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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **I.T.A. No. 161 of 2016 (O&M)**
Decided on 01.08.2018

The Commissioner of Income Tax (Exemptions), Chandigarh
Appellant

Versus

M/s Improvement Trust, Bathinda
Respondent

2. **I.T.A. No. 26 of 2016**

The Commissioner of Income Tax (Exemption), Chandigarh
Appellant

Versus

M/s Patiala Improvement Trust, Chhoti Baradari, Patiala
Respondent

3. **I.T.A. No. 7 of 2015**

The Commissioner of Income Tax (Exemption), Chandigarh
Appellant

Versus

M/s Patiala Improvement Trust, Chhoti Baradari, Patiala
Respondent

4. **I.T.A. No. 42 of 2015**

The Commissioner of Income Tax (Exemption), Chandigarh
Appellant

Versus

M/s Patiala Improvement Trust, Chhoti Baradari, Patiala
Respondent

5. **I.T.A. No. 99 of 2015**

The Commissioner of Income Tax (Exemption), Chandigarh
Appellant

Versus

M/s Patiala Improvement Trust, Chhoti Baradari, Patiala
Respondent

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Denesh Goyal, Sr. Standing Counsel for Revenue

Mr. K.L. Goyal, Senior Advocate with
Mr. Umang Goyal, Advocate
for the respondent (in ITA No.161 of 2016)

Mr. Rohit Sud, Advocate
for the respondent
(in ITA Nos.7, 42 & 99 of 2015 and ITA No. 26 of 2016)

* * *

AVNEESH JHINGAN, J.

This order shall dispose of five appeals bearing **ITA No. 161 of 2016** titled as **The Commissioner of Income Tax (Exemptions), Chandigarh vs. Improvement Trust, Bathinda, ITA No. 26 of 2016, ITA Nos. 7, 42 and 99 of 2015** all titled as **The Commissioner of Income Tax (Exemption), Chandigarh vs. M/s Improvement Trust, Chhoti Baradari, Patiala.** All the appeals have common facts, for convenience sake, facts are being taken from I.T.A. No.161 of 2016.

2. The Revenue has filed the appeal under Section 260A of Income Tax Act, 1961 (for short 'the Act') against the order dated 31.08.2015 of Income Tax Appellate Tribunal (for short 'I.T.A.T.'). The Tribunal quashed the order of the Commissioner of Income Tax (CIT), cancelling the registration of assessee-Trust.

3. As per the appellant, following substantial questions of law arise for consideration of this Court :

(i) Whether the Hon'ble ITAT has erred in law by simply making a reference to its decision in case of Kapurthala Improvement Trust and thereby ignoring the specific directions of this Hon'ble Court to discuss the scope of proviso to Section 2(15) of the Act while deciding the case afresh?

(ii)Whether the Hon'ble ITAT is right in law by saying that the powers accorded by Section 12AA(3) of the Act doesn't allow the CIT to cancel the registration granted earlier when insertion of proviso to Section 2(15) predicate new circumstances vis-a-vis both the objects and genuineness of the activities?

(iii)Whether the Hon'ble ITAT is right in law in negating the satisfaction reached by the CIT while cancelling the registration of the assessee trust?

(iv)Whether the Hon'ble ITAT is right in law by ignoring the ratios laid down in the cases of PUDA and JDA (to the extent that the Improvement trusts carry out land development in a similar manner as development authorities do)?

(v)Whether the Hon'ble ITAT is right in law in wrongly deciding the issues and wrongly setting aside the impugned order in favour of the assessee trust while conflicting from its own judgments in above cases, which are even otherwise binding on it?

(vi)Whether the Hon'ble ITAT is right in law while failed to consider the above judgments e.g. PUDA vs. CIT and Jalandhar Development Authority vs. CIT have been followed by Tribunal of Amritsar Bench in Jammu Development Authority vs. CIT reported as (2012) 52 SOT ASR 153 and upheld the order of CIT which cancelled the registration while passing an order u/s 12AA(3) of the Act, which judgment in Jammu Developmnet Authority has been upheld firstly by Hon'ble J&K High Court in ITA No. 164 of 2012 vide its order dated 07.11.2013 and also by Hon'ble Supreme Court in Special Leave to Appeal (C) No. 4990 of 2014 vide its order dated 21.07.2014?

4. The facts in brief are that the assessee i.e. Improvement Trust, Bathinda is a Trust constituted under the Punjab Town Improvement Act, 1922 (for short '1922 Act'). Vide order dated 16.08.2010, the assessee was

granted registration under Section 12AA of the Act w.e.f. 12.06.2003.

5. The definition of 'charitable purpose' u/s 2(15) of the Act was amended by Finance Act of 2008 w.e.f. 01.04.2009.

6. Amended Section 2(15) of the Act is quoted below:-

> "2(15) 'charitable purpose' includes relief of the poor, education, medical relief, preservation of environment (including water heads, forests and wildlife) and preservations of monuments or places of or objects of artistic or historical 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"*

7. In view of amendment, a show cause notice was issued on 20.06.2012 to the assessee-Trust to show cause as to why registration granted under Section 12AA of the Act, be not cancelled.

8. The assessee filed a detailed reply to the notice. In the reply, the works and objects of the assessee-Trust were mentioned. It was further submitted that though the assessee-Trust may be earning some profits, but the utilization of that funds was for public utilities. The C.I.T. held that the activities of the assessee-Trust were not for charitable purpose within the meaning of amended Section 2(15) of the Act and the registration was cancelled vide order dated 20.07.2012.

9. Aggrieved of the order of cancellation, an appeal was filed before the Tribunal, the same was dismissed vide order dated 18.12.2012.

10. The Trust filed appeal challenging the order of CIT and the Tribunal. This Court in the appeal filed by the assessee-Trust vide order dated 06.08.2014 set aside the order of the Tribunal and remanded the matter back to it for deciding the issue afresh, keeping in view the proviso to Section 2(15) of the Act as amended w.e.f. 01.04.2009, with reference to the provisions of 1922 Act. The operational part of the order of this Court is reproduced as under:-

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> *6. Accordingly, the impugned orders passed by the Tribunal in both the appeals are set aside and the matter is remanded to the Tribunal to decide the same afresh keeping in view the proviso to Section 2(15) of the Act inserted w.e.f April 1, 2009 with reference to the provisions of the 1922 Act after affording an opportunity of hearing to the parties in accordance with law. Needless to say, anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy. Sincere efforts shall be made to decide the matter expeditiously. As a result, all the appeals stand disposed of.*

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11. In pursuance to the remand, the Tribunal vide order dated 31.08.2015, allowed the appeal of the assessee-Trust. The Tribunal relied upon its decision in the case of ***Kapurthala Improvement Trust Vs. Commissioner of Income Tax*** in ITA No.732/Asr/2013 for assessment year 2009-10. The representative of the department agreed before the Tribunal that the appeal was covered by the decision of the Tribunal in ***Kapurthala Improvement Trust***'s case (supra). The Tribunal allowed the appeal mainly on the ground that the scope of cancellation under Section 12AA(3) of the Act was limited. It was held that the cancellation could have been done only

in case the activities of the Trust were not found genuine or the activities of Trust were not being carried in accordance with the objects of the Trust.

12. Aggrieved of the order of the Tribunal, the Revenue has filed the present appeal.

13. In the appeal, six substantial questions of law referred earlier have been claimed to be arising for consideration but the main issues involved in the present appeal are :-

(i) Whether in the facts and circumstances of the case the activities of the assessee are covered under Section 2(15) of the Act as amended by Finance Act, 2008 or not ?

(ii) Whether in the facts and circumstances of the case, the Tribunal decided appeal in compliance of the directions of this Court?

(iii) Whether in the facts and circumstances of the case, C.I.T. could have cancelled the registration under Section 12AA(3) of the Act, granted prior to amendment in Section 2(15) of the Act?

14. Learned counsel for the Revenue contended that the activities of the assessee-Trust does not fall within ambit of 'charitable purpose' under Section 2(15) of the Act as it stood from 01.04.2009. It was urged that the activities of the assessee are more akin to the developer and builder. The assessee-Trust purchased land at nominal rates and after carving out plots, the same were sold at exorbitant rates and thereby assessee-Trust earned huge profits. Reliance was placed upon decision of Division Bench of this Court in the case of ***Tribune Trust vs. Commissioner of Income Tax and another (2017) 390 ITR 547.***

15. The second limb of the argument of the learned counsel for the Revenue was that being a statutory body that itself will not entitle the

assessee-Trust for exemption. Reliance in this regard was placed upon the decisions of Supreme Court in the case of ***A.P. State Transport Corporation vs. Income Tax Officer (1964) 52 ITR 524, Adityapur Industrial Area Development Authority vs. Union of India 2006(283) ITR 97*** and ***Calcutta State Transport Corporation vs. Commissioner of Income Tax 1996(219) ITR 515.***

16. The next contention of learned counsel for the Revenue was that the Tribunal had not followed its earlier decision in the case of ***Jammu Development Authority vs. Commissioner of Income Tax passed in I.T.A. No. 30 (Asr) 2011 dated 14.06.2012.***

17. On the other hand, learned counsel for the assessee argued that the activities of the assessee-Trust are for charitable purpose and the matter is covered by the decision of the Division Bench of this Court in similar cases of Trusts, in the case of ***Commissioner Income Tax (Exemptions) vs. Improvement Trust, Moga reported as (2017)390 ITR 547.***

18. It was further argued that even if some profit was being earned in one of the activities i.e. by sale of plots, the said profit earned was being utilized for general public utilities. The registration cannot be cancelled merely on the fact that from an ancillary activity, the assessee was earning profit. To buttress his contention, it was stated that after utilizing the profit earned for public utility purposes, assessee-Trust suffered losses. Rebutting the second contention raised by learned counsel for the Revenue, it was argued that the assessee-Trust was not claiming exemption merely being a statutory body. The registration was granted under Section 12AA of the Act as the assessee fulfilled statutory conditions required for registration. With regard to the third contention raised by the Revenue, the learned counsel for

assessee-Trust submitted that the decision of the Tribunal in the case of ***Jammu Development Authority*** (supra) is not applicable in the facts of the present case. Moreover this Court, in ***Improvement Trust, Moga's case*** (supra) had considered the said decision.

19. The issue that whether the activities of the assessee-Trust are charitable in nature or not is answered against the Revenue.

20. Before proceeding further to decide the issue, it would be appropriate to reproduce the activities of the assessee-Trust and figure losses suffered. These were pleaded before the CIT as under :-

> *(a) To develop sewerage in the city costing about Rs.58.36 crores vide Resolution No. 49, dated 05.09.2008 (without any charges or recovery).*
>
> *(b) The Trust has reserved 18.27 Acres Land for "Bus Stand" for "General Public" vide Resolution No.18, dated 03.10.2007 (free of cost).*
>
> *(c) Land measuring 1.30 Acres for CIA staff "(Police Department)" Vide Resolution No.71 dated 12.12.2008 (free of cost).*
>
> *(d) "Community Hall" measuring 2000 sq. Yds. To be erected & built in Rajiv Gandhi Nagar, Gurukul Nagar, Gurukul Road, Bathinda, Vide Resolution No. 75 dated 30.09.2008 (free of cost).*
>
> *(e) The Trust is to provide "Service Lane" 16 wide with parking and footpath". The amount to be spent is Rs. One Crore Vide Resolution No. 48 dated 26.08.2008 (free of cost).*
>
> *(f) The Trust has given as "Charity" of 'town cleaning machine' (vaccum Machine) to the Municipal Corporation, Bathinda, for Rs. 64.86 Lakhs vide Resolution No.56 (app. Rs. Ten Lacs) vide Letter No.1146 dated 24.09.2007 (free of cost).*
>
> *(g) To provide Land as well as construction of building for 14 plots measuring 1512 sq. ydds. valuing Rs. 45.2 lacs and*

construction cost rs. 64.86 lakhs vide Resolution No.56 dated 31.08.2006 and were handed over to the poor (free of cost).

(h) To construct "Road divider" and development & renovation of Guiana- Bathinda- Mansa-G.T. Road, costing Rs.10.64 crore vide Resolution No.41 dated 31.12.2008 (free of cost).

(i) Donation of Rs. 5 Lacs to : Deaf & Dumb school" for the welfare of such handicap students, vide Resolution no. 81 dated 31.10.2005.

(j) Land for "vridh Ashram (Rest house for senior citizens) measuring 2038 sq. yds. in Transport Nagar (Free of cost).

(l) Land for "Public Health care centre" measuring 1825 sq. yds. in Kamla Nehur vide Resolution No.23, dated 03.06.2009.

(m) Construction of Rs. 25 Lakh for construction of divider & road from "Bridge to N.F.L chowk" payment was made on 21.11.2001 by cheque to PWD(B&R) for public use.

(n) Making payment of street light bills for various schemes of trust per year (free of cost).

(o) Grant of Rs.1.25 Lakhs to "Deaf and dumb school" Bathinda vide Resolution No.11, dated 14.04.2007 for the welfare of such handicap students.

(p) Land reserved for "Yatri Niwas" in Bathinda near to New Bus stand in 49.5 Acre (free of cost).

(q) Land provided for "Approach road" nearly 60 wide measuring 382.4 sq. mtr. Construction cost is nearly Rs. 23.67 Lacs approved vide Resolution No.21 dated 11.10.2007 (free of cost).

In this context, it is further respectfully submitted as under:-

(1)Improvement Trust Bathinda is providing "Public utility services" and not for the purpose of profit.
(2)That the functions of Improvement Trust Bathinda in Punjab is the same before the amendment of the Act and after the amendment of section 2(15) of the Act.
(3)From the Balance sheet we find that there is always Loss.

Asstt. Year	*Loss as per Audited B/S*
2003-04	*4,72,723/-*
2004-05	*80,346/-*
2005-06	*10,13,765/-*
2006-07	*36,39,146/-*
2007-08	*10,97,950/-*

21. The entire emphasis of the revenue is on the fact that the assessee-Trust had earned profits by selling plots. This itself cannot be a ground for denying the benefit under Section 11 of the Act, especially when it is not disputed that the selling of plots and premises by the trust is only incidental and ancillary to its main purpose and the profits have been utilized for various general public welfare and public utilities. The assessee-Trust is a statutory body established for providing general public utilities and for development of localities within the municipal limits. The acquiring of land and selling of the plots is merely an ancillary activity carried out for the purpose of planned improvement of the area. It cannot be equated that statutory Trust has been formed to carry-on business of coloniser or developer. The CIT was swayed by the fact that the profit was being earned and the said profit was converted into percentage to show that the margin of the profit was huge. There is not even iota of evidence on record to show that the said profit earned was not used for the purpose of general public utilities. There is no requirement in the provisions that the activities of charitable purposes have to be undertaken only by donations or have to be by financial aid of the government. Therefore, the CIT was not correct in cancelling the registration under Section 12AA of the Act especially when the surplus fund was being utilised for charitable purpose.

22. In the case of ***Improvement Trust Moga*** (supra), similar

contentions raised by the learned counsel for the Revenue have been considered and rejected by this Court. The relevant portion of the decision is quoted below :

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"72. The Tribunal rightly rejected the contention that to fall within the ambit of the words " advancement of any other object of general public utility" the trust must necessarily be involved only in implementing poverty alleviation programs or doing other acts of charity. <u>It is sufficient if it does precisely what the last category in Section 2(15) states namely being involved in activities for the advancement of an object of general public utility. They include a proper systematic development of certain areas. These activities are by virtue of the PTI Act undertaken by this assessee.</u>

73. <u>The Tribunal also rightly held that an object of general public utility does not necessarily require the activities to be funded or subsidized by the State.</u> So long as the objects fall within the ambit of the words "object of general public utility," it is sufficient. The achievements of those objects do not have to be as a result of State funding or State subsidy. The Tribunal accordingly rightly held that the authorities were not justified in denying the benefit of section 11 and holding that the assessee was not covered by the words "advancement of any other object of general public utility" in Section 2(15). The Tribunal, therefore, rightly directed the Assessing Officer to delete disallowance of exemption.

74. <u>It cannot possibly be suggested that the Government of Punjab formed the trusts under the Punjab Town Improvement Act, 1922 because it wanted to carry on the business as colonizers or developers under the mask of the category "objects of general public utility".</u>

75. Section 28(2)(iii) of the Punjab Town Improvement Act, 1922 permits a scheme under this Act to provide inter-alia for the disposal of the land vested in or acquired by the trust including by lease, sale and exchange thereof. This, however, is not the predominant activity or responsibility of the trust. Nor for this assessee is making profits from this activity its predominant motive.

76. The power of the assessee to dispose of land conferred by Section 28(2)(iii) is not an absolute or independent power. It is conferred upon the assessee in the discharge of its statutory duties imposed on it by the PTI Act of framing schemes. Sub section (1) of Section 28 entitles the assessee to combine the various schemes referred to in Chapter-IV. Sub section (2) stipulates that the scheme under the Act may provide for a variety of things including the disposal of land belonging to the assessee. This power is, therefore, in furtherance of, connected with and in relation to a scheme in Chapter-IV. It is not an absolute power independent of and unconnected with the assessee's statutory functions under the PTI Act.

77. <u>The predominant activity of and the purpose for the establishment of the assessee is summed up in two words "town improvement"</u> in the title "Punjab Town Improvement Act, 1922." The preamble is titled "An Act for the improvement of Certain Areas." The preamble states "whereas it is expedient to make provision for the improvement and expansion of towns in Punjab." The Act in general and Chapter-IV thereof in particular indicates the reason for and the basis of the establishment of the trust. Almost every section in the Chapter indicates clearly that the trust is established for the purpose of "advancement of the object of general public utility." This is the predominant purpose of the trust.

78. The language of the provisions of the Act are self explanatory in this regard. The trust must deal with the *buildings unfit for human habitation, the danger caused or likely to be caused to the health of the inhabitants of the area on account of the congested conditions of streets or buildings or want of light, air, ventilation or proper conveniences in an area and sanitary defects. The trust is required to frame the street schemes to lay out new streets, thoroughfares and open spaces or alter existing streets whenever it appears to the trust that it is necessary to do so for the purpose of providing building sites or remedying defective ventilation or creating new or improving existing means of communication and facilities for traffic.*

79. <u>The trust must also prepare development schemes. This duty contained in Section 24 is not akin to that of a private developer or a colonizer as wrongly suggested by the Assessing Officer and confirmed by the CIT(A).</u> The development scheme under section 24 is prepared for the purpose of development of a locality. Sub section (2) of Section 24 provides that the trust may if it is of the opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto within the local area of such trust prepare "an expansion scheme." The development scheme, therefore, is for the public purpose of development of any locality and an expansion scheme is also prepared when it is expedient and for the public advantage as opposed to a mere personal advantage as in the case of private developers or the colonizers. The two cannot possibly be compared. These schemes do not contemplate mere development of the plots and the construction of the premises for sale. The Trust must under the Act adopt a holistic approach for the betterment and advantage of the entire area within its jurisdiction.

80. Section 25 which provides for a housing accommodation scheme to be framed is similar. The trust is required to frame such a scheme if it is of the opinion that it is expedient and for *the public advantage to provide housing accommodation for any class of inhabitants within its local area. The trust is, therefore, to be motivated not by personal but by public benefit. Such activities clearly fall within the last category of cases in the proviso to Section 2(15) as it stood at the relevant time, namely, "advancement of an object of general public utility."*

81. It can hardly be suggested that the Government of Punjab established the assessee's trust and conferred upon it public responsibilities and duties of the nature specified in the PTI Act as a camouflage for its commercial, trade and business ventures. The creation and incorporation of the trust under section 3 is for a public purpose. We have no doubt whatsoever that the activities of the trust fall within the meaning of the words " charitable purpose" in Section 2(15).

82. Whether the mandate of the Act is followed by such a trust is a different matter. The facts in that regard are relevant in examining whether the activities of the trust of a given year entitled it to the benefit of the Income Tax Act. <u>Mere profit making on account of certain incidental or ancillary activities of the trust do not disentitle it to the exemptions. The Trust constituted under the PTI Act is likely to make profit on account of its commercial or business activities such as when it acts pursuant to the power under section 28(2)(iii) by disposing off its lands. That, however, does not take it out of the definition of 'charitable purpose' in Section 2(15). As we held earlier, trade, commerce and business in Section 2(15) must be such as to involve an element of profit. Profit, however, is not the predominant motive of such trusts.</u> In our view considering the nature of the Act, selling of plots and premises by the trust is only incidental and ancillary to its main purpose which at the cost of repetition is "town improvement" in almost every respect. Even where the plots are developed and premises are constructed and sold at the market price, the activity is not *commercial or business venture per se but one necessitated on account of the implementation of the provisions of the trust through statutory schemes. The main purpose of such schemes is driven by public requirements and not as a commercial venture per se. They are incidental to the main object of the trust.*

83. In the present case, the Assessing Officer has not indicated any facts which indicate that the assessee deviated from this principle. He has merely referred the extent of profit making activities without correlating the same to the other activities of the trust. In our view, therefore, the order of the Tribunal must be upheld.

(emphasis supplied)

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23. The reliance by learned counsel for revenue on ***Tribune Trust's case*** (supra) is of no help. This Court while deciding the appeal took note of the fact that the profit earned by Tribune Trust was not being utilised for charitable purposes, which is not the fact in the present case.

24. In view of the above discussion and having regard to the decision of this Court in case of the Improvement-Trusts itself, it is concluded that the objects and activities of the assessee-Trust are for charitable purpose.

25. Adverting to the contention of the revenue, that the appellant is a statutory body, and therefore, shall not be entitled to claim exemption, does not arise in the present case. Reliance on the decisions of ***A.P. State Transport Corporation vs. Income Tax Officer***, and ***Adityapur Industrial Area Development Authority vs. Union of India's*** (supra) is, thus, not well founded.

26. Analysing the facts of those pronouncement, therein, the

exemption was being claimed by the statutory authorities under Article 289 of the Constitution of India. It was in that context that the Supreme Court held that merely if the assessee is the local authority, it will not be entitled for exemption under Article 289 of the Constitution of India.

27. In ***Calcutta State Transport Corporation vs. Commissioner of Income Tax'*** *case* (supra), the issue before the Supreme Court was whether the Calcutta Transport Corporation was a local authority or not and therefore entitled to exemption under Section 12(20) of the Act. The Supreme Court held that Transport Corporation was not a local authority and not entitled to benefit under Section 10(20) of the Act.

28. The above-said decisions do not advance the case of the revenue.

29. The contention of the learned counsel for the Revenue that the Tribunal has not followed its earlier decision in ***Jammu Development Authority's*** case (supra) also does not support the case of the department.

30. The decision of the Tribunal, in ***Jammu Development Authority's*** case (supra), was challenged before the High Court of the Jammu & Kashmir. The said appeal was dismissed on the ground that there was no question of law involved much less any substantial question of law. The decision of the Tribunal was based on the facts of that case. A finding was recorded that the assessee was not advancing the objects concerning general public utility. Moreover, the said decision has been considered by this Court in ***Improvement Trust, Moga' case*** (supra).

31. Next contention urged by the revenue, that the Tribunal has not decided the remand proceedings in consonance with the directions of this Court, equally will not have any impact on the decision. Normally in such

circumstances, the matter would have been sent back to the Tribunal for decision afresh. But in the present case, it has already been held that the activities carried out by the assessee-Trust are for charitable purposes. This Court in case of the assessee-Trust itself had considered the provisions of 1922 Act. In such circumstances, no fruitful purpose would be achieved by remanding the matter back as urged by learned counsel for the revenue.

32. The last issue with regard to the scope of cancellation of registration under Section 12AA(3) need not be gone into at this stage as the core issue that the activities being carried out by assessee-Trust are charitable in nature or not, has been answered in favour of the assessee-Trust.

33. The questions of law as claimed are answered accordingly and the appeals are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

01.08.2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No