

## **Apex Court interprets definition of 'Charitable Purpose' used in Sec. 2(15) for tax exemption**

### **Facts of the case - ACIT(exemption) v. Ahmedabad Urban Development Authority - [2022]**

The primary question before the Supreme Court was the correct interpretation of the proviso to Section 2(15) which defines 'Charitable purpose'.

#### **Decision of the case:**

The Supreme Court of India has clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce, or business, or provide service in relation thereto for any consideration.

However, in the course of achieving the object of General Public Utility (GPU), the concerned organization can carry on trade, commerce, or business or provide services in relation thereto for consideration, provided that:

- (i) The activities of trade, commerce, or business are connected to the achievement of its objects of GPU; and
- (ii) The receipt from such business or commercial activity or service in relation thereto does not exceed the quantified limit, i.e., 20% of total receipts of the previous year.

Charging of any amount towards consideration for such an activity (advancing general public utility), which is on a cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto.

It is only when the charges are markedly or significantly above the cost incurred by the assessee, they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business".

Further, Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit, or surplus or gains must, therefore, be incidental.

The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has not been breached.

The assessing authorities must every year, scrutinize the record to discern whether the nature of the assessee's activities amounts to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on a cost-basis, or significantly higher).

If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in the proviso to Section 2(15), has been breached, thus disentitling them to exemption.