure that the standards of professional knowledge and skill are met and maintained. The activities being undertaken by the petitioner substantially involve imparting education in the field of accountancy in order to ensure that the standards or profession of accountancy are maintained. The petitioner institute is the sole body empowered to conduct or approve a course in the field of accountancy. No other person can conduct any course or award any degree or certificate which indicates a level of proficiency or competence in the field of accountancy similar to that as of a chartered accountant. The activity of petitioner in conducting coaching classes is integral to the activity of the petitioner institute in conducting the courses in accountancy.

61. The coaching classes being conducted by the petitioner cannot be equated with private coaching classes being conducted by organisations on commercial basis for preparing students to undertake entrance or other examinations in various professional courses. The coaching carried on by private organisations

are not integral to the courses being conducted by them but for preparing students for examinations being conducted by other institutes and universities. In the case of the petitioner institute, the coaching classes are integral to the curriculum of the programme being conducted by the petitioner institute.

62. The comparison of the petitioner institute with UPSC (Union Public Service Commission) is also, in our view, not apposite. Whereas UPSC conducts an examination for the purpose of selection of candidates for employment into service and is required to be consulted by the Governments with regard to various matters as specified in Article 310 of the Constitution of India, the petitioner institute conducts an education programme and provides not only theoretical knowledge but also practical knowledge. The object of the study programme or post-qualification courses being conducted by the petitioner institute is to impart knowledge and skill in the field of accountancy and related subjects to students and the same is not similar to the function as performed by UPSC. In our opinion, the DGIT(E) erred in proceeding on the basis that the object of the petitioner was limited to conducting examinations for a selection process enabling the successful candidates to be selected as chartered accountants. The impugned order completely ignores the nature of the educational programme being conducted by the petitioner which includes not only designing of the course, imparting of training, providing study material but also instructions by an expert faculty.

63. We are also unable to agree with the reasoning of the DGIT(E) that holding interviews for a fee for the purposes of campus placement of its students amounts to carrying on a business. Campus placement is only a small incidental activity carried on by the petitioner institute like several other universities for placement of their students in gainful employment. This too is an activity ancillary to the educational programme being conducted by the petitioner

institute and cannot be considered as a business being carried on by a placement agency. The object of the petitioner institute is not to carry on such business but to assist its students in securing employment. In this case, the object with which the activity of campus placement is carried on would determine its nature and the same is our view is not business, trade or commerce.

64. The reasoning of the DGIT(E) that since the petitioner institute charges a uniform fee from all students for providing coaching classes, thus, it cannot be said to be carrying on a charitable activity is also erroneous. It is now well settled that an eleemosynary is not an essential element of charitable purpose as defined under the Act. It is not necessary that a person should give something for free or at a concessional rate to qualify as being established for a charitable purpose. If the object or purpose of an institution is charitable, the fact that the institution collects certain charges does not alter the character of the institution. In the case of **King v. Commissioners for Special Purposes of Income-tax: 5 TC 408**, the Court of Appeal held that the purpose of advancement of education does not cease to be charitable merely because education is not confined to the poor and it extends to professional or commercial education as well as to higher education. Similar view has been expressed by the privy council in **Re: Trustees of Tribune: (1939) 7 ITR 415 (PC)** wherein the court opined as under:-

“In the High Court stress was laid by the learned Chief Justice and by Addison, J., on the fact that the Tribune newspaper charges its readers and advertisers at ordinary commercial rates for the advantages which it affords. As against this the evidence or findings do not disclose that any profit was made by the newspaper or press before 1918 and it is at least certain that neither was founded for private profit whether to the testator or any other person. By the terms of the trust it is not to be carried on for profit to any individual. It cannot in their Lordships’ opinion be regarded as an element necessarily present in any purpose of general public utility,

that it should provide something for nothing or for less than it costs or for less than the ordinary price. An eleemosynary element is not essential even in the strict English view of charitable uses [Commissioners v. University College of North Wales (i)]. There seems to be no solid distinction to be taken under the phrase “general public utility” between a school founded by a testator but charging fees to its pupils and a paper founded by a testator and sold to its readers. The purpose of providing the poor or the community in general with some useful thing without price or at a low price may doubtless be in itself a purpose of general public utility. But if another object be independently in itself of general public utility the circumstances that the testator’s (sic) bounty was only in respect of the initial capital assets, or had only to meet a working loss temporarily and not permanently will not, necessarily at least, alter the character of the object.”

65. The fact that the petitioner institute charges a uniform fee from all students for coaching would not exclude the petitioner from the ambit of Section 2(15) of the Act unless it is found that the petitioner falls within the scope of the first proviso to Section 2(15) of the Act i.e. the petitioner carries on any trade, business or commerce or any activity of rendering any service in relation to any trade, commerce or business, for a cess or a fee.

66. As stated earlier the matter was remanded to DGIT(E) to consider the submissions of the petitioner that it had been incurring administrative expenses which were much greater than the surplus and that had resulted due to the coaching provided to the students. Having erroneously come to the conclusion that the petitioner was carrying on business, the DGIT(E) has rejected the submission of the petitioner that its common administrative expenditure exceeded the surplus generated from coaching, as being not relevant. The DGIT(E) has also failed to consider that the activities being pursued by the petitioner are not with the object of earning profit but with the object of imparting knowledge and skill

to ensure that Chartered Accountants in India have the requisite skill and professional competence and comprehend the code of ethics to be followed by them.

67. The expressions “trade”, “commerce” and “business” as occurring in the first proviso to section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of “charitable purpose”. The purpose of introducing the proviso to Section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill 2008. The relevant extract to the Speech is as under:-

“.....“Charitable purpose” includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under “charitable purpose”. Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.”

The expressions “business”, “trade” or “commerce” as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions “ business”, “trade” or “commerce”.

68. In the case of **Sai Publication Fund** (*supra*) the activity of publishing and selling publication was not held to be business by the Supreme Court since the dominant object of the activity was not to carry on business but to spread the message of Sai Baba for the welfare of the public at large. In the present case, there can be little doubt that the dominant object of the petitioner institute is to regulate the profession of Chartered Accountants in India and for that purpose, the petitioner institute conducts an extensive educational program to ensure that the profession is fed by Chartered Accountants having high standards of knowledge, skill and professional competence. Coaching classes conducted by the petitioner are also in aid of its objects.

69. In the case of **Addl. Commissioner of Income Tax v. Surat Art Silk Cloth Manufacturers Association**: [1980] 121 ITR 1 (SC), the Supreme Court held as under:

“The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. But where the predominant object of the activity is to any out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely be cause some profit arises from the activity.”

70. Although in that case the statutory provisions being considered by the Supreme Court were different and the utilisation of income earned is, now, not a relevant consideration in view of the express words of the first proviso to section 2(15) of the Act, nonetheless the test of dominant object of an entity would be relevant to determine whether the entity is carrying on business or not. In the

present case, there is little doubt that the objects of the activities of the petitioner are entirely for charitable purposes.

71. Although, it is not essential that an activity be carried on for profit motive in order to be considered as business, but existence of profit motive would be a vital indicator in determining whether an organisation is carrying on business or not. In the present case, the petitioner has submitted figures to indicate that expenditure on salaries and depreciation exceeds the surplus as generated from holding coaching classes. In addition, the petitioner institute provides study material and other academic support such as facilities of a library without any material additional costs. The Supreme Court in the case of **State of Andhra Pradesh v. H. Abdul Bakhi and Bros.** (*supra*) held as under:

“The expression "business" though extensively used a word of indefinite import, in taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure.”

(Underlining added)

72. There is nothing on record to indicate the assertion of the petitioner that its activities are not fuelled by profit motive is incorrect. Absence of profit motive, though not conclusive, does indicate that the petitioner is not carrying on any business.

73. The petitioner institute has been established to perform a function of regulating the profession of Chartered Accountants. The functions performed by the petitioner institute are in the genre of public welfare and not for any private gain or profit and in this view, it cannot be said that the petitioner is involved in carrying on any business, trade or commerce. This court in the case of **Bureau of**

Indian Standards v. Director General of Income Tax (Exemptions) : W.P. (C)

1755 of 2012 decided on 27.09.2012 while considering whether the activities of the Bureau of Indian standards in awarding licences and granting certification for fees amounted to carrying on business, trade or commerce held as under:

“In these circumstances, “*rendering any service in relation to trade, commerce or business*” cannot, in the opinion of the Court, receive such a wide construction as to enfold regulatory and sovereign authorities, set up under statutory enactments, and tasked to act as agencies of the State in public duties which cannot be discharged by private bodies. Often, apart from the controlling or parent statutes, like the BIS Act, these statutory bodies (including BIS) are empowered to frame rules or regulations, exercise co-ercive powers, including inspection, raids; they possess search and seizure powers and are invariably subjected to Parliamentary or legislative oversight. The primary object for setting up such regulatory bodies would be to ensure general public utility. The prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection etc., cannot be considered as trade, business or commercial activity, merely because the testing procedures, or accreditation involves charging of such fees. It cannot be said that the public utility activity of evolving, prescribing and enforcing standards, “*involves*” the carrying on of trade or commercial activity.”

74. Following the decision of this court in the case of **Bureau of Indian Standards** (*supra*), it cannot be said that the petitioner is carrying on any business, trade or commerce.

75. The question whether the petitioner carries on business has also been examined by the Tribunal in its order dated 18.10.2010 and the Tribunal has after examining the activities of the petitioner come to the conclusion that the major activity of the petitioner revolves around accountancy education and training and the petitioner cannot be stated to be carrying on any business.

76. An appeal was preferred on behalf of the revenue against the order of the Tribunal dated 18.10.2010 which has been rejected by this court vide its decision dated 19.09.2011 in the case of **Director General of Exemption v. Institute of Chartered Accountants of India** (*supra*), wherein this court affirmed the finding of the Tribunal and has held as under :-

“14. What is noticeable and clear from the order dated March 29, 2010, of the appellant is lack of discussion, and examination of the concept/term "business", the object and role assigned to and performed by the Institute. On the other hand, the Income-tax Appellate Tribunal examined the provisions of the 1949 Act and the role assigned to and undertaken by the Institute. It was held that the Institute has been created to regulate the profession of chartered accountancy and for this purpose the Institute can and is required to provide education, training and monitor professional skills of the members. It is also required to provide education and training to students/articles clerks who are appearing in the examinations and aspire to be enrolled as members of the Institute. In the impugned order, it has been elucidated by the Tribunal as under :

"We have gone through the various regulations of the ICAI which provide for coaching, etc., to the students of chartered accountancy course. These regulations, inter alia, provide that no candidate shall be admitted to the professional examination unless he produces a certificate from the head of the coaching organization to the effect that he is registered with coaching organization and has complied with the requirements of the theoretical education scheme. The candidate is also required to pay such fee as may be fixed by the Council for such professional education. Before a student is eligible for appearing in the examination, he has to produce a certificate from the head of the coaching organization to the effect that he has complied with the requirements of postal tuition scheme. An articulated clerk who has completed the practical training as provided in these regulations, before applying for membership of the Institute, shall be required to attend a course on general management and communication skill or any other course as may be specified in the Council from

time to time. For this purpose, the Council is to arrange funds for this purpose, the Institute is also conducting classes for chartered accountancy students registered with it. We found that these classes for chartered accountancy students registered with it. We found that these classes are conducted for which classes are provided to the students registered with the Institute to train and is discharging its statutory function as required by Parliament, which does not amount to any commercial activity. From the detailed brochure, we also found that the Institute provides a comprehensive study package including large question bank for which no separate cost is charged from the students. The board of studies also provides a CD for self-assessment and model test papers. Expenditure is being incurred for preparation of the study package, CD, etc., salary of the faculty and other professionals, printing and stationery, research and development, etc. The students registered for chartered accountancy are also provided on-line guidance through the Institute's own website. At a very nominal cost, these services are provided to the students. The Institute also provides computer training to the students registered with it, at a very low fee."

15. Thereafter, the Tribunal has quoted a judgment of the Gujarat High Court in *Saurashtra Education Foundation v. CIT* [2005] 273 ITR 139 (Guj) at page 146, in which it has been observed as under:

"As regards the illustration of the Institute of Chartered Accountants of India, although the Institute was earlier not running formal classes and there was no geographical proximity when instructions were being imparted through postal tuitions, the Institute of Chartered Accountants of India has always been an institution set up, inter alia, for imparting formal education and for testing proficiency for entry to the profession of chartered accountants. The Institute imparts formal education in accountancy and connected subjects in an organized and systematic manner. The institute is accountable as per the provisions of the Act establishing it and the Institute also has disciplinary control over the students who are required to be registered with its in the first place and who appear at the exams being held by the Institute."

16. The aforesaid findings as to the object, purpose and role of the Institute cannot be disputed. The appellant has taken a very narrow and myopic view and has not examined the question of object and role of the Institute in proper and correct perspective. As noticed above, the order passed by the appellant is devoid of reasoning. This has resulted in the error made by the appellant, which has been corrected by the Tribunal.”

77. After going through the provisions of the ICAI Act and the Regulations framed therein as well as various activities carried on by the petitioner, we are of the view that the petitioner institute does not carry on any business, trade or commerce. The activity of imparting education in the field of accountancy and conducting courses both at pre-qualification as well as post-qualification level are activities in furtherance of the objects for which the petitioner has been constituted. Activities of providing coaching classes or undertaking campus placement interviews for a fee are in relation to the main object of the petitioner which as stated earlier cannot be held to be trade, business or commerce. Accordingly, even though fees are charged by the petitioner institute for providing coaching classes and for holding interviews with respect to campus placement, the said activities cannot be stated to be rendering service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which as held earlier are not trade, commerce or business.

78. The second aspect for which the matter was remanded to DGIT(E) was to consider the issue whether the funds provided by the petitioner institute to ICAI Accounting Research Foundation would violate Section 13 of the Act. In this regard, the petitioner had submitted that it had not granted any loan or advance to ICAI Accounting Research Foundation and in any event the funds paid to the Jaipur Development Authority and Government of Rajasthan for establishing an

institution by ICAI Accounting Research Foundation must be considered as application of funds towards the object of the petitioner institute since ICAI Accounting Research Foundation has been incorporated under Section 25 of the Companies Act, 1956 as a company not for profit and for the purposes of carrying on research in the field of accountancy. The ICAI Accountancy Research Foundation is also entitled to exemption under Section 10 (23C)(iv) of the Act read with Section 11 of the Act. The petitioner has also placed reliance on the fact that the CIT (Appeals) in its order dated 31.12.2010 relevant to the assessment year 2006-07 has accepted this contention of the petitioner and the same has been affirmed by the Tribunal by its order dated 09.01.2010. The petitioner has further placed reliance on the assessment order dated 27.12.2010 relevant to the assessment year 2008-09 wherein the Assessing Officer has held as under:

“On verification, it is found out that its activities fall within the ambit of section 2(15) of the Act, i.e. “charitable purpose” and it has complied with the provision of section 11/12 of the Act. Violation of section 13 of the Act was not found.”

79. We note from the above that revenue has not found any violation of Section 13 of the Act. We also notice that DGIT(E) has not found any violation of Section 13 of the Act in the impugned orders. Further, it has also not been contended before us that the petitioner has violated section 13 of the Act. Thus, this dispute also stands concluded in favour of the petitioner.

80. In view of the above, we allow these writ petitions and set aside the two impugned orders dated 13.04.2012 and 28.09.12 passed by the respondent DGIT(E) and further direct DGIT(E) respondent to recognise the petitioner as eligible under Section 10(23C)(iv) of the Act as an institution established for charitable purposes having regard to its object and importance for the assessment

years 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012, subject to the petitioner complying with the other provisions of the Act.

81. The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, ACJ

JULY 04, 2013
MK/rk

