IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai

Before Shri M. Balaganesh, Accountant Member and Shri Ravish Sood, Judicial Member

ITA No.6896/Mum/2019
(Assessment Year: 2016-17)

Confederation of Real Estate Developers Association of India, 5th Floor, PHD House, 4/2, Siri Insitutional Area, New Delhi-110016	Vs.	ACIT (Exemption)-1(1), Piramal Chambers, Lalbaug, Parel, Mumbai 400 012
PAN – AABCC4354M		
(Appellant)		**(Respondent)**

ITA No.2815/Mum/2018
(Assessment Year: 2014-15)

M/s Confederation of Real Esate Developers of India Maker Bhavan II, 4th Floor, 18V Thackrey Marg, New Marine Lines, Mumbai 400 020	Vs.	Commissioner of Income-tax (Appeals)-3, Room No. 354, Aayakar Bhavan, M.K. Road, Mumbai - 400020
PAN – AABCC4354M		
(Appellant)		**(Respondent)**

Appellant by:	Shri Jitendra Jain & Shri Sachin Romani, A.Rs
Respondent by:	Shri. Kumar Padmapani Bora & Ms. Kavita Kaushik, D.R

Date of Hearing : 31.07.2020
Date of Pronouncement: 15.09.2020

O R D E R

PER RAVISH SOOD, JM

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-3, Mumbai, dated 19.03.2018 and 21.08.2019 for A.Y. 2014-15 and A.Y. 2016-17, respectively, which in turn arises from the respective assessment orders passed under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 30.11.2016 and 15.12.2018 for the aforesaid years. As common issues are involved in these appeals, the same therefore are being taken up and disposed off by way of a consolidated order. We shall first take up the appeal of the assessee for A.Y. 2016-17. The assessee has assailed the impugned order by raising before us the following grounds of appeal:

> "1. The learned Commissioner of Income-tax (Appeals)-3 [CIT(A)'] erred in confirming the action of the Assessing Officer in denying the benefit of exemption under Section 11 of the Income-tax Act, 1961 (the Act') to the Appellant by applying the proviso to Section 2(15) of the Act and holding that the Appellant is carrying on activity in the nature of commerce and therefore objects of the Appellant is not to be treated as for charitable purpose.
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> 2. In the alternative and without prejudice to the above, the CIT(A) erred in confirming the action of the Assessing Officer in not providing relief to the extent of receipts from members, applying the principle of mutuality, despite the fact that the Assessing Officer has himself treated the Assessee-trust as a mutual association."

2. Briefly stated, the assessee which is a company registered under Sec. 25 of the Companies Act, 1956 (now Sec. 8 of the Companies Act, 2013) is registered as a trust with the DIT (Exemption), Mumbai under Sec. 12A of the Act. The assessee trust had e-filed its return of income for A.Y 2016-17 on 14.10.2016, declaring its total income at Rs. nil. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act. In the course of the assessment proceedings it was observed by the A.O that the main objects of the assessee trust were as under:

> "a) To act as a group of associations/ federations functioning at national and state level and with the object to address the national issues

relating to real estate sector and better standard for its all member associations.

b) To encourage fraternity, feelings of co-operation and mutual help among the members of the confederation in respect of the subjects connected with the common good of trade, industry and profession of building, construction and development of funds.

c) To encourage adoption and promotion of fair business practices according to an ethical code of fair business practices and to maintain efficiency, dignity and integrity of the confederation."

On a perusal of the income and expenditure account, it was observed by the A.O, that the assessee had during the year in question earned income on account of membership fees, subscription fees, grant in aid from Government of India, income from publications, exhibitions, award functions etc. As per the audited financial statements the assessee had during the year generated a revenue of Rs.17,73,02,166/-, as under:

Revenue from Activities carried on in pursuance of the objects	
Particulars	Amount
Membership fees	Rs. 91,67,860/-
Receipts from Conventions	Rs. 9,35,87,873/-
Sponsorship Income	Rs. 7,27,46,433/-
Promotional Income	Rs. 18,00,000/-
Total	**Rs.17,73,02,166/-**

After perusing the objects of the assessee trust the A.O was of the view that the same would fall within the realm of "advancement of any other object of public utility" as contemplated in Sec. 2(15) of the Act. In the backdrop of his aforesaid observation, the A.O held a conviction that as the assessee was involved in commercial activities for a fee or cess, either direct or indirect, which during the year in question were more than 20% of its total receipts, therefore, the 'proviso' to Sec.2(15) of the Act would get attracted in its case. Backed by his aforesaid conviction the A.O called upon the assessee to explain as to why the 'proviso' to Sec. 2(15) of the Act would not be applicable in its case. In reply, it was submitted by assessee that once a certificate under Sec. 12AA of the Act was issued, thereafter, its objects had to be accepted as charitable and the provisions of Sec. 11 of the Act would be applicable. Apart

from that, the assessee drawing support from certain judicial pronouncements tried to impress upon the A.O that rendering of services like holding conventions, meetings, conferences and seminars by professional institutions could not be construed as being in the nature of trade, commerce or business. As such, it was the claim of the assessee that the conventions organised by it for the benefit of the real estate industry could not be brought within the meaning of or be treated as being in the nature of trade, commerce or business, for the purpose of declining its entitlement towards claim of deductions envisaged in Sec.11 and Sec.12 of the Act. To sum up, it was the claim of the assessee that its activities were not hit by the 'proviso' to Sec. 2(15) of the Act. However, the aforesaid claim of the assessee did not find favour with the A.O. After deliberating on the activities carried out by the assessee during the year under consideration, the A.O was of the view that the assessee was engaged in carrying out commercial activities with a motive of making profit. Also, the fact that the assessee had parked a substantial amount of Rs.13,65,13,564/- as term deposits with the banks, from which it had during the year in question earned an interest income of Rs.1,05,46,504/-, weighed in the mind of the A.O for concluding that the assessee was existing for a motive of generating profit from its activities. In fact, the A.O held a conviction that the generation of huge surplus year after year by the assessee dislodged the claim of the assessee that it was not existing with a motive of making profit. Adverting to the 'proviso' to Sec. 2(15) of the Act, the A.O was of the view that the same was clearly applicable to the case of the assessee. Also, it was observed by the A.O that though a fundamental requirement of charity was that the benefit of trust or institution should be for the public and not confined to selective individuals, but in the case of the assessee trust before him the facilities were provided only for the benefit of a limited group of persons i.e members of the assessee trust and real estate professionals. As such, the A.O was of the view that as the assessee trust was existing only for the real estate professionals/finance companies/investors etc., and not for the benefit of the public at large, therefore, its activities could not be brought

within the meaning of "advancement of any other object of public utility". Observing, that the assessee during the year in question by rendering services had received substantial amount of sponsorship income of Rs. 7,27,46,433/-, the A.O was of the view that the said fact proved that motive of the assessee trust was that of making profit and not charity. Further, it was noticed by the A.O that the assessee during the year in question had received amounts aggregating to Rs. 9,35,87,873/- from holding conventions, which by no means could be brought within the meaning of charitable activities. To sum up, the A.O was of the view that the assessee trust was existing for a specific group of persons i.e real estate professionals/finance companies/investors etc. and not for the public at large AND was carrying out activities which were clearly in the nature of trade, commerce or business, involving no element of charity. Insofar the principle of mutuality was concerned, the A.O observed, that the assessee was a mutual organisation/association. But then, the A.O was of the view that the income earned by the assessee during the year in question fell beyond the purview of the principle of mutuality. Backed by his aforesaid deliberations the A.O brought the net surplus generated by the assessee during the year to tax in its hands. Accordingly, the income of the assessee was assessed by the A.O vide his order passed u/s 143(3), dated 15.12.2018 at Rs.5,08,75,100/-.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, not finding favour with the contentions advanced by the assessee, the CIT(A) upheld the view taken by the A.O and dismissed the appeal.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the authorised representative for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements pressed into service by them. The ld. Authorised representative for the assessee (for short "A.R") vehemently submitted that the case of the assessee trust was not hit by the 'proviso' to Sec. 2(15) of the Act, and thus, was duly eligible for

claim of deduction envisaged in Sec. 11 of the Act. In order to buttress his aforesaid claim the ld. A.R took us through the facts of the case and drew support from a host of judicial pronouncements to which our attention was drawn during the course of hearing of the appeal. Accordingly, it was submitted by the ld. A.R that both the lower authorities by misconceiving the factual position had wrongly concluded that the activities of the assessee trust were hit by the 'proviso' to Sec. 2(15) of the Act. As such, it was submitted by the ld. A.R that the lower authorities backed by their erroneous view had wrongly declined the assessee's claim for deduction u/s 11 of the Act. Alternatively, it was submitted by the ld. A.R, that as the A.O had admitted that the assessee was a mutual association, therefore, the surplus generated by it was not exigible to tax in the backdrop of the principle of mutuality.

5. Per contra, the ld. Departmental representative (for short "D.R") relied on the orders of the lower authorities.

6. Before proceeding any further, we deem it fit to cull out the definition of the term "charitable purpose" as contemplated in Sec. 2(15) of the Act, which we find had been subjected to an amendment by the legislature, vide the Finance Act, 2015, w.e.f 01.04.2016. Post-amended definition of the term "charitable purpose" would be applicable to the appeal of the assessee for the year under consideration i.e A.Y 2016-17. As per the aforesaid amendment, the "first" and "second" proviso to Sec. 2(15) (as was available on the statute till A.Y 2015-16), had been substituted by the legislature in all its wisdom by a "Proviso", and the post-amended section therein reads as under:

> "2(15) "charitable purpose includes relief of the poor, education, [yoga] 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, unless-

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year."

As per the aforesaid post-amended definition of the term "charitable purpose", "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. However, an exception to the application of the aforesaid exclusion has been provided by the legislature by way of a "Provision" that has been made available on the statute vide the Finance Act, 2015 w.e.f A.Y 2016-17. As per the "Proviso" to Sec. 2(15), if 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 is undertaken by the assessee in the course of actual carrying out of its object of advancement of its object of general public utility AND the aggregate receipts from such activity or activities during the previous year do not exceed twenty per cent of the total receipts of the trust or institution undertaking such activity or activities for that previous year, then the exclusion carved out in the definition of the term "charitable purpose" in Sec. 2(15) would not be applicable. Accordingly, it is in the backdrop of the aforesaid post-amended definition of the term "charitable purpose" as provided in Sec. 2(15) of the Act, i.e w.e.f A.Y 2016-17, that the adjudication of the case of the present assessee before us has to be looked into. In all fairness, in order to understand the purpose and the intent that had led to the aforesaid amendment to the definition of the term "charitable purpose" as

provided in Sec. 2(15) of the Act, we shall look into the **Explanatory Notes to the Provisions of Finance Act, 2015**, as provided in the **CBDT Circular No. 19/2015, dated 27.11.2015**, which reads as under:

"4. Rationalisation of definition of charitable purpose in the Income-tax Act

4.1 Section 11 of the Income-tax Act deals with exemption to charitable trusts and institutions. The primary condition for grant of exemption to a trust or institution under the said section is that the income derived from property held under trust should be applied for charitable purposes in India. 'Charitable purpose' is defined in section 2(15) of the Act. The first proviso to clause (15) of section 2,inter alia, provides that 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. However, as per the second proviso, this restriction shall not apply if the aggregate value of the receipts from the activities referred above is twenty five lakh rupees or less in the previous year.

4.2 The institutions which, as part of genuine charitable activities, undertake activities like publishing books or holding program on yoga or other programs as part of actual carrying out of the objects which are of charitable nature were being put to hardship due to first and second proviso to section 2(15).

4.3 The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. Therefore the provisions of the Income-tax Act have been amended to include 'yoga' as a specific category in the definition of charitable purpose on the lines of education.

4.4 In order to ensure appropriate balance between the object of preventing business activity in the garb of charity and at the same time protecting the activities undertaken by the genuine organization as part of actual carrying out of the primary purpose of the trust or institution, the definition of 'charitable purpose' in the Income-tax Act has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and (ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed twenty percent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

4.5 Applicability: - These amendments take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

On a perusal of the aforesaid amendment to the definition of the term "charitable purpose" provided in Sec. 2(15) of the Act, we find, that the legislative intent behind the amendment was to ensure an appropriate balance between the object of preventing business activity in the garb of charity, and at the same time protecting the activities undertaken by the genuine organizations as part of actual carrying out of the primary purpose of the trust or institution. As such, "advancement of any other object of general public utility" shall not fall within the definition of "charitable purpose" if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; AND (ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed twenty percent of the total receipts of the trust or institution undertaking such activity or activities of that previous year. To sum up, if a charitable institution with an object of "advancement of any other object of general public utility" carries out 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, the same irrespective of the nature of use or application, or retention, of the income from such activity, would take such "advancement of any other object of general public utility" beyond the meaning of "charitable purpose" as provided in Sec. 2(15) of the Act. But then, the legislature had provided an exception, as per which, if the activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; AND (ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed twenty percent of the total receipts of the trust or institution

undertaking such activity or activities of that previous year, then such trust or institution would not be hit by the exclusion carved out in the definition of "charitable purpose" as provided in Sec. 2(15) of the Act.

7. Before proceeding any further, we may herein observe that the ld. CIT(A) while adjudicating the present appeal had erroneously referred to the pre-amended provisions of Sec. 2(15) of the Act. As observed by us at length hereinabove, the case of the present assessee would be regulated by the post-amended Sec. 2(15), as had been made available on the statute vide the Finance Act, 2015 w.e.f 01.04.2016. Be that as it may, we shall hereinafter deal with the issue that as to whether or not the assessee before us would be hit by the post-amended Sec. 2(15) of the Act. But then, before dealing with the said aspect, we are confronted with another observation of the lower authorities. As observed by the lower authorities, as the assessee trust had been set up for catering to a limited group of people, viz. members of the assessee trust/real estate professionals etc., and not for the benefit of the general public at large, therefore, it could not be held to be a trust set up for advancement of any other object of general public utility. At the first blush the said observation of the lower authorities appeared to be very convincing, but then, we are afraid the same cannot be sustained in the eyes of law. As observed by the **Hon'ble Supreme Court** in the case of **Ahmedabad Rana Caste Association Vs. CIT (1971) ITR 82 ITR 704 (SC)**, the High Court in the case before them had rightly observed that an object beneficial to a section of the public is an object of general public utility. It was further observed by the Hon'ble Apex Court that in order to serve a charitable purpose it was not necessary that the object should be to benefit the whole of mankind or all persons in a particular country or State, and it would be sufficient if the intention to benefit a section of the public as distinguished from a specified individual was present. In the backdrop of the aforesaid observations of the Hon'ble Apex Court, we are of the considered view, that as the present assessee trust before us had been set up with the object to address the national issues related to real estate sector and better standards

for its all member associations, having 21 State chapters, 220 city chapters and 20,000 members, it can safely be held to be for the benefit of a particular section of the public and not for any specified individual. Accordingly, the view taken by the lower authorities that as the assessee trust was set up for providing facilities to a limited group of people and not for the benefit of the general public at large, therefore, it could not be held to be a trust set up for advancement of any other object of general public utility cannot be sustained and is herby vacated.

8. As is discernible from the orders of the lower authorities, we find, that they had observed that the activities of the assessee trust, viz. (i). offering of services in relation to trade and business of construction industry in lieu of fees, cess or other consideration; and (ii). receipt of interest on income accumulated in form of term deposits with banks, were in the nature of commercial activities. It was observed by the lower authorities that as the assessee was carrying on activities which were in the nature of commerce, and the receipts there from were in excess of the prescribed limit, it could thus not be held to be carrying on 'charitable activities' within the meaning of Sec. 2(15) of the Act. Apart from that, the CIT(A) by referring to Sec. 11(4A) of the Act, had observed, that the provisions of Sec. 11 would be applicable only to such profits and gains that would be derived by a trust or institution from carrying on a business that was incidental to the attainment of the objectives of such trust or institution. In the backdrop of his aforesaid observations, the CIT(A) was of the view that the dealings of trade and industry associations with the non-members for activities which were in the nature of trade, commerce or business did not qualify for tax exemption and would be liable for tax under Sec. 28(iii) of the Act. On the basis of his aforesaid deliberations, the CIT(A) held a conviction that though the activities of the assessee trust were in the nature of "advancement of any other object of general public utility", the same, however, being in the nature of commercial activities for which fees had been charged, would thus be hit by the 'proviso' to Sec. 2(15) of the Act. Accordingly, backed by his aforesaid conviction the CIT(A)

concluded that as the activities of the assessee trust were hit by the 'proviso' to Sec. 2(15) therefore, its objects could not be held to be in the nature of charitable objects, and thus, it would stand disentitled for claim of deduction u/s 11 of the Act.

9. As observed by us hereinabove, the core issue for which our indulgence has been sought, is to adjudicate, as to whether or not the CIT(A) is right in law and the facts of the case in concluding that the activities of the assessee trust, viz. holding conventions, exhibitions etc. were to be construed as being in the nature of trade, commerce or business. For a fair adjudication of the issue in hand, the main objects of the assessee trust after vetting of which it was registered as a 'charitable trust' by the DIT(Exemption), Mumbai, u/s 12A, vide his order dated 25.11.1999, in our considered view once again requires to be referred to, and thus, are reproduced as under :

> "a) To act as a group of associations/federations functioning at national and state level and with the object to address the national issues relating to real estate sector and better standard for its all member associations.
>
> b) To encourage fraternity, feelings of co-operation and mutual help among the members of the confederation in respect of the subjects connected with the common good of trade, industry and profession of building, construction and development of funds.
>
> c) To encourage adoption and promotion of fair business practices according to an ethical code of fair business practices and to maintain efficiency, dignity and integrity of the confederation."

Now, for the attainment of its aforesaid objects, viz. to act as a group of associations/federations functioning at national and state level with an object to address the national issues relating to real estate sector and better standard for its all member associations; to encourage fraternity, feelings of co-operation and mutual help among the members of the confederation in respect of the subjects connected with the common good of trade, industry and profession of building, construction and development of funds; and to encourage adoption and promotion of fair business practices according to an ethical code of fair business practices and to maintain

efficiency, dignity and integrity of the confederation, the assessee trust in our considered view had to carry out certain activities, say holding conventions, exhibitions, meetings etc. Insofar carrying out of such activities are concerned, we are unable to comprehend as to how simplicitor carrying on of the same for the furtherance of the objects of the assessee trust on a standalone basis would take the color as that of a trade, commerce or business. At the same time, we also cannot remain oblivious of the fact that a trust or a society whose objects falls within the realm of "advancement of any other object of general public utility", would loose its character as that of a charitable institution, if it is involved in 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, though subject to the allowable limit therein prescribed.

10. In the backdrop of our aforesaid observations, we shall now look into the aspect that as to whether the activities of the assessee trust before us are in the nature of trade, commerce or business, as the answer to the same would be decisive of its eligibility towards claim of deduction u/s 11 of the Act. At this stage it would be relevant to point out that as per the post-amended 'proviso' to Sec. 2(15) of the Act, an 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, that is undertaken in the course of actual carrying out of such advancement of any other object of general public utility by a trust or society, would not be held to be non-charitable, only if the aggregate receipts from such activity or activities during the said year do not exceed 20% of its total receipts. But then, it is not the case of the assessee before us that its activities albeit in the nature of trade, commerce or business, are however less than 20% of its total receipts. In fact, the claim of the assessee throughout had been that as its activities do not fall within the realm of either trade, commerce or business or any activity

of rendering any service in relation to any trade, commerce or business, it would thus not be hit by Sec. 2(15) of the Act. As neither of the aforesaid terms, viz. trade, commerce or business are defined in the Income-tax Act, 1961, therefore, we shall construe them as per their dictionary meaning for resolving the controversy before us, viz. (i). 'trade' : the action of buying and selling goods and services; (ii). 'commerce' : the activity of buying and selling, especially on a large scale. (iii).'business' : a commercial activity. As claimed by the ld. A.R, the conventions/seminars are held once in a year for around two days, wherein about 2,000 participants take part. Admittedly, the participants would not only be the members of the assessee trust, but also all such individuals/entities who would be connected with the real estate sector, viz. Housing Finance Companies etc., who would participate in such conventions /seminars, as they played a very crucial role in the development of real estate sector in India. As per the ld. A.R eminent personalities from various fields would be roped in for delivering lectures on issues having a material bearing on the real estate sector. As for the receipts from holding of the conventions, it was submitted by the ld. A.R that on an average, per person fee/charge would work out to Rs. 30,000/- to Rs. 32,000/-, which would include making of arrangements for their boarding and lodging facilities. It was further submitted by the ld. A.R, that in the course of the conventions the members and also the individuals connected with the real estate sector would display their advertisements, for which the assessee would receive sponsorship fees from them. It was submitted by the ld. A.R that the displaying of the advertisements during the conventions would again be a step towards furtherance of the objects of the assessee trust, as the same would benefit the members who would become aware of the services rendered by such sponsors. It was further submitted by the ld. A.R that it was beyond comprehension as to how the activities of the assessee trust could be run on a cost-to-cost basis as was so expected on the part of the lower authorities. Elaborating on his said claim, it was submitted by the ld. A.R that at the time of planning of the conventions, budgets would be prepared and the cost per

person was arrived at assuming a number of participants who would attend the convention. Accordingly, as submitted by the ld. A.R, if the actual number of participants would exceed what was initially expected, then every increase would lead to a surplus in the hands of the assessee, which would be channelized solely for the objects of the assessee trust. As such, it was submitted by the ld. A.R that mere generation of surplus from the aforesaid activities would not ipso facto mean that the assessee was carrying on activities in the nature of trade, commerce or business. Insofar the amount of surplus generated in the hands of the assessee was concerned, it was submitted by the assessee that the same had to be considered in the backdrop of the size of the association which had 21 State chapters, 220 city chapters and 20,000 members. The aforesaid factual position so averred by the ld. A.R was not rebutted by the departments counsel before us.

11. We have deliberated at length on the issue under consideration and find substantial force in the claim of the ld. A.R that the activities of the assessee trust could not be brought within the meaning of trade, commerce or business. As observed by us hereinabove, the holding of convention by the assessee trust, and the resultant receipts therein generated by it, say participant fees, sponsorship fees (from advertisers) etc., were clearly in the nature of activities that were carried out by the assessee with the sole intent of attaining the object for which the trust was established. At this stage, we may herein observe, that the convention was held by the assessee trust only once in a year. Apart from that, the activities which would be involved in the said convention, say lectures of eminent personalities on issues having a strong bearing on the real estate sector etc., were for the benefit of its members by augmenting their knowledge about issues pertaining to the real estate sector. As for the sponsorship fees received by the assessee from the members and other entities related to the real estate sector, we are afraid that the lower authorities had failed to appreciate that the objective of allowing display of such advertisements/banners was in order to make the members aware of the services rendered by such sponsors. As the convention would be held by the

assessee trust only once in a year, and that too spread over a short span of only two days, we are of the considered view that such standalone event cannot be brought within the meaning of trade, commerce or business, wherein profit is the dominant motive. Insofar the quantum of surplus generated in the hands of the assessee during the year is concerned, we are in agreement with the claim of the assessee that the same if considered in the backdrop of the size of the association which has 21 State chapters, 220 city chapters and 20,000 members, cannot be held to be substantial. In the totality of our aforesaid deliberations, we are of a strong conviction that the surplus generated in the hands of the assesses in the course of the convention held by it only once during the year in furtherance of its objects and for the benefit of its members/real estate sector of the country cannot be brought within the realm of the meaning of trade, commerce or business. Our aforesaid view is fortified from a perusal of the 'Explanatory Notes' to the Provisions of Finance Act, 2015, as provided in the CBDT Circular No. 19/2015, dated 27.11.2015, wherein it is stated that the purpose behind the amendment to Sec. 2(15) of the Act, vide the Finance Act, 2015 w.e.f 01.04.2015, was to inter alia protect the activities undertaken by a genuine organization as part of actual carrying out of the primary purpose of the trust or institution. In fact, a similar issue had came up before the Tribunal in the case of **Fragrance and Flavours Associaton of India. Vs. DDIT(E)-1(2), Mumbai, ITA No. 5453/Mum/2015 for A.Y 2011-12**. In the said case, the objects of the assessee trust was to promote co-operation and friendly feeling amongst the persons, firms and companies engaged in or connected with the Fragrance and Flavours Trade and Industry in India, and also, to promote and safeguard the interest of the Trade and Industry. As the amounts received by the assessee from the various activities which were carried out by it for the benefit of its members and in furtherance of its objects, viz (i). Subscription received; (ii). Sale of publications ; (iii). Fafai Journal ; (iv). Workshop & Conference; (v). Bangalore Seminar; and (vi) Directory receipts, were held by the A.O/CIT(A) as receipts in lieu of activities which were in the nature of trade, commerce or business

carried out by it, and its claim for deduction u/s 11 was declined, for the reason, that the assessee was hit by Sec. 2(15) of the Act, the matter at the instance of the assessee was carried in appeal before the Tribunal. Observing, that the activities of the assessee trust could not be brought within the realm of trade, commerce or business, the Tribunal relying on a host of judicial pronouncements vacated the orders of the lower authorities, observing as under:

> "8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal is sought for adjudicating as to whether the claim of the assessee for exemption under Sec. 11, in the backdrop of the post amended definition of the term 'Charitable purpose' in Sec. 2(15) made available on the statute vide the Finance Act, 2008, w.e.f 01.04.2009 is in order, or not. We find that pursuant to the post amended Sec. 2(15), the legislature in all its wisdom by making available the proviso to the said statutory provision had narrowed down the scope and gamut of the definition of the term 'Charitable purpose', to the extent the same is relatable to the "advancement of any other object of general public utility". That as per the amended Sec. 2(15), 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 other 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.
>
> 9. We have given a thoughtful consideration to the issue before us. We find that the assessee is registered as a Charitable organization under Sec. 12A with the Director of Income-tax (Exemption), Mumbai. That as the activities of the assessee were primarily in the nature of "advancement of any other object of general public utility", therefore, the A.O being of the view that as per the post amended definition of the term 'Charitable purpose' in Sec. 2(15), the commercial activities of the assessee could no more be held as being for charitable purpose, as a result whereof the assessee stood disentitled for claim of exemption under Sec. 11 of the Act. We find that the assessee had declined that it was carrying on any commercial activities, and had rather by referring to its activities which had been taken cognizance of by the A.O, viz. (i). Subscription received; (ii). Sale of publications ; (iii). Fafai Journal ; (iv). Workshop & Conference; (v). Bangalore Seminar; and (vi) Directory receipts, submitted that the said respective activities were for the furtherance of the general public utility object of the assessee, which by no means could be construed as commercial activities.
>
> 10. We have deliberated on the observations of the lower authorities and find that the A.O had concluded that the assessee was carrying on commercial activities, primarily for the reason that it had generated substantial revenue from the seminar held at Bangalore. We have given a thoughtful

consideration to the issue before us and have deliberated at length on the contentions of the ld. A.R in the backdrop of the facts of the case. We find that the activities of the assessee trust were directed towards providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry. The activities of the assessee were essential to understand the development of the said industry in India. We have deliberated on the nature of activities of the assessee trust and are of the considered view that all of its activities, viz. receipts by way of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts and holding of the seminar at Bangalore, were activities which were for facilitating the very object of the assessee trust, viz. providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry. We are of the considered view that the providing of the aforesaid services were indispensably required to facilitate the furtherance of the very interest of the Fragrance and Flavours industry. Rather, we are of a strong conviction that in the absence of the aforesaid activities of the assessee trust, which as observed by us hereinabove can safely be held to have been indispensably required for the growth of the industry and giving its members an exposure to the developments in the industry and keeping pace with the day to day changes and innovations in the industry, the objects of the assessee trust would have been frustrated and rendered as merely dumb and name sake in nature, defeating the very purpose for which it was set up. We find that a perusal of the orders of the lower authorities reveals that their view that the assessee was involved in carrying on of commercial activities within the meaning of Sec. 2(15), was primarily guided by the fact that the products of the sponsors from whom sponsorship fees were received by the assessee were displayed at the seminar held at Bangalore. We are of the considered view that the holding of the seminar at Bangalore was in furtherance of the main object of the assessee trust, which was solely for empowerment, betterment and creating awareness amongst the industrialists in order to bring about the development of the Fragrance and Flavours industry in India. We further find that the assessee was not by way of a regular and systematic activity carrying on such seminars, and as observed by us hereinabove, the seminar at Bangalore was the only international seminar held by the assessee trust. We are further of the considered view that no such inextricable nexus between the receipt of sponsor fees by the assessee and display of the products of the sponsors does emerge, on the basis of which the same could safely be characterised as a commercial activity.

11. We are of the considered view that the fact that holding of the seminar at Bangalore by the assessee was in furtherance of the dominant object of the assessee, viz. empowerment, betterment and creating awareness amongst the industrialists of the Fragrance and Flavours industry, and display of the products of the sponsors can safely be concluded to be for furtherance of and in the interest of the members of the trade. We are unable to persuade ourselves to be in agreement with the view of the A.O that as the products of the sponsors were displayed at the seminar held at Bangalore, therefore, on the said stand alone basis the assessee was to be held to have carried on commercial activities. We are of the considered view that on a close analysis

of the aforesaid activities of the assessee trust when viewed in a broader perspective and pitted against the dominant object of the assessee to hold a seminar for furtherance of and in the interest of the members of the industry, the same cannot be characterised as commercial activities. We find that the **Hon'ble Jurisdictional High Court** in the case of **Director of Income-tax Vs. Womens India Trust (2015) 379 ITR 506 (Bom)** had upheld the observations of the Tribunal that where a trust formed to carry out the object of education and development of natural talents of the people having special skills, more particularly the women in the society, had in the course of imparting to them training in the field of catering, stitching, toy making, etc., therein carried out sale of certain finished products, viz. pickles, jams, etc. which would be produced by them, through shops, exhibitions and personal contracts, the same could not be held to be activities in the nature of trade, commerce or business as contemplated in the proviso of Sec. 2(15). We find that the view of the Tribunal that as the dominant object of trust was to teach or impart skills and to instill confidence, therefore, the sale of the goods or articles produced in the course of such training could not be construed as carrying on of trade, commerce or business, did find favour with the Hon'ble High Court. We find that in the case of the assessee before us, the holding of the seminars and carrying on of other activities, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were activities which were for facilitating the dominant object of the assessee trust, viz. providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry, therefore, neither the carrying on of either of the aforesaid activities, and specifically the display of the products of the sponsor members of the industry in the course of the seminar at Bangalore by the assessee, which we find had been emphasized by the revenue as the primary reason for concluding that the assessee was carrying on commercial activities, could thus be held as such and brought within the sweep of the first proviso of Sec. 2(15). We further find that the **Hon'ble High Court of Madras** in the case of **Director of Income Tax (Exemption) Vs. The Chartered Accountant Study Circle (2012) 250 CTR 70 (Mad),** had the occasion to deliberate on the scope and gamut of the first proviso of Sec. 2(15) in the case of an asseseee trust whose objects among other things *was* to conduct periodical meetings on professional subjects. The High Court observed that the publishing and sale of books, booklets etc. on professional subjects related to audit and not on any other subject by the assessee. The sale of the books was primarily made to the members of the society, as well as made available to the general public, with the aim to help the society to get better, well-equipped and skilled set of Chartered Accountants for maintaining audit quality, which however could not be construed as a trade or commerce or business. Thus, the High Court observed that the activities of the assessee-trust in publishing and selling books of professional interest, which were meant to be used as a reference material even by the general public as well as the professionals in respect of Bank Audit, Tax Audit, etc., could not be construed as a commercial activity. We are of the considered view that in the case of the present assessee before us, the services viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were provided for facilitating

the dominant object of the assessee trust, viz. providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry. We further find that even the display of the products of the sponsors of the seminar at Bangalore, who were primarily the members of the industry, was also in furtherance of the interest of the members of the industry, i.e both by facilitating the very holding of the seminar, as well as providing them knowledge and information of the wide range of products available in the industry. We are thus of the view that the aforesaid activities of the assessee trust before us, in the backdrop of the aforesaid observations of the High Court of Madras, safely be held to be in the course of furtherance of the dominant object of the assessee trust, and would not fall within the realm of commercial activities. We further find that a similar view had also been taken by the **Hon'ble High Court of Delhi** in the case of **The Institute of Chartered Accountants Of India Vs, Director General of Income Tax (Exemption) (2013) 260 CTR 1 (Del).** The High Court held that n*o* doubt the assessee institute was holding classes and providing coaching facilities for the members and articled clerks etc. who wanted to appear in the examination conducted by the Institute of Chartered Accountants, but these classes were not held for coaching or for appearance in an examination conducted by some other entity. The High Court observed that as conducting of coaching classes was 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 was established, i.e., professional excellence and promotion of accountancy as a preferred profession, and to sharpen the skills and knowledge of the members of Institute who would attend the courses/lectures etc., therefore, the *a*ctivities of providing coaching classes or undertaking campus placement interviews for a fee were in relation to the main object of the assessee institute, which could not be held to be trade, business or commerce. The High Court while concluding as hereinabove, had observed as under:

> "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."

We are further of the considered view that the *proviso* to Sec. 2(15) is not aimed at excluding genuine charitable trusts of general public utility, but rather, a trust would not be held to be for 'Charitable purpose', if it is engaged in any activity in nature of trade, commerce or business or renders any service in relation to trade, commerce or business for a cess, fee and/or any

other consideration. We find that our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Gujarat** in the case of **DIT (Eexemption) Vs. Sabarmati Ashram Gaushala Trust (2014) 362 ITR 539 (Guj).**

12. We thus in the backdrop of our aforesaid observations are of the considered view that the assessee trust was set up for a charitable purpose within the meaning of Sec. 2(15) of the Act, viz. advancement of an object of the general public utility. We are of the view that as had been deliberated by us at length hereinabove, the holding of the seminar at Bangalore and the other activities of the assessee trust, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts were incidental to its main object and were conducted only for the purpose of securing the main object of advancement and development of the Fragrance and Flavours industry in India. We are further of the considered view that the aforesaid activities of the assessee trust are neither in the nature of trade, commerce or business, nor an activity rendered in relation to any trade, commerce or business. We further find that the activities of the assessee trust are not with any motive to earn profit, which though we are not oblivious would not conclusively determine as to whether an activity is in the nature of a trade, commerce or business, but then, the same undoubtedly remains a crucial factor for characterising an activity, as one. We find that the surplus arising to the assessee is only incidental and ancillary to the dominant object of the assessee, viz. advancement and development of the Fragrance and Flavours industry in India. We further find that the surplus generated by the assessee trust was utilized only for the purpose of feeding its dominant object, and no part of such surplus was distributed amongst its members. We have deliberated on the records pertaining to the nature of the activities of the assessee trust, and have observed that the generation of the surplus in its hands is merely a by-product of its main object, which had incidentally resulted in the course of furtherance of its dominant object, viz. advancement and development of the Fragrance and Flavors industry in India. We are further of the view that as the international seminar at Bangalore was held by the assessee for the very first time, and the assessee was not holding such type of seminars by way of a regular and systematic activity, therefore, on the said count also the same can safely be held as not being in the nature of a commercial activity. We have also deliberated on the order of the ITAT, Kolkata, in the case of **Indian Chamber of Commerce Vs. Income Tax Officer (2015) 167 TTJ 1 (Kolkata)** as had been relied upon by the ld. A.R, and find that a similar view in context of the issue before us was taken by the coordinate bench of the Tribunal.

13. We thus, in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view of the lower authorities that the assessee was involved in carrying of commercial activities. We thus being of the view that as the assessee is carrying on its charitable activities, which are in the nature of advancement of the object of general public utility and is not carrying on any commercial activity, therefore, uphold the entitlement of the assessee towards claim of exemption under Sec. 11 of the

Act. We thus in terms of our aforesaid observations set aside the order of the CIT(A)."

We find that the facts and the issue involved in the aforesaid case remains the same as are there before us in the case of the assessee before us. Accordingly, in the backdrop of our aforesaid deliberations, and also respectfully following the view taken by the Tribunal in the aforesaid case, we herein conclude that the holding of convention by the assessee, and the consequential receipts therein generated in its hands, viz. participation fees, sponsorship fees etc. cannot be brought within the meaning of trade, commerce or business or an activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration. We thus not being able to persuade ourselves to subscribe to the view taken by the lower authorities vacate the order passed by the CIT(A).

12. As regards the observation of the lower authorities that the parking of substantial amount of surplus funds by the assessee trust over a period as time deposits with the banks and receipt of interest income on the same revealed, that the activities of the assessee trust were backed by a profit motive, we are afraid does not find favour with us. As pointed out by the ld. A.R, and rightly so, the term deposits of Rs. 13.65 crores referred to by the A.O were the term deposits accumulated by the assessee trust over a period of 15 years i.e since the year 1999, and therefore, merely on the ground of having such huge term deposits the assessee's entitlement towards claim of deduction u/s 11 of the Act could not have been denied. In fact, we are in agreement with the claim of the ld. A.R, that as per clause (iii) of Sec. 11(5) of the Act, deposit of money in any account with a scheduled bank is one of the prescribed form and mode of depositing the money referred to in clause (b) of sub-section (2) to Sec. 11. Accordingly, not being able to persuade ourselves to subscribe to the view taken by the A.O that as the assessee over the years had invested surplus aggregating to Rs.13,65,13,524/- in term deposits with the banks, it was thus be concluded that it was working with a profit motive, we vacate the said observation.

13. Before parting, we may herein observe that the narrowing of the definition of “charitable purpose” as contemplated in Sec. 2(15) insofar the same is related to “advancement of any other object of general public utility”, was carried out by the legislature by way of an insertion of a ‘proviso’, vide the Finance Act, 2009 w.e.f 01.04.2009. Assessments in the case of the assessee trust for A.Ys 2010-11 to A.Y 2013-14 were framed u/s 143(3), and its claim for deduction u/s 11 after being tested in the backdrop of the amended definition of “charitable purpose”, and also, the ‘proviso’ that supplemented the said definition, were in both the years found by the revenue to be in order. In sum and substance, the revenue while framing the assessment for the aforementioned preceding years had not held the activities of the assessee trust as being in the nature of trade, commerce or business, or those of rendering of any services in relation to any trade, commerce or business. Nothing is either discernible from the records which would reveal that the activities of the assessee trust had witnessed any change during the year in question as in comparison to those for the aforementioned preceding years, nor any contention to the said effect had been advanced by the ld. D.R before us. Accordingly, in the backdrop of our aforesaid deliberations on the merits of the case, and also, the consistent view taken by the revenue in the case of the assessee for the preceding years, we are of a strong conviction that the lower authorities had erred in concluding that as the activities of the assessee trust being in the nature of trade, business or commerce were thus not carried out for a “charitable purpose” within the meaning of Sec. 2(15) of the Act, it was therefore disentitled for claim of deduction u/s 11 of the Act. As such, we vacate the order of the CIT(A), and therein direct the A.O to allow the assessee’s claim for deduction u/s 11 of the Act. The **Ground of appeal No. 1** is allowed in terms of our aforesaid observations.

14. As we have vacated the orders of the lower authorities and have concluded that the assessee trust is eligible for claim of deduction u/s 11 of the Act, therefore, we refrain from dealing with the ground of appeal no. 2 raised by the assessee before us, wherein it had assailed the order of the

CIT(A), on the ground that he had erred in not allowing the relief by applying the principle of mutuality, and is thus left open. The **Ground of appeal No. 2** is disposed off in terms of our aforesaid observations.

15. The appeal of the assessee is allowed in terms of our observations recorded hereinabove.

A.Y.2014-15
ITA No.2815/Mum/2018

16. We shall now advert to the appeal of the assessee for A.Y. 2014-15. The impugned order has been assailed before us on the following grounds of appeal:

> "1. In the facts and circumstances of the case and in law, the Ld. CIT-(A) erred in taxing interest earned on FDs with Bank by invoking concept of Mutuality & ignoring the provisions of Section 11 as applicable to appellant.
>
> 2. Ld CIT-(A) erred in ignoring appellant's status of being registered charitable organization for general public utility by stating that receipts from conventions are business and commercial activity when such amount was received from sponsors of the event i.e. members. He also erred in computing total income of appellant in other way as applicable to appellant."

17. Briefly stated, the assessee trust had filed its return of income for A.Y. 2014-15 on 27.11.2014 along with its Income and expenditure account, balance sheet and audit report in Form No. 10B, declaring its total income at Rs.nil. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

18. During the course of the assessment proceedings, it was observed by the A.O that the assessee had shown interest income of Rs.61,27,025/-. Observing, that in the past the assessee was held to be a mutual entity, and on similar issue its interest income was treated as income from other sources, the A.O called upon it to explain as to why its income may not be assessed in the same manner as that of the preceding years. As the reply filed by the assessee did not find favour with the A.O, he therein relying on the judgement of the Hon'ble Supreme Court in the case of Bangalore Club Vs. CIT (2013)

350 ITR 509 (SC) concluded, that the interest income of Rs.61,27,025/- received by the assessee trust did not satisfy the mandate of principle of mutuality, and thus, was liable to be assessed to tax as its income from other sources. Accordingly, the A.O assessed the income of the assessee trust at Rs.61,27,025/-.

19. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Observing, that the A.O had failed to give any finding as regards the assessee's entitlement for claim of deduction under Sec. 11 of the Act, the CIT(A) examined the said aspect in the course of the proceedings before him. As the assessee trust had during the year received convention fees of Rs. 96,77,500/-, the CIT(A) held a conviction that the assessee trust was carrying on activities in the nature of trade, commerce or business. As such, being of the view that the assessee would be hit by the 'first proviso' to Sec. 2(15) of the Act, the CIT(A) upheld the declining of deduction under Sec. 11 of the Act by the A.O. Insofar the principle of mutuality was concerned, the CIT(A) did not find any infirmity in the view taken by the A.O that the interest income earned by the assessee on its deposits with the banks would not qualify for exemption on the said count. In the backdrop of his aforesaid observations, the CIT(A) dismissed the appeal.

20. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the ld. Authorised representatives for both the parties that the facts and the issue involved in the present appeal remained the same as were there before us in the assessee's appeal for the immediately succeeding year i.e A.Y 2016-17 in ITA No.6896/Mum/2019 .

21. We have deliberated on the facts involved in the captioned appeal of the assessee, and find, that the facts and the issue therein involved are more or less the same as were there before us in the appeal of the assessee for A.Y 2016-17 in ITA No. 6896/mum/2019. At the same time, we find that the

only difference in the present appeal before us i.e for A.Y 2014-15 is that unlike A.Y 2016-17, in the year under consideration i.e A.Y 2014-15 the pre-amended definition of "charitable purpose" would be applicable. However, as we have while disposing off the appeal of the assessee for A.Y 2016-17, therein concluded that the activities of the assessee trust cannot be brought within the realm of trade, commerce or business, or those of rendering of any services in relation to any trade, commerce or business. therefore, finding no shift in facts during the year in question, we follow the view therein taken. Accordingly, on the basis of the reasoning adopted by us while disposing off the appeal of the assessee for A.Y 2016-17, we herein on the same terms vacate the view taken by the lower authorities that the activities of the assessee would be hit by the exclusion carved out in the definition of "charitable purpose" in Sec. 2(15) of the Act. As such, we direct the A.O to allow the assessee's claim for deduction u/s 11 of the Act. The **Grounds of appeal Nos. 1 and 2** are allowed in terms of our aforesaid observations.

22. Before parting, we may herein observe that as we have vacated the orders of the lower authorities and have concluded that the assessee trust is eligible for claim of deduction u/s 11 of the Act, therefore, we refrain from dealing with the alternative claim raised by the assessee, wherein it had assailed the order of the CIT(A) in not allowing the relief by applying the principle of mutuality, which is thus left open.

23. The appeal of the assessee is allowed in terms of our observations recorded hereinabove.

24. Resultantly, both the appeals of the assessee, viz. ITA No. 6896/Mum/2019 for A.Y 2016-17 and ITA No. 2815/Mum/2018 for A.Y 2014-15 are allowed in terms of our aforesaid observations.

Sd/-	Sd/-
M. BALAGANESH	RAVISH SOOD
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Date: 15.09.2020
R. Kumar

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai