आयकर अपीलीय अधीकरण, न्यायपीठ – "B" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य **एवं** डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 278/Kol/2018
Assessment Year: 2012-13

M/s. Credai Bengal (PAN: AABCC2326D)	Vs.	Income-tax Officer (Exemption), Ward-1(1), Kolkata.
Appellant		Respondent

Date of Hearing	06.03.2019
Date of Pronouncement	03.06.2019
For the Appellant	Shri S. K. Tulsiyan, FCA
For the Respondent	Shri Rabin Choudhury, Addl. CIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by assessee is against the order of Ld. CIT(A) - 25, Kolkata dated 27.10.2017 for AY 2012-13.

2. The following grounds of appeal have been raised by the assessee:

"1. That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in law in denying exemption u/s 11 r.w.s. 13(8) of the I. T. Act,1961 on the income ofRs.91,10,026/- arising in the form of sponsorship out of the activity of holding Fairs, Meetings, Conferences and Seminars on his alleged assumption that such activity was not charitable warranting the benefit of sec. 11 & 12 of the Act.

2. That, on the facts and in the circumstances of the case, the Ld. C.LT.(A) further erred in law in confirming the disallowance of Rs. 91,10,026/- holding the appellant-company as engaged in the activity of holding Fairs, Meetings, Conferences and Seminars in the nature of trade, commerce or business falling within the ambit of section 2(15) of the Act.

3. That, the Ld. C.LT.(A) while upholding disallowance of Rs.91,10,026/- and thus denying the benefit of section 11 of the Act further erred and misdirected himself in not properly considering the principal objective of the appellant company behind holding of Fairs, Meetings, Conferences and Seminars and assuming such activities in lieu of sponsorship as in the nature of trade, commerce or business in spite of the fact there was no contravention of the provisions of sec.l1 in claiming such lawful claim.

4. That, on the facts and in the circumstances of the case, the Ld. C.LT.(A) erred and misdirected himself in treating corpus donation of Rs.17,50,000/-, being in the form of Admission Fees from members, as not exempt u/s 11(1)(d) of the Act.

5. That, as the order of Ld. CIT(A) suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.."

3. Ground nos. 1, 2 and 3 are against the action of the Ld. CIT(A) in denying exemption u/s. 11 r.w.s. 13(8) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") on the income of Rs.91,10,026/- arising in the form of sponsorship out of the activity of holding fairs, meetings, conferences and seminars.

4. Brief facts of the case as observed by the AO are that the assessee filed its return of income on 29.09.2012 for the relevant AY 2012-13 declaring deficit income of Rs. 29,82,888/-. The case was selected for scrutiny through CASS in AST Module. Notices u/s. 143(2) and 142(1) of the Act along with questionnaire were issued and served on the assessee. According to AO, the assessee was registered u/s. 12A of the Act vide order No. DIT(E)/S-37/8E/238/91-92 dated 10.10 1995 and has claimed exemption u/s. 11 of the Act. The assessee was engaged in the promotion of commerce and industry relating to construction in general and building construction in particular. According to AO, during the course of assessment proceedings the assessee submitted that the assessee had received Rs.3,94,70,967/- from different sponsors, most of whom are the members of the appellant-organization. These sponsors gave the money to the assessee for the purpose of holding fairs, meeting, conference and seminars. During the course of assessment proceedings the assessee was asked to explain as to why the claim of exemption u/s. 11 of the Act would not be denied by invoking the proviso of Section 2(15) read with section 13(8) of the Act. In response the assessee filed a detailed response on 16.03.2015, inter alia, emphasizing on the fact that the organizing of two fairs by the assessee is a charitable activity and not business. Assessee also relied on various case laws in support of its submission. After considering the submissions of the assessee the AO held that the activity of the assessee of holding fairs, meetings, conferences and seminars in lieu of sponsorships received to be in the nature of "*rendering service in relation to any trade, commerce or business.*" Further, the AO held that the receipts from such sponsorship out of the said activity to the tune of

Rs.3,94,70,967/-, exceeded the prescribed limit of Rs.25,00,000/- and therefore the case of the appellant stood covered by the proviso to sec. 2(15) of the Act. Thus the AO held thatthe activities carried on by the appellant were no longer 'charitable' in nature as defined u/s. 2(15) of the Act and consequently therefore the appellant was not eligible to claim benefit of Section 11 of the Act. The AO accordingly computed the business income of the assessee after allocating the direct and indirect expenses on account of the said activity as under :

Total Business receipts		Rs. 3,94,70,967/-
Less: Business expenses – direct		Rs. 3,03,60,941/-
	Profit from business	Rs 91,10,026/-

Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who denied exemption u/s. 11 r.w.s. 13(8) of the Act and held that the assessee is engaged in the activity of holding fairs, meetings, conferences and seminars which wasin the nature of trade, commerce or business and therefore the activities of the appellant did not come within the ambit of section 2(15) of the Act. Aggrieved by the order of the Ld. CIT(A), assessee isnow in appeal before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the appellant has been granted registration u/s 12AA of the Act since 1995 and onwards. Holding trade exhibitions and conferences has been the regular feature of the activities carried on by the appellant since its incorporation. In the past assessments completed u/s 143(3), the AOs never questioned the appellant's eligibility to claim benefit of Section 11 of the Act in respect of surplus realized from its activities of holdings fairs and exhibitions where members as well as non-members participated on payment of fees / sponsorship charges. We find that even in the preceding year i.e. AY 2011-12, the AO had allowed the appellant's claim for non-taxability of the sponsorship / participation fees received from the members for participating in trade fairs, exhibitions and conferences but denied the benefit of Section 11 in relation to the sponsorship / participation fees received from non-members. The Ld. CIT(E) was however of the opinion that the appellant's activity

of holding trade fairs, exhibitions and conferences did not come within the ambit of Section 2(15) which defines the term 'charitable purpose' and therefore he in his order u/s 263 held that the appellant did not carry on the charitable activities and therefore not eligible to avail the benefit of Section 11 of the Act. The Ld. AR of the appellant brought to our attention that this Tribunal in its order dated 30.09.2016 in ITA No.381/Kol/2016 did not agree with the Ld. CIT(E)'s finding and held that the appellant's activity of holding trade fairs, exhibitions and conferences was carried out in pursuit of or incidental to its main objective which was considered to be charitable in nature by the Ld. CIT(E) at the time of granting registration u/s 12A of the Act. The Ld. AR therefore submitted that the issue involved in the present appeal is squarely covered in appellant's favour by the decision of the coordinate Bench of this Tribunal in its own case for AY 2011-12. He further brought to our attention that this issue was also decided in assessee s favour by the decisions of the Hon'ble Apex Court in the case of Addl. CIT vs Surat Art Silk Cloth Manufacturers Association (121 ITR 1) and the coordinate Bench of this Tribunal in the case of DCIT Vs Indian Chamber of Commerce (ITA Nos. 415, 416 & 1291/Kol/2016). He therefore submitted that the lower authorities wer unjustified in not following the decision of the coordinate Bench of this Tribunal and denying the benefit of Section 11 by wrongly interpreting the proviso to Section 2(15) read with Section 13(8) and wrongly distinguishing the earlier decision of the Tribunal rendered in appellant's own case for earlier years. Per contra the Ld. DR appearing on behalf of the Revenue strongly supported the orders of the lower authorities.

6. After giving a thoughtful consideration to the rival submissions, material placed on record and the judicial precedents available on this subject, we note that in the appellant's case the lower authorities rejected appellant's claim for benefit of Section 11 primarily on the ground that the appellant was holding trade fairs, exhibitions and conferences and in respect of these activities received substantial sums from the participants who were both members of the appellant organization as well as non-members. In the opinion of the lower authorities the appellant activity of holding trade fairs, exhibitions and conferences was in the nature of trade or business and therefore in terms of the proviso introduced by the

Finance Act, 2008 in Section 2(15) of the Act, the said activity could not be regarded to be charitable in nature and consequently therefore the benefit of Section 11 was not available to the appellant. We however find that since inception of the appellant it has been conducting the foregoing activities in furtherance of the objects of the company and in all the past assessments such activities were considered to be charitable in nature. We find that there was no material change in the factual matrix of the appellant's case though the change was brought about in Section 2(15) by introduction of proviso therein. On careful perusal of proviso to Section 2(15) it is noted that the object of advancement of general public utility is not be considered as charitable in nature if it involves carrying of any activity in nature of trade, commerce or business or any activity of rendering any service in relation to trade, commerce or business, for a cess or fee or other consideration. From the language employed by the Legislature while enacting the said proviso it is apparent that it is only when the activity of general public utility in itself involves carrying on any trade, commerce or business only then the proviso will be applicable. In other words the activity of the organization on its own should constitute either trade, commerce or business or any activity involving provision of servicein relation o trade, commerce or business. We however note that in the present case the lower authorities have not brought on record any cogent or tangible material which in any manner will persuade us to hold that the activity of the appellant of holding trade fairs, exhibitions or conferences were in itself for making profit or in the nature of t ade, commerce or business.

7. We note that as per Memorandum of Association, the main object of the assessee is to engage itself in establishing harmony between the construction industry and the Government Departments at the Central and State levels, local and public bodies, financial institutions and private bodies and institutions for promoting healthy growth and development of the construction industry. In order to pursue and fulfilment of the said main objectives, the appellant-association organised certain incidental or ancillary activities, as stated above, namely, organising fairs, exhibitions and several other inter-connected activities. Such fairs/exhibitions are organized by the assessee as ancillary in the pursuit of achieving the main objectives of the institution. The purpose of organizing fairs or

exhibitions etc. is to disseminate information about availability of affordable housing amongst emerging urban populous and to provide effective platform for holding interface amongst various stakeholders connected with development or urban infrastructure with Govt. agencies and general public for the development of civic infrastructure. We further note that the persons taking part in such fairs and making contributions are primarily members of the appellant-institution. It may be so that some of the non-members also participate in these fairs, exhibitions & conferences. However the non-members participating are not strangers but they are important stakeholders closely connected with real estate development industry and thus have important role in the development of civic infrastructure facilities. In this factual background we are of the considered view that the activities of holding fairs, exhibitions and conferences were incidental or ancillary to the attainment of the main objects for which the appellant in titution was created and registered u/s. 12AA of the Act. In view of the foregoing facts we are of the considered opinion that the benefit of Section 11 could not be denied to the appellant only because it realized net surplus from activities which were undertaken in the pursuit of attaining main object of the organization which was considered to be charitable in nature by the Department itself at the time when registration u/s 12AA was granted and in the past assessments the benefit of Section 11 was also extended in respect of the self-same activities.

8. In this regard we note that the issue involved in the present appeal is coveredby the majority opinion of the Hon'ble Supreme Court in Addl. CIT vs Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1. Even though the decision of the Hon'ble Supreme Court was rendered in the backdrop of provisions of the IT Act, 1961 prior to introduction of the proviso in Section 2(15) of the Act yet in our considered opinion the judicial principles laid down in the said decision continue to hold field and therefore still applicable even after introduction of first proviso to Section 2(15) of the Act. In this regard we also note that the ratio laid down by the Hon'ble Apex Court in the case of Addl. CIT vs Surat Art Silk Cloth Manufacturers Association (supra) was applied by this Tribunal in appellant-assessee's own case for A.Y. 2011-12 which is placed at page no. 68 to 87 of the

Paper Book in ITA No. 381/Kol/2016 passed on 30.09.2016. The relevant extracts of the decision is reproduced below:

8.1 Now in the light of above words, we have to examine as to whether the order of the ld. CIT is a valid order in the light of the above stated points/provisions of section 263 of the Act.
Issue No. 1
Violation of provisions of section 2(15) of the Act

9. We find that the activities of the assessee are within the objects as per its memorandum of association. The relevant main objects and objects incidental or ancillary to the attainment of the main objects stand as under:
"Main objects:-
'3) To establish harmony between the construction industry and the Government Departments at the Central and State levels, local and public bodies, financial institutions and private b dies and institutions for promoting healthy growth and development of the construction industry.
4) xxxxxxxxxx
5) xxxxxxxxxxx
6) To encourage research and development in the construction industry and for that purpose organizes conferences, seminars, exhibitions, films shows etc. and also establish laboratories, collect models and designs, etc.'

Objects incidental or ancillary to the attainment of the main objects:
'5) To organize conferences, exhibitions film shows, seminars, tours, delegation, etc. in India and abroad and to nominate delegates and advisers and to take steps which may promote and support the construction industry, trade and profession.'
The assessee-company was establ shed with the aforesaid objects and the same were accepted by the Revenue while granting the reg stration u/s 12AAof the Act on 10.10.1995. Since the inception of the assessee-company the objects and activities remained same and which were accepted by the Revenue even under the assessment framed u/s 143(3)/147 of the Act consistently without holding the aforesaid activities as commercial in nature.
Accordingly, in view above, we are inclined to provide the relief to the assessee on the basis of consistency as there is no change in the objects and activities of the society. In this connection, we rely in the case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 where the Hon'ble Supreme Court has held as under:-
"There is no dispute that the properties of the assessee are also recorded in the name of the Sabha (Central Council) and there is no personal interest claimed by the Sant Satguru in such property. Over the years the Satguru has never claimed any title over, or beneficial interest in, the properties and they have always been utilised for the purpose of the religious community. Even if the trust was revocable, the property was not to go back to the Satguru on revocation. The constitution and the bye-laws on record indicate in cl. 1(b) that where the property was given to the SantSatguru, it was intended for the common purpose of furthering the objects of the Sant Satguru and the Central Council had the authority to manage the property. Clause 9 of the document stipulated that the properties would vest in the trust and cl. 25 provided that the trust shall be revocable at the discretion of the Council and the trustees shall hold office at its pleasure. Upon revocation the property was not to go back to the Satguru and, at the most, in place of trust, the Central Council would exercise authority. It is on record that there has been no Satguru long before the period of assessment under consideration. As a fact, therefore, the Tribunal was justified in holding that the property was subject to a

legal liability of being used for the religious or charitable purpose of the Satsang.—AllIndia Spinners' Assocn. vs. CIT (1944) 12 ITR 482 (PC) : TC23R.179applied; The Secretary of State for India in Council vs. Radha Swami Satsang (1945) 13 ITR 520 (All) impliedly approved; CIT vs. Radha Swami Satsang (1980) 19 CTR (All) 345 : (1981) 132 ITR 647 (All) :TC23R.644 set aside. Properties of assessee, a religious institution, were meant for the common purpose of furthering the objects of the Sant Satguru and vested in its Central Council and income was always utilised for that purpose and, therefore, assessee was entitled to exemption under ss. 11 and 12."

Now coming to the objects and activities of the assessee company, we find that the ld. CIT held that the activities are commercial in nature in terms of the provisions of section 2(15) of the Act. At this juncture we would like to reproduce the said provision which reads as under:-
"2[(15) chartable purpose includes relief of the poor, education, [yoga]medical relief, [preservation of environment (including water sheds, 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 first proviso shall not apply if the aggregate value of receipts from activities referred to therein is twenty-five lakh rupees or less in the previous year".

The ld. CIT passed impugned order u/s 263 of the Act is treating the activities of the assessee as commercial in nature in terms of the clause of section2(15) i e. 'advancement of any other object of general public utility'.
However we find that as per the proviso to section 15 along with the speech of the Finance Minister and CBDT circular number 11 of the 2008 dated 19th December 2008 make it clear that only the institution carrying on commercial activ ties are intended to be covered by the proviso, not the genuine charitable institutions. The activity will be deemed to be in the nature of trade, commerce or business only if the same is carried on with the intention to earn profit. The Courts in the series of decision have held that it is an activity carried on in a systematic manner with a view to earn profit, which will be termed as "business". Accordingly in order to hold that the activity is in the nature of trade, commerce or business there should be profit motive. If during the course of carrying out any activity on non-commercial lines, some profit is received by the trust, which is incidental to the activities of the trust, the same shall not be construed to be activity in the nature of trade, commerce or business of the assessee. However, the assessee relied in the order of theCo-ordinate "C" Bench of this Tribunal in the case of Indian Chamber of Commerce Vs. ITO (ITA Nos. 1491 & 1284/Kol/2012 dated 02.12.2014. But the ld. CIT distinguished the said case law by holding that in that case the assessee's activities were incidental and ancillary to the main objects to the trade, commerce and industry but in the case on hand the main activities of the assessee are commercial in nature. However, we disagree with the view taken by the ld. CIT as the questions before the Hon'ble ITAT were as follows:-
"2. That on the acts and the circumstances of the case of the appellant the Ld.CIT(A) erred in confirming the allegation of the Ld. AO that the appellant's activities of conducting the Environment Management Centers, meetings, conferences & seminar and the Issuance of Certificate of Origin were all in the nature of business carried on systematically and continuously with a motive to earn profit from the same.

3. That on the acts and the circumstances of the case of the appellant and in law, the Ld. CIT(A) erred in holding that decision of the Hon'ble Delhi HC dated 19th September, 2011, in the case of DIT (Exemptions) Vs. Institute of Chartered Accountants of India and that the case of The Institute of Chartered Accountant of India in Write Petition 1927 of 2010are not applicable to the case of the appellant inasmuch the facts of the said case are different from the case of the appellant.

4. That on the acts and the circumstances of the case of the appellant the Ld. CIT(A) erred in holding that the appellant's activities of conducting the Environment management Centers, mettings, conferences & seminars and the issuance of Certificate of Origin were not incidental to the main object of the appellant which was charitable in nature."

9. From the above facts, we find that there was no question to decide before the then Hon'ble ITAT which is arising in the instant case whether the activities of the instant assessee are incidental/ ancillary to the main objects to the trade, commerce and industry or main objects are in the nature of trade, commerce and industry. Therefore, in our considered view the facts of the case are squarely applicable of case of Indian Chamber of Commerce Vs. ITO(Supra), wherein it was held that the activities of the assessee are charitable in nature. The relevant portion of the order is reproduced below:-

"30. Hence in view of all the above, concluding this issue we hold that the purpose for which the assessee association, i.e. the Indian Chamber of Commerce was established is a charitable purpose within the meaning of s. 2(15) of the Act. The assessee is carrying out the said activities which are incidental to the main object of the Association and which are conducted only for the purpose of securing the main object which is the advancement and development of trade and commerce and industry in India. The activities are not in the nature of business and there is no motive to earn profit. The income arising to the assessee is only incidental and ancillary to the dominant object for the welfare and common good of the country's trade, commerce and industry. The profits earned are utilized only for the purpose of feeding its dominant object and no part of such profit is distributed a ongs its members.

Profit making is not the object of the asse see. Profit is merely a by product which result incidentally in the process of carrying out the charitable purpose. Thus, the income of the assessee for AY 2008-09 is exempt from tax u/s. 11 of the Act. Accordingly, the appeal of assessee is allowed.

35. In view of the above, we thus now turn to examine and analyze in full details the particular fact of the present case. That the assessee association is a charitable institution, duly registered as such us.12A of the Act, carrying in its main object of development of trade, industries and commerce. The main objects for which the association came into existence, are clearly set out in clause 3 of the memorandum of Association which duly records and reads as under:-

'3(a) To promote and protect the trade, commerce and industries and in particular the trade, commerce and industries in or with which Indians are engaged or concerned' The activities of conducing Environment Management Centre, Meetings, Conferences & Seminar and issuance of Certificate of Origin, being the activities stated to be "services in relation to trade, commerce or business" were all well covered by the main object being fully connected, incidental and ancillary to the main purpose and were conducted solely for the empowerment, betterment and for creating awareness amongst the industrialists in order to bring about the development of trade and industries in India. Further it is to be noticed that the Memorandum has also specifically authorized the Chamber "to do all other things as may be conductive to the development of trade, commerce and industries, or incidental to attainment of the above objectives or any of them."Thus it was only for the purpose of securing its primary aims of proper development of business in India that the assessee was taking the said ancillary steps. The said activities were not carried out independent of the main purpose of the association of the institution being the development and protection of trade. There was no

independent profit motive in any of the said activities. The surplus arising out of the same was merely incidental to the main object to charity. The majority of the receipts in the said activities were out of the sponsorships and donations. The expenses incurred on the said activities as and when incurred were all separately debited to the said accounts and the balance was shown as surplus over receipts. Thus in view of the above it is clear that the alleged activities were all merely incidental to the main object of the assessee and the predominant object of the association being the promotion development and protection of trade and commerce which is an object of general public utility, it can never be the case that it is engaged in "business trade or commerce" or in any "service in relation to business, trade or commerce. The individual nature and purpose of the specific activities, it is stated that the activities held by AO and the (A) to be business in nature, were as follows:-

a) Meetings, Conference & Seminars
b) Environment Management Centre
c) Fees for Certificate of origin

38. In view of the above decision, we are of the considered view that in the given facts and detailed reading of the various judicial decisions through the years, interpreting the definition of "charitable purpose" as laid out in sec. 2(15) of the Act and also the definition of "busine s" in relation to the said section amply reveals that the theory of dominant purpose has always, all through the years, been upheld to be the determining factor laying down whether the institutions Charitable in nature or not. Where the main object of the institution was 'charitable' in nature, then the activities carried out towards the achievement of the said, being incidental or ancillary to the main object even if resulting in profit and even if carried out with non members, were all held to be "charitable" in nature. Hon'ble Apex Court in the earliest case of Andhra Chamber of Commerce (supra) had laid out the principle that if the primary purpose of an Institution was advancement of objects of general public utility, it would remain charitable even if an incidental and ancillary activity or purpose, for achieving the main purpose, was profitable in nature, in our view the basic principle underlying the definition of "charitable purposes" remained unaltered even on amendment in the sec. 2(15) of the Act w.e.f. 1.4.2009 though the restrictive first proviso was inserted therein. Accordingly, in the given facts of the case as discussed above in detail, the assessee association primary purpose was advancement of objects of general public utility and it would remain charitable even if an incidental or ancillary activity or purpose, for achieving the main purpose was profitable in nature. Hence, assessee is not hit by newly inserted proviso to s. 2(15) of the Act. this issue of assessee's appeal is allowed."

Besides the above, we also rely in the case of the CIT Vs. Federation of Indian Chambers of Commerce & Industry (1981) 130 ITR 186 (SC) where the Hon'ble Supreme Court has held as under :

"Whatever reservations one may have regarding the correctness of the interpretation of the exclusionary clause in the definition of 'charitable purpose' in s. 2(15) of the Act, there can be no doubt that the majority decision in the Addl. CIT vs. Surat Art Silk Cloth Manufactures Assn.(1979) 13 CTR (SC) 378 : (1980) 121 ITR 1 (SC) : TC23R.195 is binding on the Bench. Undoubtedly, the activities of the assessee in regard to holding of the Conference of the Afro-Asian Organisation in the relevant accounting year were for the advancement of the dominant object and purpose of the trust, viz., promotion, protection and development of trade, commerce and industry in India. The income derived by the assessee from such activities was exempt under r/w s.11(1)(a) s. 2(15). There is a distinction between the "purpose" of a trust and "powers" conferred upon the trustees as incidental to the carrying out of the purpose. For instance, cl. 3(v) enables the establishment and support of associations, institutions, funds, trusts and convenience calculated to benefit the employees and their dependents, for making provision for grant of pension and allowances, etc. The

framing of such employee benefit scheme is essential and necessary for the proper functioning of the organisation and is incidental to the carrying out of the purpose for which it is constituted. If the primary or dominant purpose of a trust or institution is charitable, any other object which is merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or the institution from being a valid charity. Likewise, cl.3(z1) and (z2) which permit the establishment of a trust or trusts, appointment of trustees thereof from time to time and the vesting of funds or surplus income or any property of the assessee in the trustees, are nothing but powers conferred on them for the proper financial management of the affairs of the trust which are incidental or ancillary to the main purpose of the trust.—Addl. CIT vs. Surat Art Silk Cloth Manufacturers Association (1979) 13 CTR (SC) 378 : (1980) 121 ITR 1(SC) : TC23R.195 followed.
The majority decision in Surat Art Silk Manufacturers case has the effect of neutralising the radical changes brought about by Parliament in the system of taxation of income and profits of charities, with particular reference to "objects of general public utility" to prevent tax evasion, by diversion of business profits to charities. It is the vagueness of the fourth head of charity "any other object of general public utility" that impelled Parliament to insert the restrictive words "not involving the carrying on of any activity for profit". It was clearly inconsistent with the settled principles to hold in the aforesaid case that if the dominant or primary object of a trust was 'charity' under the fourth head 'any other obj ct of general public utility', it was permissible for such an object of general public utility, to augment its income by engaging in trading or commercial activities. In retrospect, it seems that it would have been better for Parliament to have deleted the fourth head of charity "any other object of general public u ility" from the ambit of the definition of 'charitable purpose' while enacting s. 2(15) rather than inserted the words "not involving the carrying on of any other activity for profit", thereby creating all this legal conundrum". When the Government had not accepted the recommendation of the Direct Tax Laws Committee in Chapter 2 (Interim Report, December, 1977) for the deletion of the words "not involving the carrying on of any activity for profits", by suitable legislation, it was impermissible for this Court by a process of judicial construction to achieve the same result. It is wrong to think that all spring of charity in India will dry up if true effect is given to s. 2(15) in accordance with the minority judgment in the Surat Art Silk Cloth Manufacturers' Association's case. People who are truly charitable do not think of the tax benefits while making charities. One must realise that even the poor who do not pay income tax can be charitable and their charities made at great personal inconvenience are commendable indeed. One need not go in search of charitable persons amongst the taxpayers only. Still the majority view has got to be followed now.

The main object of assessee being promotion, protection and development of trade, commerce, and industry in India, it was an object of general public utility and income derived from activities for advancing the dominant object was exempt under s. 11."

9. Since the factual matrix of the appellant's case for the AY 2012-13 is identical with that involved in AY 2011-12, we have no hesitation in holding that the ratio laid down in the decision of the coordinate Bench of this Tribunal holds good and applies to the year under consideration as well. Applying the said decision we hold that the appellant's activity of holding trade fairs, exhibitions and conferences was not in the nature of trade, commerce or business and therefore there was no violation of Section 2(15) of the Act. Accordingly we

hold that the lower authorities were legally unjustified in not granting the appellant the benefit of Section 11 of the Act.

10. We also note that during the relevant year the gross receipts from the activities of holding trade fairs, exhibitions and conferences from members and non-members together totalled Rs.3,94,70,967/-. There against the expenditure incurred was Rs.3,03,60,941/- resulting in surplus of Rs.91,10,026/- which has been assessed in the impugned order as business income. In the course of appellate proceedings the Ld. AR furnished the break-up of such receipts, expenses and surplus as follows:

Particulars	Cash Basis	Accrual Basis
Inflow from Fairs etc.		
• Members	3,43,28,080	3,44,74,450
• Non-Members (Others)	49,96,517	49,96,517
Total	**3,93,24,597**	**3,94,70,967**
Outgo on a/c of Fairs etc		
• Members portion	2,87,18,963	2,65,17,636
• Non-Members (Others)	41,80,099	38,43,305
	3,28,99,062	**3,03,60,941**
Net Surplus	**64,25,534**	**91,10,026**

11. We note that even though the appellant realized surplus from organizing fairs & exhibitions yet there was express understanding between the appellant and the participants that the surplus if any, remaining after meeting the cost and expenses for holding the events would be transferred to infrastructure fund of the appellant. A sample copy of the invoice raised by the appellant on the participant from whom the contribution was received was filed from which we note that the following note was appended :

" CREDAI BENGAL is a charitable non-profit organization. The tariffs are based on the reimbursement of recurring and non-recurring expenses based on estimated expenses for the exhibition. The surplus, if any, from the exhibition shall form part of 'OWN INFRASTRUCTURE FUND' of the association for mutual benefit of members by creation of own infrastructure and facilities and by reduction in costs to the members in future."

12. We therefore find that the surplus generated from holding the events was an un-intended surplus which the contributor at the outset had agreed to appropriate as their contribution to 'Own Infrastructure Fund' of the appellant and therefore it was corpus in nature. Viewed from any angle therefore the surplus of Rs.91,10,026/- was not bearing income character in the hands of the appellant and therefore the lower authorities were unjustified in assessing the same as business income of the appellant. For the reasons set out in the foregoing therefore the addition of Rs.91,10,026/- is deleted and hence, Ground Nos. 1 to 3 are allowed.

13. The next ground of appeal of the assessee is against the action of the Ld. CIT(A) in confirming the action of the A.O. in treating the corpus donation of Rs. 17,50,000/- in the form of admission fees from its members as not exempt u s 11(1)(d) of the Act.

14. Brief facts are that the appellant had created the membership admission fees of Rs. 17,50,000/- received by it as corpus funds to the reserve fund and claimed exemption u/s 11(1)(d) of the Act when confronted by the A.O. the appellant filed copies of letters of corpus donation received from member / entrants and details of admissions fees and explained that the membership / admission fees received by the appellant institution was corpus donation though it was brought to the notice of the A.O. that as per section 12(1) of the Act, donation towards corpus funds of a charitable institution shall be excluded from voluntary contribution and such corpus donations would not form part of the income of the charitable institution was not accepted by the A.O. It was also brought to the notice of the A.O. that this admission were voluntarily and towards corpus fund exemption u/s 11(1)(d) is also available to the appellant. However, the A.O. treated the said corpus donation in revenue and disallowed the same. On appeal, the ld. CIT(A) confirming the order of the A.O. Aggrieved the assessee is before us. We note that the assessee is no longer res-integra. We note that the precise question arose in the case of CIT vs Divine Light Mission 146 Taxman 653 as under:

*"**12.** We now take up the only remaining question (question No. 1 in paragraph 3) with regard to income received by the assessee by way of subscription from its members and, that is whether such income was assessable to tax under the Income-tax Act, 1961 or was exempted under section 11.*

***13.** The amount received by way of subscription as well as voluntary contributions came to be considered in the case of Trustees of Shri Kot Hindu Stree Mandal v. CIT [1994] 209 ITR 396[1] and in the case of CIT v. Madhya Pradesh AnajTilhanVyapariMahasangh[1988] 171 ITR 677[2].*

***14.** The contributions are voluntary and are made willingly and without compulsion. Money is to be gifted or is given gratuitously without consid-eration. These tests should be satisfied for contribution. However, when a person pays membership fee or subscription to a society or a trust, he does not make a gift of the membership fee or subscription amount to the society. The amount of subscription paid by a member to the society can never be considered as gratuitous payment made by the member to the society or as a payment without consideration.*

***15.** In the case of Trustees of Shri Kot Hindu Stree Mandal 's case (supra), High Court of Bombay examined a similar question. Voluntary contribu-tions do not mean annual subscriptions. It amounts to gift made from disinterested motives for benefit of others. In Society of Writers to the Signet v. IRC [1886] 2 TC 257 (C Sess), the Court held that the entrance fees and subscriptions paid by entrants to a society or institution as a condition precedent to their membership and as the price of admission to the privileges and benefits of the society or institution are given under a contract and are not voluntary. In view of the Bombay High Court, membership and subscription amounts received by the assessee-trust/society from its members cannot be characterized as voluntary contribution within the meaning of the expression "fund" in section 12 of the Income-tax Act, 1961.*

***16.** Thus there is a distinction between voluntary contribution and subscription. When a sum is paid in the nature of gift or a gratuitous payment to the trust without any consideration it would be considered as voluntary contribution. Subscription is not to be treated as voluntary contribution.*

***17.** Voluntary contribution is an act not coupled with compulsion. One may contribute or one may not contribute. Therefore, it is rightly said that it is in the nature of a gift. But so far as subscription is concerned, it is with some compulsion. If one wants to become a member of a trust and if he is required to pay subscription, as in the instant case, then, it amounts to compulsion. Sometimes it becomes a question of prestige i.e., to say that a person is a member of a charitable institution. If a person had made voluntary contribution to the said trust, then on payment of such contribution he does not become a member. The membership may be coupled with benefits or duties and that all depends on the nature of the trust and terms and conditions of the contract.*

***18.** Sometimes members are getting certain privileges or rights. Therefore, such subscription fee has been considered as income of institutions.*

***19.** Coming to income derived from property and property held under trust, one has to consider the meaning of the word "income". Even by an Act (Finance Act No. 1972) with effect from 1-4-1973 voluntary contribution received by a trust has been included in the definition of "income". The amount of fee covers membership or subscription, which is not included in income. However, the term is very wide. It refers to receiving money or monetary benefits, perquisite, etc. Therefore, it is certain that it is an income.*

***20.** Before us learned counsel for the assessee submitted that in view of All India Spinners' Association v. CIT [1944] 12 ITR 482 (PC) the subscription be considered as income.*

***21.** In the case of CIT v. Cotton Textiles Export Promotion Council [1968] 67 ITR 539, Bombay High Court examined the question.*

***22.** The Cotton Textiles Export Promotion Council was established with its principle object, as indicated in the memorandum of association, to promote, support, protect, maintain and increase the export of cloth and yarn. It undertook many other activities with the idea, as its name implied, of*

promoting the export in cotton textiles from this country. Market studies, collection of statistics and other information regarding the manufacture or trade in cloth and yarn in various countries, propagating information useful to that trade, laying down standards of quality in packing and so on. Where the activities with regard to income and property, in the form of mandate for application of income and property was solely for the promotion of the objects of the society, as indicated in the memorandum of association and by whatever method property or income was to be utilized by way of dividends, bonus or otherwise or by way of profits etc. For this, there were two sources about the funds for its activities, namely, grants made by the Government and subscriptions of its members. Section 4(3)(i) of the Income-tax Act, 1922 was for grant of exemption. Section 4(3)(i) reads as under :—

> "Subject to the provisions of clause (*C*) of sub-section (1) of section 16, any income derived from property held under trust or other legal obligations wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purposes as relate to anything done within the taxable territories, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto."

Thus income derived from property held under trust or other legal obligations came to be considered by the Court. In the instant case, we are not required to consider whether the assessee can be said to be a charitable trust or not as it is admitted position and not in question. But the question is only with regard to income derived from property held under trust s there or not. By way of subscription, if the amount is received, can it be said that that is income derived from property held under trust. The Bombay High Court observed that the question is beyond controversy in view of the decision of the Supreme Court in the case of CIT v. Andhra Chamber of Commerce [1965] 55 ITR 722. Under almost identical provisions the Andhra Chamber of Commerce was constituted and when a similar attempt to tax that chamber was made, one of the questions which arose was whether the objects and purposes of the Chambers of Commerce showed that it was for general public utility. Considering various decisions, the Bombay High Court held that Tribunal was right in holding that the property held by the assessee-company was for an object of general public utility and was voluntary for charitable purposes. The question posed before the Court was upon the words used in sub-section (3) of section 4 "any income derived from property held under trust" and its interpretation. On behalf of the Revenue, it was contended that it is not he requirement of sub-section that the income of the assessee should be held under trust but that the income should be derived from "property which held under trust". In that case, all the company receipts in the shape of property was the income which they received from the grants made by the Central Government and a comparatively small amount from the subscriptions from its members. There is no "property" as such held in trust. The other contention was that whatever may be said of the income received from Government by way of grant, the subscription which this company receives from its members was not income for a charitable purpose. It was further submitted that the property held under trust in that case from which the income of this company is being derived is the business of the company itself. The word "property" includes the business of the company. All the income which the company derived or received is in the shape of grants and subscriptions from members which cannot possibly have received by the company except from its business. It was, therefore, submitted that the entire income of the company must be held to be the income derived from its business, which is its property. The Court pointed out that the entire business or the organization of the assessee commenced with the object of promoting the export trade of the country. The object was held as charitable purpose, as defined in the Act. The Court held that the income which the company received from the two admitted sources, namely, grants from Government and subscriptions from its members, was income which it could not have received but for its business or organization and it would, therefore, be income derived from such business or organization, which as shown can be held to be the property of the company. The Division Bench further pointed out:—

> *"We have already held that the property held under trust was the business or organization itself and whether we consider either of the two sources of income of*

this company, namely, the grant or the subscriptions from its members, both arose directly and substantially from that business or organization. If the organization had not existed, the grants would not have been paid to the company nor would the subscriptions have been received by the company. Therefore, even upon the construction put upon the word "derived" the income would be derived from the business or organization which we held was the property held under trust in this case."

23. *It is in view of this, that the question whether on the facts and circums-tances of the case the assessee's income is exempted under section 4(3)(i) of the Income-tax Act or not was answered in the affirmative.*

24. *In view of the Division Bench judgment of the Bombay High Court, it was submitted by the assessee that the assessee trust is a charitable trust for which there is no doubt. The objects of the trust were placed before the Court. We have perused the same and in fact there is no dispute with regard to the fact that it is a charitable trust and, therefore, we are not required to examine this aspect at all.*

25. *In view of the judgment of the Division Bench of the Bombay High Court in the case of Cotton Textiles Export Promotion Council (supra), we are of the view that the property held under trust was the organization itself and the source of money, that is to say, the subscriptions from its members arose directly and substantially from that of organization. In the absence of organization, there would have been no question of subscriptions and following the Division Bench judgment of the Bombay High Court in the case of Cotton Textiles Export Promotion Council (supra), we are of the opinion that the subscription is to be considered as income derived from proper y held under trust.*

26. *Hence it is clear that the subscription is to be treated as income and exempted under section 11 of the Act. The question, therefore, is required to be answered in favour of the assessee and against the Revenue.*

15. Respectfully following the aforesaid order of the Hon'ble Delhi High Court, we hold that the membership fees received from members were towards the corpus and therefore rightly claimed exempt u/s 11(1)(d) of the Act. The AO is therefore directed to delete the addition of Rs.17,50,000/-. Ground No. 4 of the appeal also stands allowed.

16. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 3rd June, 2019

Sd/- Sd/-

(Dr. A. L. Saini) (A. T. Varkey)
Accountant Member Judicial Member

Dated: 3rd June, 2019

Biswajitt (Sr.P.S.)

Copy of the order forwarded to:

1 Appellant –M/s. Credai Bengal, Jindal Tower, Block-A, 21/1A/3, Darga Road, Park Circus, Kolkata-700 017.
2 Respondent – ITO(Exemption), Wd-1(1), Kolkata.
3 CIT(A)-25 , Kolkata. (sent through e-mail)
4 CIT , Kolkata
5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy, By order,

Sr. Pvt. Secretary