ADDITIONAL COMMISSIONER OF INCOME-TAX GUJARAT, AHMEDABAD

v.

SURAT ART SILK CLOTH MANUFACTURERS ASSOCIATION, SURAT

November 19, 1979

[P. N. BHAGWATI, N. L. UNTWALIA, V. D. TULZAPURKAR R. S. PATHAK AND A. P. SEN, JJ.]

Income-tax Act 1961—*Sections* 2 (15), 11 *and* 13(1) *(bb)—Scope of—"Advancement of any other object of general public utility not involving the carrying on of any activity for profit" meaning.*

The assessee which was an incorporated company, carried on various activities for promotion of commerce and trade in art silk yarn, art silk cloth and silk cloth. Its other objects were to obtain licences for import of raw material needed by its members, to obtain licences for export of cloth manufactured by its members and to do all other lawful things as are incidental or conducive to the attainment of the objects. Its income and property were to be applied solely for the promotion of its objects and no portion of the income or property was to be paid or transferred directly or indirectly by way of dividend, bonus or profits to its members. In the event of its winding up or dissolution, surplus of assets over liabilities, if any, could not be distributed amongst the members but was liable to be given or transferred to some other company having the same objects as the assessee, to be determined by the members of the assessee or by the High Court which has jurisdiction in the matter.

The assessee recieved income by way of annual subscription from its members (the revenue conceded that this amount was exempt from tax) and commission on the basis of certain percentage of the value of licences for import of foreign yarn and quotas for the purchase of indigenous yarn. The assessee constructed a building out of the amounts received and the rent received from the tenants was an additional source of its income.

The assessee's claim for exemption under section 11(1) of the Income-Tax Act was rejected by the Income-Tax Officer on the ground that its objects were not charitable within the meaning of section 2(15) of the Act. On the other hand the Appellate Assistant Commissioner held that the assessee's income was entitled to exemption under section 11(1) because the activities carried on by the assessee were in fulfilment of the primary purposes which did not involve the carrying on of any activity for profit. This view of the Appellate Assistant Commissioner was affirmed by the Appellate Tribunal in appeal by the revenue.

In view of the conflicting decisions amongst different High Courts on the interpretation of the words "not involving the carrying on of any activity for profit" in the definition of charitable purpose in section 2(15) of the 1961 Act the Appellate Tribunal referred to this Court, under section 257 of the Act,

A the question whether the assessee was entitled to exemption under section 11(1) of the Act.

It was contended on behalf of the revenue that if the means to achieve or carry out the object of general public utility involve the carrying on of any activity for profit, the purpose of the trust, though falling within the description "any other object of general public utility", would not be a charitable purpose B and the income from business would not be exempt from tax.

Dismissing the appeal,

HELD : (Per majority Bhagwati, Untwalia and Tulzapurkar, JJ)

1. The contention that the objects of the assessee did not fall within the C category of "advancement of any other object of general public utility" and were not charitable within the meaning of section 2(15) in that its members were merely specified individuals who did not constitute a section of the public cannot be allowed to be raised in this reference. In a reference under s. 257 of the Income Tax Act, 1961 the Tribunal is not competent to refer to this Court a question in respect of which there is no conflict of decisions amongst different High Courts nor can this Court travel beyond the particular question D of law referred to it by the Tribunal on account of conflict in the decisions of the High Courts. [92 A-B]

2. (a) It is well-settled that where the main or primary objects are distributive, each and every one of the objects must be charitable in order that the trust of institution may be upheld as a valid charity. But if the primary or dominant purpose of a trust is charitable another object which by itself may E not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent it from being valid charity. [92 D-E]

(b) The test which has to be applied is whether the object which is said to be non-charitable is the main or primary object of the trust or institution or it is ancillary or incidental to the dominant or primary object which is charitable. [92 F]

F *Mohd. Ibrahim* v. *Commissioner of Income-tax* 57 Indian Appeal 260; *East India Industries (Madras) Ltd.* v. *Commissioner of Income-tax*, 65 ITR 611= [1967] 3 SCR 356; *Commissioner of Income-tax, Madras* v. *Andhra Chamber of Commerce*, 65 ITR 722=[1965] 1 SCR 565. *Commissioner of Inland Revenue* v. *Yorkshire Agricultural Society* [1928] 1 K.B. 611; 13 Tax Cas. 58; *Institution of Civil Engineers* v. *Commissioner of Inland Revenue* [1931] 16 Tax Cas. 158 G (C.A.); referred to.

In the instant case the income and property of the assessee are held under a legal obligation for the purpose of advancement of an object of general public utility within the meaning of s. 2(15) of the Act. The dominant or primary purpose of the assessee is to promote commerce and trade in art silk yarn etc., which is charitable and the other objects are in the nature of powers conferred upon the assessee for the purpose of securing fulfilment of the dominant or H primary purpose. They would no doubt benefit the members of the assessee but this benefit would be incidental in carrying out the main or primary purpose of the assessee. If therefore the dominant or primary purpose of the assessee

was charitable the subsidiary objects would not militate against its charitable character and the purpose of the assessee would not be any the less charitable. [93 E-G]

3. It is settled law that the words "advancement of any other object of general public utility" would exclude objects of private gain; but this requirement is also satisfied in the present case because the object of private profit is eliminated by the recognition of the assessee under s. 25 of the Companies Act, 1956 and the objects set out in clauses 5 and 10 of its Memorandum of Association. [94 C-D]

4. Where the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. But if the purpose of the trust or institution is such that it cannot be regarded as covered by the heads of "relief of the poor, education and medical relief" but its claim to be a charitable purpose rests only on the last head "advancement of any other object of general public utility" then it requires, for its applicability, fulfilment of two conditions, namely, (i) the purpose of the trust or institution must be advancement of an object of general public utility; and (ii) the purpose must not involve the carrying on of any activity for profit. [94 G-H]

M/s. Dharamdipti v. *Commissioner of Income-tax*, [1978] 3 S.C.R. 1038, referred to.

5. The words "not involving the carrying on of any activity for profit" qualify or govern only the last head of charitable purpose and not the earlier three heads. [94 G]

6. The meaning of the words "not involving the carrying on of any activity for profit" added in s. 2(15) of the 1961 Act is that when the purpose of a trust or institution is the advancement of an object of general public utility it is that object of general public utility and not its accomplishment which must not involve the carrying on of any activity for profit. [92 H]

7. If the argument of the Revenue that if the means to achieve the object of general public utility involve the carrying on of any activity for profit, the purpose of the trust though falling within the description "any other object of general public utility" would not be a charitable purpose and the income from business would not be exempt from tax it right it would not be possible for a charitable trust whose purpose is promotion of an object of general public utility to carry on any activity for profit at all. [97 F-H]

8. The consequence would be that even if a business is carried on by a trust or institution for the purpose of accomplishing or carrying out an object of general public utility and the income from such business is applicable only for achieving that object, the purpose of the trust would cease to be charitable and not only income from such business but also income derived from other sources would lose the exemption. Such a far-reaching consequence was not intended to be brought about by the legislature when it introduced the words "not involving the carrying on of any activity for profit" in s. 2(15). [98 B-C]

A 9. What is inhibited by the words "not involving the carrying on of any activity for profit" is the linking of an activity for profit with the object of general public utility and not its linking with the accomplishment or carrying out of the object. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the newly added words. What these words require is that the object should not involve the carrying on of any activity for profit. B The emphasis is on the object of general public utility and not on its accomplishment or attainment. [98 E-G]

Commissioner of Income-tax v. *Cochin Chamber of Commerce and Industry*, 87 I.T.R. 83 *and Andhra Pradesh State Road Transport Corporation* v. *Commissioner of Income-tax*, 100 I.T.R. 392 approved.

C 10. If the intention of the legislature were to prohibit trusts of this nature from carrying on any activity for profit it would have made such a provision in the clearest terms that no such trust or institution shall carry on any activity for profit. [99 E-F]

11. Section 13(1)(bb) introduced in the Act with effect from April 1, 1977 provides that in the case of a charitable trust for the relief of the poor, education or medical relief which carries on any business, income derived from such D business would not be exempt from tax unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution. Where, therefore, a charitable trust falling within any of the first three categories of charitable purpose set out in section 2(15) carries on business which is held in trust for the charitable purpose, income from such business would not be exempt by reason of section 13(1)(bb) and section 11(4) would, E therefore, have no application in the case of a charitable trust falling within any of the first three-heads of charitable purpose. Similarly, on the construction contended for by the Revenue it would have no applicability in the case of a charitable trust falling under the last head of charitable purpose, because in such a case income from business would not be exempt since the purpose would cease to be charitable. The construction contended for by Revenue would have the effect of rendering s. 11(4) totally redundant after the enactment of F section 13(1)(bb). A construction which renders a provision of the Act superfluous and reduces it to silence cannot be accepted. [100 C-F]

12. If the language of a statutory provision is ambiguous and is capable of two constructions that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none. [100 G]

G 13. If a business is held under trust or legal obligation to apply its income for promotion of an object of general public utility or it is carried on for the purpose of earning profit to be utilised exclusively for carrying out such charitable purpose, the last concluding words in section 2(15) would have no application and they would not deprive the trust or institution of its charitable character. What these last concluding words require is not that the trust or institution whose purpose is advancement of an object of general public utility H should not carry on any activity for profit at all but that the purpose of the trust or institution should not involve the carrying on of any activity for profit. So long as the purpose does not involve the carrying on of any activity for

profit, the requirement of the definition would be met and it is immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not. [104 D-G] A

Commissioner of Income-tax v. *Dharmodayan Company,* 109 I.T.R. 527 followed.

Indian Chamber of Commerce v. *Commissioner of Income-tax* (1975) 101 I.T.R. 796 wrongly decided. B

The Trustees of the Tribune, (1939) 7 I.T.R. 415; *Commissioner of Income-tax* v. *Krishna Warrier;* 53 I.T.R. 176, *J. K. Trust* v. *Commissioner of Income-tax* 32 I.T.R. 535 and *Sole Trustees Lokshikshana Trust* v. *Commissioner of Income-tax* (1975) 101 I.T.R. 234 (S.C.) referred to.

14. It has therefore to be seen whether the purpose of the trust or institution *in fact* involves the carrying on of an activity for profit or in other words whether an activity for profit is *actually* carried on as an integral part of the purpose "as a matter of advancement of the purpose". *There must be an activity for profit* and it must be involved in carrying out the purpose of the trust or institution that is, it must be carried on in order to advance the purpose or in the course of carrying out the purpose of the trust or institution. It is then that the inhibition of the exclusionary clause would be attracted. C D [105 G-H]

15. Every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity. The activity must be for profit in order to attract the exclusionary clause. [106 D]

16. The preposition "for" in the phrase "activity for profit" has many shades of meaning but when used with the active participle of a verb it means "for the purpose of" and connotes the end with reference to which something is done. [106 E] E

17. Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where an activity is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in advancement of the charitable purpose of the trust or institution. Where an activity is carried on as a matter of advancement of the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to subserve the charitable purpose and not to earn profit. [106 F-H] F G

Dharmadipti v. *Commissioner of Income-tax, Kerala,* [1978] 3 S.C.R. 1038 referred to.

18. The test to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises H

A from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. The restrictive condition that the purpose should not involve the carrying on of any activity for profit would be satisfied *if profit making is not the real object.* [107 G-H]

19. (a) The observations in *Lok Shikshana Trust* and *Indian Chamber of* B *Commerce* that activity involved in carrying out the charitable purpose must not be motivated by a profit objective but it must be undertaken for the purpose of advancement or carrying out of the charitable purpose are correct. But the further observation that whenever an activity is carried on which yields profit, the inference must necessarily be drawn, in the absence of some indication to the contrary, that the activity is *for profit* and the charitable purpose involves the carrying on of an activity for profit is not correct. [109 H; 110 A-B]

C (b) It is not necessary that there must be a provision in the constitution of the trust or institution that the activity shall be carried on a "no profit no loss" basis or that the profit shall proscribed. Even if there is no such express provision, the nature of the charitable purpose, the manner in which the activity for advancing the charitable purpose is being carried on, and the surrounding circumstances may clearly indicate that the activity is not propelled by a dominant profit motive. What is necessary to be considered is whether having D regard to all the facts and circumstances of the case, the dominant object of the activity is profit making or carrying out a charitable purpose. If it is the former the purpose would not be a charitable purpose but if it is the latter the charitable character of the purpose would not be lost. [110 C-D]

In the instant case, the activity of obtaining licences for import of foreign yarn and quotas for purchase of indigenous yarn was not an activity for profit. E The predominant object of the activity was the promotion of commerce and trade in those commodities which was clearly an object of general public utility and profit was merely a by-product which resulted incidentally in the process of carrying out charitable purpose. The assessee's profit could be utilized only for feeding this charitable purpose. The dominant and real object of the activity being the advancement of the charitable purpose the mere fact that the activity yielded profit did not alter the charitable character of the F assessee.

Per Pathak J. (*concurring*)

In the scheme under the Income-tax Act, 1961 for exemption from income-tax of income derived from property held under trust for charitable purposes, two safeguards have been provided. One arises from the limited definition of "charitable purpose" by s. 2(15), Income-tax Act, 1961, and the other is pro- G vided by the controls imposed on the utilisation of accumulated income derived from the charitable trust or institution. The first relates to the very purpose of the trust or institution, the second to the application of the resulting income. In construing what is a "charitable purpose" under s. 2(15) of the Act, considerations pertinent to the application of the accumulated income should not ordinarily be taken into account. [114 F-G]

H The first three heads of "charitable purpose" in s. 2(15) of the Act are defined in specific terms, namely, relief of the poor, education and medical relief. The fourth head is described generally as a residuary head. The

definition of "charitable purpose" with reference to the fourth head shows that the purpose is the "advancement of any other object of general public utility.....". The charitable purpose is not the "object of general public utility", it is the advancement of the object. The definition defines "charitable purpose" in terms of an activity. An object by itself cannot connote an activity. It represents a goal towards which, or in relation to which, an activity is propelled. The element of the activity is embodied in the word "advancement". If "charitable purpose" is defined in terms of an activity, the restrictive clause "not involving the carrying on of any activity for profit" must necessarily relate to "the advancement" of the object contemplated. [115 B-C]

The words "activity for profit" should be taken as descriptive of the nature of the activity. It is an activity of a kind intended to yield profit. Conversely if profit has resulted from an activity, that does not, without anything more, classify it as an "activity for profit". [116 B-C]

The requirement of section 2(15) is satisfied where there is either a total absence of the purpose of profit-making or it is so insignificant compared to the purpose of advancement of the object of general public utility that the dominating role of the latter renders the former unworthy of account. If the profit-making purpose holds a dominating role or even constitutes an equal component with the purpose of advancement of the object of general public utility, then the definition in section 2(15) is not satisfied. [116-G-H]

If the purpose is charitable in reality, the mode adopted must be one which is directed to carrying out the charitable purpose. The carrying on of such a business does not detract from the purpose which permeates it, the end result of the business activity being the effectuation of the charitable purpose. A business activity carried on not with a view to carrying out the charitable purpose of the trust but which is related to a non-charitable purpose falls outside the scope of the trust. If it is a business entered into for working out the purpose of the trust or institution with a view to realisation of the chariable purpose, the income therefrom would be entitled to exemption under s. 11. Section 11(4) and section 13(1)(bb) represent the mode of finding finance for working out the purpose of the trust or institution by deriving income from the corpus of the trust property and also from an activity carried on in the course of actual carrying out of the purpose of the trust or institution. [117 B-E]

A distinction must be maintained between what is merely a definition of "charitable purpose" and the powers conferred for working out or fulfilling that purpose. While the purpose and the powers must correlate they cannot be identified with each other. [118 B]

In the instant case the purpose of the assessee falls within the definition of section 2(15). The objects of the assessee were to promote commerce and trade, which have been held to be an object of general public utility and, there is nothing to show that the relevant sub-clause of the Memorandum of Association involves the carrying on of any activity for profit. The remaining sub-clauses enumerate powers for which the company was constituted. [118 G-H]

The Trustees of the Tribune, (1939) 7 I.T.R. 415, *Commissioner of Income Tax* v. *Andhra Chamber of Commerce* (1965) 55 I.T.R., 722, *referred to.*

A *Sale Trustee, Loka Shikshana Trust* v. *Commissioner of Income-tax, Mysore* (1975) 101 I.T.R. 234; *Indian Chamber of Commerce* v. *Commissioner of Income-tax, West Bengal II* (1975) 101 I.T.R. 796, not approved.

Per Sen, J. (*dissenting*)

The two decisions in *Sole Trustee Lok Sikshana Trust* v. *C.I.T.* (101 ITR 234) and *Indian Chambers of Commerce* v. *C.I.T.* (101 ITR 796) lay down the
B law correctly and are still good law. [119 D]

1. The words "not involving the carrying on of any activity for profit" occuring in section 2(15) of the Act qualify only the fourth head of charitable purpose namely "any other object of general utility" and not the first three heads. [119 E]

2. It is the vagueness of the expression "any other object of general public
C utility" occuring in section 4(3)(i) of the 1922 Act which impelled Parliament to insert the restrictive word "not involving the carrying on of any activity for profit." It is not permissible for the court to whittle down the plain language of the section. It would be contrary to all rules of construction to ignore the impact of the newly added words and to construe the definition as if the newly added words were either not there or were intended to be otiose and redundant. Such a construction would frustrate the very object of the legislation. The
D relative simplicity of the language brings out the necessary legislative intent to counteract tax advantages resulting from the so-called charities in camouflage. [119 H; 120 A-C]

3. The restriction introduced by the definition of the term "charitable purpose" in section 2(15) is that the advancement of objects of general public utility should not involve the carrying on of any activity for profit. If it involved any such activity the charity would fall outside the defination [120 D-E]
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4. There is no statutory bar to earn exemption in respect of income derived from a business undertaking if such business undertaking is held under a trust for a charitable purpose. The first essential condition for exemption under section 11(1) is that the property from which the income is derived must be held under trust or other legal obligation. Section 11(4) gives a statutory recognition to the principle that the business is property and if a business is held in
F trust wholly for a charitable purpose, the income therefrom would be exempt under section 11(1). [121 B-D]

In *re. The Trustee of the Tribune* (1939) 7 ITR 415; *All India Spinners' Association* v. *C.I.T.* (1944) 12 ITR 482; *C.I.T.* v. *P. Krishna Warrier* (1964) 53 ITR 176 *C.I.T.* v. *Andhra Chamber of Commerce* (1965) 56 ITR 722; *JK Trust* v. *CIT* (1957) 32 ITR 535 referred to.

G 5. The restrictive words "not involving the carrying on of any activity for profit" were deliberately introduced in the definition to cut down the wide ambit of the fourth head as a measure to check avoidance of tax. Engagement in an activity for profit by religious or charitable trusts provides scope for manipulation for tax evasion. [121 F-G]

6. Even assuming that the dominant object of a trust is the promotion or
H 'advancement of any other object of general public utility,' if it involves any activity for profit i.e. any business or commercial activity, then it ceases to be a charitable purpose within the meaning of section 2(15). In that event the profits derived from such business are not liable to exemption under section 11(1)

read with section 2(15). The concept of profits to feed the charity is also of no avail. That is because the concept of 'profits to feed the charity' can only arise under the first three heads of 'charitable purpose' as defined in section 2(15) of the Act, that is, "relief of the poor" "education" and "medical relief" but they are not germane in so far as the fourth head is concerned. If the fulfilment of an object of general public utility is dependent upon any activity for profit, it ceases to be a charitable purpose. A reading of section 2(15) and section 11 together shows that what is frowned upon is an activity for profit by a charity established for advancement of an object of general public utility in the course of accomplishing its objects. [126 H; 127 A-B]

7. It would be clearly inconsistent to hold that if the dominant or primary purpose was 'charity' it would be permissible for such an object of general public utility to augment its income by engaging in trading or commercial activity. [131 F]

8. If the object of the trust is advancement of an object of general public utility and it carried on any activity for profit, it is excluded from the ambit of charitable purpose defined in section 2(15). The distinction is clearly brought out by the provision contained in section 13(1)(bb) which provides that in case of a charitable trust or institution for the relief of the poor, education or medical relief which carries on any business, any income derived from such business, unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution, shall not be excluded from the total income of the previous year. [132 G-H]

9. If the advancement of an object of general public utility involves the carrying on of an activity for profit, it ceases to be a charitable purpose and, therefore, the income is not exempt under section 11(1)(a). In case of a trust falling under any of the first three heads of charity, namely, 'relief of the poor' 'education' and 'medical relief' it may engage in any activity for profit and the profits would not be taxable if they were utilized for the primary object of the trust. In other words the business carried on by them is incidental or ancillary to the primary object namely relief of the poor, education and medical relief. The concept of 'profits to feed the charity' therefore is applicable only to the first three heads of charity and not the fourth. It would be illogical to apply the same consideration to institutions which are established for charitable purposes of any object of general public utility. Any profit-making activity linked with an object of general public utility would be taxable. The theory of the dominant or primary object of the trust cannot, therefore, be projected into the fourth head of charity, namely, 'advancement of any other object of general public utility' so as to make the carrying on of any business activity merely ancillary or incidental to the main object. [134 A-E]

10. The restrictive words 'not involving the carrying on of any activity for profit' in the definition of "charitable purpose" in s. 2(15) must be given their due weight. Otherwise, it would have the effect of admitting to the benefits of exemption the fourth indeterminate class, namely, objects of general public utility engaged in activity for profit contrary to the plain words of s. 2(15). [134 G]

CIVIL APPELLATE JURISDICTION : Tax Reference No. 1A of 1973.

Tax Reference under Section 257 of the Income Tax Act, 1961 made by the Income Tax Appellate Tribunal, Ahmedabad in R.A. No. 66 (AHD) of 1971-72 arising out of I.T.A. No. 1697 of 1967-68 decided on 10-9-71 Assessment year 1962-63.

AND

Tax Reference Nos. 10–14 of 1975

Tax Reference under section 257 of the Income Tax Act, 1961 made by the Income Tax Appellate Tribunal, Ahmedabad in R.A. Nos. 140-144/AHD/73-74 arising out of I.T.A. Nos. 2098-2102/AHD/7172 for assessment years 1963-64 to 1967-68.

V. S. Desai (in T. R. No. 1A/73), *B. B. Ahuja* and *Miss A. Subhashini* for the Appellant.

Sanat P. Mehta, Ravinder Narain, A. N. Haskar and *Shri Narain* for the Respondent.

Dr. Devi Pal, P. V. Kapur, S. R. Agarwal, Praveen Kumar and *R. K. Chaudhary* for the Intervener (Indian Sugar Mills).

Dr. Devi Pal and *D. N. Gupta* for the Intervener (Bengal Chamber).

R. N. Bajoria, S. R. Agarwal and *Praveen Kumar* for the Intervener (Indian Chamber, Calcutta).

F. S. Nariman, N. Nettar, A. K. Sanghi and *O. P. Vaish* for the Intervener (Indian Chamber, New Delhi).

The Judgment of P. N. Bhagwati, N. L. Untwalia and V. D. Tulzapurkar, JJ. was delivered by Bhagwati, J. R. S. Pathak, J. gave a separate Opinion and A. P. Sen, J. gave a dissenting Opinion.

BHAGWATI, J. These tax references have been made by the Tribunal directly to this Court under Section 257 of the Income Tax Act, 1961 (hereinafter referred to as the Act), since there is a conflict of opinion amongst different High Courts as to the interpretation of the words "not involving the carrying on of any activity for profit" occurring at the end of the definition of "charitable purpose" in clause (15) of Section 2. Originally these references came up for hearing before a Bench of three Judges but having regard to the great importance of the question involved and the serious repercussions, which an adverse decision might have on a large number of public trusts in the country, the Bench thought it desirable to refer the cases to a larger Bench and that is how these references have now come before us.

Though the references are six in number, they relate to the same assessee and raise the same question, only the assessment years being different. The assessee is the Surat Art Silk Cloth Manufacturers Association, a company incorporated under the Indian

Companies Act, 1913. The original Memorandum of Association set out the objects for which the assessee was incorporated, but we are not concerned with it since vital amendments were made in the Memorandum with effect from 14th July, 1961 at the time when the assessee was permitted under section 25 of the Companies Act, 1956 to omit the word "limited" from its name by order of the Central Government and it is the amended Memorandum which governed the assessee during the relevant assessment years. The amended objects, so far as material, were as follows :

(a) To promote commerce and trade in Art Silk Yarn, Raw Silk, Cotton Yarn, Art Silk Cloth, Silk Cloth and Cotton Cloth.

(b) To carry on all and any of the business of Art Silk Yarn, Raw Silk, Cotton Yarn as well as Art Silk Cloth, Silk Cloth and Cotton Cloth belonging to and on behalf of the members.

(c) To obtain import Licences for import of Art Silk Yarn, Raw Silk, Cotton Yarn and other Raw Materials as well as accessories required by the members for the manufacture of Art Silk, Silk and Cotton Fabrics.

(d) To obtain Export Licences and export cloth manufactured by the members.

(e) To buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the Members.

(f) × × ×

(g) × × ×

(h) × × ×

(i) × × ×

(j) × × ×

(k) × × ×

(l) × × ×

(m) × × ×

(n) To do all other lawful things as are incidental or conducive to the attainment of the above objects.

Clause 5 of the Memorandum provided in sub-clause (1) that the income and property of the assessee wheresoever derived shall be applied solely for the promotion of its objects as set forth in the

A Memorandum and sub-clause (2) directed that no portion of the income or property shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons, who at any time are or have been members of the assessee or to any one or more of them or to any person claiming through anyone or more of them. What should happen to the assets in case of winding up or dissolution of the assessee, was set out in clause 10 of the Memorandum and it provided that the property remaining after satisfaction of all the debts and liabilities shall not be distributed amongst the members of the assessee but shall be given or transferred to such other company having the same objects as the assessee, to be determined by the members of the assessee at or before the time of the dissolution or in default, by the High Court of Judicature that has or may acquire jurisdiction in the matter. The income and property of the assessee were thus liable to be applied solely and exclusively for the promotion of the objects set out in the Memorandum and no part of such income or property could be distributed amongst the members in any form or under any guise or utilised for their benefit either during the operational existence of the assessee or on its winding up and dissolution.

The assessee carried on various activities for promotion of commerce and trade in Art Silk Yarn, Silk Yarn, Art Silk Cloth and Silk Cloth. The income of the assessee was derived primarily from two sources. One was annual subscription at the rate of Rs. 3/- per power loom collected by the assessee from its members and the other was commission calculated on the basis of a certain percentage of the value of licences for import of foreign yarn and quotas for purchase of indigenous yarn obtained by the assessee for the members. There was no dispute between the parties in regard to the first category of income derived from annual subscription collected from the members and it was conceded by the Revenue to be exempt from tax but the real controversy centred round the taxability of the second category of income. The amount collected by the assessee from the members in respect of licences for import of foreign yarn was credited in an account styled "Vahivati Kharach" while the amount collected in respect of quotas of indigenous yarn was credited in another account called "Building Fund". The assessee constructed a building out of the amount credited to the "Building Fund" during the accounting year relevant to the assessment year 1965-66 and it was let out to various tenants and the rent received from them augmented the income of the assessee. The assessee claimed in the course of assessment to income tax for the assessment year 1962-63 that it was an

institution for a charitable purpose and its income was, therefore, exempt from tax under Section 11 sub-section (1) of the Act. This claim was rejected by the Income-tax Officer on the ground that the objects of the assessee were not charitable within the meaning of sec. 2 clause (15). The assessee carried the matter in appeal and, in the appeal, the view taken by the Appellate Assistant Commissioner was that the purpose of the assessee was pre-dominantly development of Art Silk Industry which was an object of general public utility, but since the Income-tax Officer had not examined whether the object involved the carrying on of an activity for profit and had also not considered whether the other conditions of section 11 sub-section (1) were satisfied, the Appellate Assistant Commissioner set aside the order of assessment and remanded the case to the Income-tax Officer with a direction to make a fresh assessment after considering these issues. The Tribunal on further appeal at the instance of the Revenue did not agree with the procedure adopted by the Appellate Assistant Commissioner and taking the view that the Appellate Assistant Commissioner should not have set aside the order of assessment and made an order of remand for making a fresh assessment but instead, if he wanted any further facts, he should have called for a remand report from the Income-tax Officer and then disposed of the appeal by deciding whether the assessee was entitled to exemption from tax under section 11 sub-section (1), the Tribunal directed the Appellate Assistant Commissioner to submit a remand report on the question "whether the objects for which the assessee-company has been established are for charitable purposes within the meaning of section 2(15) and whether it satisfise the other conditions laid down under section 11." The Appellate Assistant Commissioner in his remand report found in favour of the assessee on both the points referred to him and after considering the remand report, the Tribunal confirmed the view taken by the Appellate Assistant Commissioner that the primary purpose for which the assessee was established was to promote commerce and trade in Art Silk and Silk Yarn and Cloth as set out in sub-clause (a) of Clause (3) of the Memorandum of Association and the other subjects set out in sub-clause (b) to (e) of clause (3) were merely subsidiary objects and since the primary purpose was plainly advancement of an object of general public utility, the first part of the requirement for falling within the last head of "charitable purpose" in sec. 2 clause (15) was satisfied. The Tribunal also agreed with the Appellate Assistant Commissioner that this primary purpose for which the assessee was constituted did not involve the carrying on of any activity for profit, because whatever activity was carried on by the assessee in fulfil-

A ment of the primary purpose was for advancement of an object of general public utility and not for profit. The Tribunal pointed out that there was no dispute in regard to the fulfilment of the other conditions mentioned in section 11 and held that, in the circumstances, the income of the assessee was entitled to exemption under sub-section (1) of section 11. The Revenue, being aggrieved B by the decision of the Tribunal, made an application for a reference and since there was a conflict of decisions between the Calcutta and Mysore High Courts on the one hand and Kerala and Andhra Pradesh High Courts on the other in regard to the true interpretation of the words "not involving the carrying on of any activity for profit", the C Tribunal referred the question "whether on the facts and in the circumstances of the case, the assessee is entitled to exemption under sec. 11 (1) (a) of the Income-tax Act, 1961" directly to this Court. So far as the assessment years 1963-64 to 1967-68 are concerned, the assessment proceedings followed the same pattern and the Tribunal, following its earlier decision for the assessment years 1962-63, held the D assessee to be exempt from tax in respect of its income under section 11 sub-section (1) and thereupon, at the instance of the Revenue an identical question of law for each assessment year was referred by the Tribunal directly to this Court.

Now before we proceed to consider the true meaning and con- E notation of the words "not involving the carrying on of any activity for profit" occurring at the end of the definition of "charitable purpose" in section 2 clause (15), it will be convenient to dispose of a short contention raised on behalf of the Revenue in Tax Reference Nos. 10 to 14 of 1975. The Revenue urged that the objects F for which the assessee was incorporated did not fall within the category denoted by the words "advancement of any other object of general public utility" since the objects set out in sub-clauses (b) to (e) of clause (3) of Memorandum of Association were for the benefit only of the members of the assessee and not for the benefit of a section of the public. It was contended that in order that a G purpose may qualify for being regarded as an object of general public utility, it must be intended to benefit a section of the public as distinguished from specified individuals. The section of the community sought to be benefitted must be sufficiently defined and identifiable by same common quality of a public or impersonal nature and where there is no such common quality uniting the H potential beneficiaries into a class, the purpose would not be liable to be regarded as a "charitable purpose". The argument was that since the members of the assessee did not constitute a section of the

public, but were merely specified individuals, the objects set out in sub-clauses (b) to (e) of clause (3) which were meant to benefit only the members of the assessee could not be regarded as objects of general public utility and hence the assessee could not be said to be an institution for a "charitable purpose" within the meaning of section 2 clause (15). A

We do not think it is open to the Revenue to urge this contention in the present References. These References having been made under section 257 on account of a conflict of decisions amongst different High Courts in regard to the true interpretation of the words "not involving the carrying on of any activity for profit" in section 2 clause (15), it is only that particular question which can be decided by this Court in these References. Section 257 provides that if, on an application made under section 256, the Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of *any particular question of law,* it is expedient that a reference should be made direct to the Supreme Court, the Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court. It is only the particular question of law on which there is a conflict of decisions in the High Courts that can be referred by the Tribunal directly to this Court. Here in the present case the conflict of decisions amongst the different High Courts was as to what is the true scope and meaning of the words "not involving the carrying on of any activity for profit" in section 2 clause (15) and whether on account of the presence of these words, the purpose for which the assessee was constituted, though falling within the words "advancement of an object of general public utility" would not be a charitable purpose within the meaning of section 2 clause (15) and it was on account of conflict of decisions on this question that a direct reference was made to this Court by the Tribunal. This Court cannot travel beyond the particular question of law which has been referred to it by the Tribunal on account of conflict in the decisions of the High Courts. It cannot in a direct reference deal with a question of law on which there is no conflict of decisions amongst the High Courts because such a question would be outside the jurisdiction of the Tribunal to refer under section 257. It is possible that a situation may arise where there may be two questions of law arising from the order of the Tribunal, one in respect of which there is a conflict of decisions amongst different High Courts and the other in respect of which there is no such conflict of decisions and in such a situation it may become necessary to consider whether one single reference comprising both questions should be made to B C D E F G H

A the High Court or two references can be made, one to the High Court and the other to this Court. We do not wish to express any opinion on this rather intriguing question but one thing is clear that a question of law in respect of which there is no conflict of decisions amongst different High Courts cannot be referred to this Court under section 257. The contention that the objects of the B assessee did not fall within the category "advancement of any other object of general public utility" and were, therefore, not charitable within the meaning of section 2 clause (15) cannot, in the circumstances, be allowed to be raised in these References.

But even if such a contention were permissible, we do not C think there is any substance in it. The law is well settled that if there are several objects of a trust or institution, some of which are charitable and some non-charitable and the trustees or the managers in their discretion are to apply the income or property to any of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income would be D exempt from tax. In other words, where the main or primary objects are distributive, each and everyone of the objects must be charitable in order that the trust or institution might be upheld as a valid charity Vide *Mohd. Ibrahim* v. *Commissioner of Income-tax*(1) *and East India Industries (Madras) Ltd.* v. *Commissioner of Income-tax*(2). But if the primary or dominent purpose of E a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity : Vide *Commissioner of Income-tax, Madras* v. *Andhra Chamber of Commerce*(3) The test F which has, therefore, to be applied is whether the object which is said to be non-charitable is a main or primary object of the trust or institution or it is ancillary or incidental to the dominant or primary object which is charitable. It was on an application of this test that in *Commissioner of Income-tax* v. *Andhra Chamber of Commerce* (supra), the Andhra Chamber of Commerce was held to be a G valid charity entitled to exemption from tax. The Court held that the dominant or primary object of the Andhra Chamber of Commerce was to promote and project trade, commerce and industry and to aid stimulate and promote the development of trade, commerce and industry and to watch over and protect the general commercial interests of India or any part thereof and this was clearly an object of general

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(1) 57 Indian Appeals 260.
(2) 65 I.T.R. 611.
(3) 65 I.T.R. 722.

public utility and though one of the objects included the taking of steps to urge or oppose legislation affecting trade, commerce or manufacture, which, standing by itself, may be liable to be condemned as non-charitable, it was merely incidental to the dominant or primary object and did not prevent the Andhra Chamber of Commerce from being a valid charity. The Court pointed out that if "the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose e.g. promotion of or opposition to legislation concerning that purpose, was contemplated." The Court also held that the Andhra Chamber of Commerce did not cease to be charitable merely because the members of the chamber were incidentally benefitted in carrying out its main charitable purpose. The Court relied very strongly on the decisions in *Commissioner of Inland Revenue* v. *Yorkshire Agricultural Society*(1) and *Institution of Civil Engineers* v. *Commissioner of Inland Revenue*(2) for reaching the conclusion that merely because some benefits incidentally arose to the members of the society or institution in the course of carrying out its main charitable purpose, it would not by itself prevent the association or institution from being a charity. It would be a question of fact in each case "whether there is so much personal benefit, intellectual or professional, to the members of the society or body of persons as to be incapable of being disregarded".

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It is this criterion which has to be applied in the present case and if we do so, it is clear that the dominant or primary purpose of the assessee was to promote commerce and trade in Art Silk Yarn, Raw Silk, Cotton Yarn, Art Silk Cloth, Silk Cloth and Cotton Cloth as set out in sub-clause (a) of clause (3) of the Memorandum and the objects specified in sub-clauses (b) to (e) of clause (3) were merely incidental to the carrying out of this dominant or primary purpose. The objects set out in sub-clauses (b) to (e) of clause (3) were, in fact, in the nature of powers conferred upon the assessee for the purpose of securing the fulfilment of the dominant or primary purpose. The Revenue, it may be conceded, is right in contending that these objects or powers in sub-clauses (b) to (e) of clause (3) would benefit the members of the assessee, but this benefit would be incidental in carrying out the main or primary purpose forming the basis of incorporation of the assessee. If, therefore, the dominant or primary purpose of the assessee was charitable, the subsidiary objects set out in sub-clauses

(1) [1928] 1 K.B. 611; 13 Tax Cas. 58

(2) [1931] 6 Tax Cas. 158 (C.A.).

A (b) to (e) of clause (3) would not militate against its charitable character and the purpose of the assessee would not be any the less charitable. Now having regard to the decision of this Court in *Commissioner of Income-tax* v. *Andhra Chamber of Commerce* (supra), there can be no doubt that the dominant or primary purpose to promote commerce and trade in Art Silk Yarn, Raw Silk, B Cotton Yarn, Art Silk Cloth, Silk Cloth and Cotton Cloth fell within the category of advancement of an object of general public utility. It is true that according to the decision of the Judicial Committee of the Privy Council in *All India Spinners Association* v. *Commissioner of Income-tax*,(1) the words "advancement of any other object C of general public utility" would exclude objects of private gain, but this requirement was also satisfied in the case of the assessee, because the object of private profit was eleminated by the recognition of the assessee under section 25 of the Companies Act, 1956 and clauses 5 and 10 of its Memorandum. It must, therefore, be held that the income and property of the assessee were held under a D legal obligation for the purpose of advancement of an object of general public utility within the meaning of section 2 clause (15).

But the question still remains whether this primary purpose of the assessee, namely, to promote commerce and trade in Art Silk E Yarn, Raw Silk, Cotton Yarn, Art Silk Cloth, Silk Cloth, and Cotton Cloth could be said to be "not involving the carrying on of any activity for profit." This question arises on the terms of section 2 clause (15) which gives an inclusive definition of "charitable purpose". It provides that "charitable purpose" includes "relief of the poor, education, medical relief and the advancement of any other F object of general public utility not involving the carrying on of any activity for profit." It is now well settled as a result of the decision of this Court in *M/s. Dharamdipti v. Commissioner of Income-tax*(2) that the words "not involving the carrying on of any activity for profit" qualify or govern only the last head of charitable purpose and not the earlier three heads. Where therefore the purpose of a trust or G institution is relief of the poor, education or medical relief, the requirement of the definition of "charitable purpose" would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. But if the purpose of the trust or institution is such that it cannot be regarded as covered by the heads of "relief of the poor, H

(1) 12 I.T.R. 482.

(2) C.A. No. 82/75 decided on 24th July, 978.

education and medical relief", but its claim to be a charitable purpose rests only on the last head "advancement of any other object of general public utility", then the question would straight arise whether the purpose of the trust or institution involves the carrying on of any activity for profit. The last head of "charitable purpose" thus requires for its applicability, fulfilment of two conditions (i) the purpose of the trust or institution must be advancement of an object of general public utility; and (ii) that purpose must not involve the carrying on of any activity for profit. The first condition does not present any difficulty and, as we have already pointed out above, it is fulfilled in the present case, because the primary purpose of the assessee, namely, promotion of commerce and trade in Art Silk Yarn, Raw Silk Cotton Yarn, Art Silk Cloth, Silk Cloth and Cotton Cloth is clearly advancement of an object of general public utility. But the real difficulty arises when we turn to consider the applicability of the second condition. What do the words "not involving the carrying on of any activity for profit" mean and what is the nature of the limitation they imply, so far as the purpose of advancement of an object of general public utility is concerned ?

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It would be convenient at this stage to refer briefly to the legislative history of the definition of "charitable purpose" in the Income-tax law of this country, as that would help us to understand the true meaning and import of the words "not involving the carrying on of any activity for profit". These restrictive words, it may be noted, were not to be found in the definition of "charitable purpose" given in sub-section (3) of section 4 of the Indian Income-tax Act, 1922 and they were added for the first time when the present Act was enacted. What were the reasons which impelled the legislature to add these words of limitation in the definition of "charitable purpose" is a matter to which we shall presently advert, but before we do so, we may usefully take a look at the definition of "charitable purpose" in Section 4 sub-section (3) of the Act of 1922. There, "Charitable purpose" was defined as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility" without the additive words "not involving the carrying on of any activity for profit". Now it is interesting to compare this definition of "charitable purpose" with the concept of "charity" under English Law. The English Law of charity has grown round the Statute of Elizabeth, the Preamble to which contained a list of purpose regarded as worthy of protection as being charitable. These purposes have from an early stage been regarded merely as examples and have through the centuries been considered as guide

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posts for the courts in the differing circumstances of a developing and fast changing civilization and economy. Whenever a question has arisen whether a particular purpose is charitable, the test has always been whether it is or is not within the spirit and intendment of the Preamble to the Elizabeth Statute. The law has been developed by analogy upon analogy and it is to be found in the large case of case-law that has been built up by the courts in over the years. The result is that the concept of charity in English Law is as vague and undefined as it is wide and elastic and every time there has to be a search for analogy from the Preamble to the Statute of Elizabeth or from decided cases. An early attempt to simplify this problem by a classification under main heads was made by Sir Samuel Romilly when he tried to subsume charitable purposes under four heads in the following summary submitted by him in the course of arguments in *Morice* v. *Bishop of Durham*(1) "reief of the indigent, the advancement of learning, the advancement of religion and the advancement of objects of general public utility". This classification was adopted in substance by Lord Macnaghten in his classic list of charitable purposes in *Special Commissioners* v. *Pemsel*(2) where the learned Law Lord pointed out that charity in its legal sense comprises four principal divisions : trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads." It will be noticed that the first head in the definition of "charitable purpose" both in the Act of 1922 and in the pursuant Act is taken from the summary of Sir Samuel Romilly; the second from the classification of Lord Macnaghten after omitting the word "advancement"; the third is a new head not to be found either in the summary of Sir Samuel Romilly or in the classification of Lord Macnaghten while the fourth is drawn from the last head in the summary of Sir Samuel Romilly. The definition of "charitable purpose" in Indian Law thus goes much further than the definition of charity to be derived from the English cases, because it specifically includes medical relief and embraces all objects of general public utility. In English Law it is not enough that a purpose falls within one of the four divisions of charity set out in Lord Macnaghten's classification. It must also be within the spirit and intendment of the Preamble to the Statute of Elizabeth if it is to be regarded as charitable. There is no such limitation so far as Indian Law is concerned even if a purpose is not within the spirit and intendment

(1) 1805 10 Ves. Jr. 522.
(2) 3 Tax Cases 53.

of the Preamble to the Statute of Elizabeth, it would be charitable if it falls within the definition of "charitable purpose" given in the Statute. Every object of general public utility would, therefore, be charitable under the Indian Law, subject only to the condition imposed by the restrictive words "not involving the carrying on of any activity for profit" added in the present Act. It is on account of this basic difference between the Indian and English Law of charity that Lord Wright uttered a word of caution in *All India Spinners' Association* v. *Commissioner of Income-tax* (supra) against blind adherence to English decisions on the subject. The definition of "charitable purpose" in the Indian Statute must be construed according to the language used there and against the background of Indian life. The English decision may be referred to for help or guidance but they cannot be regarded as having any binding authority on the interpretation of the definition in the Indian Act.

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With these prefatory observations, we may now turn to examine the crucial words "not involving the carrying on of any activity for profit". One question of semantics that was posed before us was—and that is a question which we must first resolve before we can arrive at the true meaning and effect of these words—whether these words qualify "advancement" or "object of general public utility". What is it that must not involve the carrying on of any activity for profit in order to satisfy the requirement of the definition; "advancement" or "object of general public utility? The Revenue contended that it was the former and urged that whatever be the object of general public utility, its 'advancement' or achievement must not involve the carrying on of any activity for profit, or in other words, no activity for profit must be carried on for the purpose of achieving or attaining the object of general public utility. The argument was that if the means to achieve or carry out the object of general public utility involve the carrying on of any activity for profit, the purpose of the trust or institution, though falling within the description "any other object of general public utility" would not be a charitable purpose and the income from business would not be exempt from tax. Now, if this argument is right it would not be possible for a charitable trust or institution whose purpose is promotion of an object of general public utility to carry on any activity for profit at all. Not only would it be precluded from carrying on a business in the course of the actual carrying out of the primary purpose of the trust or institution, but it would also be unable to carry on any business even though the business is held under trust or legal obligation to

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A apply its income wholly to the charitable purpose or is carried on by the trust or institution by way of investment of its monies for the purpose of earning profit which, under the terms of its constitution, is applicable solely for feeding the charitable purpose. The consequence would be that even if a business is carried on by a trust or institution for the purpose of accomplishing or carrying B out an object of general public utility and the income from such business is applicable only for achieving that object, the purpose of the trust or institution would cease to be charitable and not only income from such business but also income derived from other sources would lose the exemption. This would indeed be a far reaching consequence but we do not think that such a consequence was C intended to be brought about by the legislature when it introduced the words "not involving the carrying on of any activity for profit" in section 2 clause (15). Our reasons for saying so are as follows :

D It is clear on a plain natural construction of the language used by the Legislature that the ten crucial words "not involving the carrying on of any activity for profit" go with "object of general public utility" and not with "advancement". It is the object of general public utility which must not involve the carrying on of any activity for profit and not its advancement or attainment. What is E inhibited by these last ten words is the linking of activity for profit with the object of general utility and not its linking with the accomplishment or carrying out of the object. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the newly added words. What these words require is that the F object should not involve the carrying on of any activity for profit. The emphasis is on the object of general public utility and not on its accomplishment or attainment. The decisions of the Kerala and Andhra Pradesh High Courts in *Commissioner of Income-tax* v. *Cochin Chamber of Commerce and Industry*(1) and *Andhra Pradesh State Road Transport Corporation* v. *Commissioner of Income-tax*(2) G in our opinion lay down the correct interpretation of the last ten words, in section 2 clause (15). The true meaning of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not H involve the carrying on of any activity for profit.

(1) 87 I.T.R. 83.
(2) 108 I.T.R. 392.

A It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision where such meaning is plain and unambiguous, but they can certainly help to fix its meaning in case of doubt or ambiguity. Let us examine that would be the consequence of the construction contended for on behalf of the Revenue. If the construction put forward on behalf of the Revenue B were accepted, then, as already pointed out above, no trust or institution whose purpose is promotion of an object of general public utility, would be able to carry on any business, even though such business is held under trust or legal obligation to apply its income wholly to the charitable purpose or is carried on by the trust or institution for the purpose of earning profit to be utilised exclusively C for feeding the charitable purpose. If any such business is carried on, the purpose of the trust or institution would cease to be charitable and not only the income from such business but the entire income of the trust or institution from whatever source derived, would lose the tax exemption. The result would be that no trust or institution established for promotion of an object of general public D utility would be able to engage in business for fear that it might lose the tax exemption altogether and a major source of income for promoting objects of general public utility would be dried up. It is difficult to believe that the legislature could have intended to bring about a result so drastic in its consequence. If the intention of the legislature were to prohibit a trust or institution established for pro- E motion of an object of general public utility from carrying on any activity for profit, it would have provided in the clearest terms that not such trust or institution shall carry on any activity for profit, instead of using involved and obscure language giving rise to linguistic problems and promoting interpretative litigation. The legislature would have used language leaving no doubt as to what was intended F and not left its intention to be gathered by doubtful implication from an amendment made in the definition clause and that too in language far from clear.

Moreover, another consequence of the construction convassed on G behalf of the Revenue would be that section 11 sub-section (4) would be rendered wholly superfluous and meaningless. Section 11 sub-section (4) declares that for the purpose of section 11 "property held under trust" shall include a business undertaking and, therefore, a business can also be held under trust for a charitable purpose and where it is so held, its income would be exempt from tax, provided, of course, H the other requisite conditions for exemption are satisfied. It may be pointed out that section 11 sub-section (4) where it provides that a

A business may also be properly held under trust, does not bring about any change in the law, because even prior to the enactment of that provision, it was held by the Judicial Committee of the Privy Council in the *Tribune's case*(1) that property in the corresponding section 4(3)(i) of the Act of 1922 included business and this principle was affirmed by the pronouncements of this Court in *J. K. Trust* v. *Commissioner of Income-Tax*(2) and *Commissioner of Income-Tax* v. *Krishna Warrier.*(3) Section 11 sub-section (4) merely gave statutory recognition to this principle. Now section 13(1)(bb), introduced in the Act of 1961 with effect from 1st April, 1977, provides that in the case of a charitable trust or institution for the relief of the poor, education or medical relief which carries on any business, income derived from such business would not be exempt from tax unless the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution. Where therefore, there is a charitable trust or institution falling within any of the first three categories of charitable purpose set out in section 2 clause (15) and it carries on business which is held by it under trust for its charitable purpose, income from such business would not be exempt by reason of section 13(1)(bb). Section 11 sub-section (4) would, therefore, have no application in case of a charitable trust or institution falling within any of the first three heads of 'charitable purpose'. Similarly, on the construction contended for on behalf of the Revenue, it would have no applicability also in case of a charitable trust or institution falling under the last head of 'charitable purpose' because according to the contention of the Revenue, even if a business is held under trust by a charitable trust or institution for promotion of an object of general public utility, income from such business would not be exempt since the purpose would cease to be charitable. The construction contended for on behalf of the Revenue would thus, have the effect of rendering section 11 sub-section (4) totally redundant after the enactment of sec. 13(1)-(bb). We do not think, we can accept such a construction which renders a provision of the Act superfluous and reduces it to silence. If there is one rule of interpretation more well settled than any other, it is that if the language of a statutory provision is ambiguous and capable of two constructions, that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none. The construction which we are placing of section 2 clause (15) leaves a certain area of operation to section 11 sub-section (4) notwithstanding the enactment of section

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(1) 7 I.T.R. 415.
(2) 32 I.T.R. 535.
(3) 53 I.T.R. 176.

13(1)(bb) and we must, therefore, in any event prefer that construction to the one submitted on behalf of the Revenue. A

We must, however, refer to the decision of this Court in *Indian Chamber of Commerce* v. *Commissioner of Income-tax*(1) because that is the decision on which the strongest reliance was placed on behalf of the Revenue. The question which arose for decision in that case B was whether income derived by the Indian Chamber of Commerce from arbitration fees levied by the Chamber, fees collected for issuing certificates of origin and share of profit for issue of certificates of weighment and measurement was exempt from tax under section 11 read with section 2 clause (15) of the Act. The argument of the Indian Chamber of Commerce (hereinafter referred as the assessee) C was that its objects were primarily promotional and protective of Indian trade interests and other allied service operations and they fell within the broad sweep of the expression "advancement of any other object of general public utility" and its purpose was, therefore, charitable within the meaning of section 2 clause (15) and its income was exempt from tax under section 11. The Revenue, on the other hand, con- D tended that though the objects of the assessee were covered by the expression "advancement of any other object of general public utility" the activities of the assessee which yielded income were carried on for profit and the advancement or accomplishment of these objects of the assessee, therefore, involved carrying on of activities for profit and E hence the purpose could not be said to be charitable and the income from these activties could not be held to be exempt from tax. These rival contentions raised the same question of interpretation of section 2 clause (15), which has arisen in the present case. Krishna Iyer, J. speaking on behalf of the Court lamented the obscurity and complexity of the language employed in section 2 clause (15) a sentiment with F which we completely agree—and after referring to the history of the provision the learned Judge proceeded to explain what according to him was the true interpretation of the last concluding words in section 2 clause (15). The learned Judge said :

> "So viewed, an institution which carries out charitable purposes out of income "derived from property held under trust wholly for charitable purposes" may still forfeit the claim to exemption in respect of such takings or incomes as may come to it from pursuing any activity for profit. Notwithstanding the possibility of obscurity and of dual meanings when the emphasis is shifted from "advancement" to "object" used in section 2(15),we are clear in our minds that by the G H

(1) 101 I.T.R. 196.

A new definition the benefit of exclusion from total income is taken away wherein accomplishing a charitable purpose the institution engages itself in activities for profit. The Calcutta decisions are right in linking activities for profit with advancement of the object. If you want immunity from taxation, your means of fulfilling charitable purposes, must be unsullied
B by profit-making ventures. The advancement of the object of general public utility must not involve the carrying on of any activity for profit. If it does, you forfeit. The Kerala decisions fall into the fallacy of emphasizing the linkage between the objects of public utility and the activity carried on.
C According to that view, whatever the activity, if it is interwined with, wrapped in or entangled with the object of charitable purpose even if profit results, therefrom, the immunity from taxation is still available. This will result in absurd conclusions. Let us take this very case of a chamber of commerce which strives to promote the general interests of the
D trading community. If it runs certain special types of services for the benefit of manufacturers and charges remuneration from them, it is undoubtedly an activity which, if carried on by private agencies, would be taxable. Why should the Chamber be granted exemption for making income by methods which in the hands of other people would have been
E exigible to tax ? This would and up in the conclusion that a chamber of commerce may run a printing press, advertisement business, market exploration activity or even export promotion business and levy huge sums from its customers whether they are members of the organisation or not and still claim a blanket exemption from tax on the score that the
F objects of general public utility which it has set for itself implied these activities even though profits or surpluses may arise therefrom. Therefore, the emphasis is not on the object of public utility and the carrying on of related activity for profit. On the other hand, if in the advancement of these objects the chamber resorts to carrying on of activities for
G profit, then necessarily section 2(15) cannot confer cover. The advancement of charitable objects must not involve profit making activities. That is the mandate of the new amendment".

It will thus be seen that Krishna Iyer, J. accepted the contention of
H the Revenue that the means of accomplishing or carrying out an object of general public utility must not involve the carrying on of any activity for profit or to use the words of the learned Judge "must be unsullied

by profit-making ventures" and even if a business is carried on by a trust or institution for earning profit to be applied wholly for an object of general public utility, the trust or institution would forfeit the claim for exemption from tax. The view taken by him was that the benefit of the exemption would be taken away where in accomplishing or carrying out an object of general public utility, the trust or institution engages itself in activity for profit or in other words, the trust or institution should not resort to carrying on of an activity for profit for the purpose of accomplishment or attainment of the object of general public utility. This view clearly supports the construction canvassed on behalf of the Revenue for our acceptance, but, with the greatest respect to the learned Judges who decided the Indian Chamber of Commerce case, we think, for reasons already discussed, that this view is incorrect and we cannot accept the same.

We have already examined the langauge of section 2 clause (15) and pointed out how the plain natural meaning of the words used by the Legislature in that definitional clause does not accord with the contention of the Revenue. We have said enough on the subject and nothing more need be said about it. It is enough to point out that in a subsequent decision in *Commissioner of Income-tax* vs. *Dharmodayan Company*(1) which came by way of an appeal from the judgment of the Kerala High Court, this Court itself has, in effect and substance, departed from this view and adopted the same construction which has commended itself to us. The question which arose in this case was whether the income from business of conducting kurries carried on by the assessee was exempt from tax. The contention of the Revenue was that since the assessee was an institution established for promoting an object of general public utility and this purpose was sought to be achieved out of the income of the business of conducting kurries, the last concluding words of section 2 clause (15) were attracted and the income of the assessee was disentitled to exemption from tax. This contention was, however, rejected by the Kerala High Court which took the view that the business of conducting kurries was held under trust to apply its income for the charitable purpose of the assessee and was not carried on as a matter of advancement of that charitable purpose and hence it was not possible to say that the purpose of the assessee involved the carrying on of an activity for profit so as to attract the mischief of the last few words in section 2 clause (15). Krishna Iyer, J., in the Indian Chamber of Commerce case, while discussing the judgment of the Kerala High Court in the Dharmodayan case, observed, consistently with the interpretation placed by him on the last concluding words in section 2 clause (15), that the decision

(1) 109 I.T.R. 527.

of the Kerala High Court in this case proceeded on a wrong test and impliedly, therefore, was incorrectly decided. But this court while disposing of the appeal from the decision of the Kerala High Court differed from the view taken by Krishna Iyer, J. and upheld the Judgment of the Kerala High Court. This Court pointed out that the facts of Dharmodayan case were not before Krishna Iyer, J. and that the test applied by Kerala High Court was held by him to be wrong on the assumption that the case fell under the last clause of section 2 clause (15) but, in fact, this assumption was invalid, as Dharmodayan case was not one falling under the last part of the definitional clause. The finding of the Kerala High Court was that the business of conducting kurries was a business held under trust for applying its income to the charitable purpose and it was not carried on as a matter of advancement of the primary purpose of the trust or in the course of carrying out such purpose and it could not, therefore, be said that the primary purpose of the trust involved the carrying on of an activity for profit within the meaning of the last concluding words in section 2 clause (15). This Court thus held in no uncertain terms that if a business is held under trust or legal obligation to apply its income for promotion of an object of general public utility or it is carried on for the purpose of earning profit to be utilised exclusively for carrying out such charitable purpose, the last concluding words in section 2 clause (15) would have no application and they would not deprive the trust or institution of its charitable character. What these last concluding words require is not that the trust or institution whose purpose is advancement of an object of general public utility should not carry on any activity for profit at all but that the purpose of the trust or institution should not involve the carrying on of any activity for profit. So long as the purpose does not involve the carrying on of any activity for profit, the requirement of the definition would be met and it is immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not. We may point out that even in *Sole Trustees Lokshikshan Trust* v. *Commissioner of Income Tax*(1), a decision which, as we shall presently point out, does not commend itself to us on another point, the same interpretation has been accepted by this Court.

We must then proceed to consider what is the meaning of the requirement that where the purpose of a trust or institution is advancement of an object of general public utility, such purpose must not involve the carrying on of any activity for profit. The question that is necessary to be asked for this purpose is as to when can the purpose of a trust or institution be said to involve the carrying on of any activity

(1) [1975] 101 I.T.R. 234 (SC).

for profit. The word "involve" according to the Sherter Oxford Dictionary "to enwrap in anything, to enfold or envelop; to contain or imply". The activity for profit must, therefore, be interwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose. But the question again is what to do we understand by these verbal labels or formulae what is it precisely that they mean? Now there are two possible ways of looking at this problem of construction. One interpretation is that according to the definition what is necessary is that the purpose must be of such a nature that it involves the carrying on of any activity for profit in the sense that it cannot be achieved without carrying on an activity for profit. On this view, if the purpose can be achieved without the trust or institution engaging itself in an activity for profit, it cannot be said that the purpose involves the carrying on of an activity for profit. Take for example a case where a trust or institution is established for promotion of sports without setting out any specific mode by which this purpose is intended to be achieved. Now obviously promotion of sports can be achieved by organising cricket matches on free admission or no profit no loss basis and equally it can be achieved by organising cricket matches with the predominant object of earning profit. Can it be said in such a case that the purpose of the trust or institution does not involve the carrying on of an activity for profit, because promotion of sports can be done without engaging in an activity for profit. If this interpretation were correct, it would be the easiest thing for a trust or institution not to mention in its constitution as to how the purpose for which it is established shall be carried out and then engage itself in an activity for profit in the course of actually carrying out of such purpose and thereby avoid liability to tax. That would be too narrow an interpretation which would defeat the object of introducing the words "not involving the carrying on of any activity for profit". We cannot accept such a construction which emasculates these last concluding words and renders them meaningless and ineffectual.

The other interpretation is to see whether the purpose of the trust or institution *in fact* involves the carrying on of an activity for profit or in other words whether an activity for profit is actually carried on as an integral part of the purpose or to use the words of Chandrachud, J. as he then was in *Dharmodayan case*, "as a matter of advancement of the purpose". *There must be an activity for profit* and it must be involved in carrying out the purpose of the trust or institution or to put it differently, it must be carried on in order to advance the purpose or in the course of carrying out the purpose of the trust or institution. It is then that the inhibition of the

A exclusionary clause would be attracted. This appears to us to be a more plausible construction which gives meaning and effect to the last concluding words added by the legislature and we prefer to accept it. Of course, there is one qualification which must be mentioned here and it is that if the constitution of a trust or institution expressly provides that the purpose shall be carried out by engaging in an activity B which has a predominant profit motive, as, for example, where the purpose is specifically stated to be promotion of sports by holding cricket matches on commercial lines with a view to making profit, there would be no scope for controversy, because the purpose would, on the face of it, involve carrying on of an activity for profit and it C would be non-charitable even though no activity for profit is actually carried on or, in the example given, no cricket matches are in fact organised.

The next question that arises is as to what is the meaning of the expression "activity for profit". Every trust or institution must have a purpose for which it is established and every purpose must for its D accomplishment involve the carrying on of an activity. The activity must, however, be for profit in order to attract the exclusionary clause and the question therefore is when can an activity be said to be one *for* profit? The answer to the question obviously depends on the correct connotation of the proposition "for". This proposition has many shades of meaning but when used with the active participle E of a verb it means "for the purpose of" and connotes the end with reference to which something is done. It is not therefore enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. Profit-making must be the end to which the activity must be directed or in other words, the predo- F minant object of the activity must be making of profit. Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where, on the other hand, an activity is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in advancement G of the charitable purpose of the trust or institution. Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the pre-dominant object of such activity must be to subserve the H charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit making motive; the latter should not masquerade under the guise of the former. The purpose of the

trust, as pointed out by one of us (Pathak, J.) in *M/s Dharmodipti* v. *Commissioner of Income Tax, Kerala* (supra) must be "essentially charitable in nature" and it must not be a cover for carrying on an activity which has profit making as its predominant object. This interpretation of the exclusionary clause in section 2 clause (15) derives considerable support from the speech made by the Finance Minister while introducing that provision. The Finance Minister explained the reason for introducing this exclusionary clause in the following words;

> 'The definition of "charitable purpose" in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them namely, the newspaper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words "not involving the carrying on of any activity for profit" should be added to the definition.'

It is obvious that the exclusionary clause was added with a view to over-coming the decision of the Privy in the Tribune cases where it was held that the object of supplying the community with an organ of educated public opinion by publication of a newspaper was an object of general public utility and hence charitable in character, even though the activity of publication of the newspaper was carried on on commercial lines with the object of earning profit. The publication of the newspaper was an activity engaged in by the trust for the purpose of carrying out its charitable purpose and on the facts it was clearly an activity which had profit-making as its predominant object, but even so it was held by the Judicial Committee that since the purpose served was an object of general public utility, it was a charitable purpose. It is clear from the speech of the Finance Minister that it was with a view to setting at naught this decision that the exclusionary clause was added in the definition of 'charitable purpose'. The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because

A some profit arises from the activity. The exclusion any clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be defficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also B reflect unsound principle of management. We, therefore, agree with Beg. J. when he said in *Sole Trustee, Lok Sikshana Trust case* (supra) that "if the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust.. The C test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity." The learned Judge also added that the restrictive condition "that the purpose should not involve the carrying on of any activity for profit would be satisfied if *profit-making is not the real object*" (emphasis supplied). We wholly endorse these obser- D vations.

The application of this test may be illustrated by taking a simple example. Suppose the Gandhi Peace Foundation which has been established for propagation of Gandhian thought and philosophy, which would admittedly be an object of general public utility, under- E takes publication of a monthly journal for the purpose of carrying out this charitable object and charges a small price which is more than the cost of the publication and leaves a little profit, would it deprive the Gandhi Peace Foundation of its charitable character? The pricing of the monthly journal would undoubtedly be made in such a manner F that it leaves some profit for the Gandhi Peace Foundation, as, indeed, would be done any prudent and wise management, but that cannot have the effect of polluting the charitable character of the purpose, because the predominent object of the activity of publication of the monthly journal would be to carry out the charitable purpose by propagating Gandhian thought and philosophy and not to make profit or G in other words, profit-making would not be the driving force behind this activity. But it is possible that in a given case the degree or extent of profit-making may be of such a nature as to reasonably lead to the interference that the real object of the activity is profit making and not serving the charitable purpose. If, for example, in the illustration given by us, it is found that the publication of the monthly H journal is carried on wholly on commercial lines and the pricing of the monthly journal is made on the same basis on which it would be made by a commercial organisation leaving a large margin of profit.

it might be difficult to resist the inference that the activity of publication of the journal is carried on *for* profit and the purpose is non-charitable. We may take by way of illustration another example given by Krishna Iyer, J. in the Indian Chamber of Commerce case where a blood bank collects blood on payment and supplies blood for a higher price on commercial basis. Undoubtedly, in such a case, the blood bank would be serving an object of general public utility but since it advances the charitable object by sale of blood as an activity carried on with the object of making profit, it would be difficult to call its purpose charitable. Ordinarily there should be no difficulty in determining whether the predominant object of an activity is advancement of a charitable purpose or profit-making. But cases are bound to arise in practice which may be on the border line and in such cases the solution of the problem whether the purpose is charitable or not may involve much refinement and present real difficulty.

There is, however, one comment which is necessary to be made whilst we are on this point and that arises out of certain observations made by this Court in *Sole Trustee Lok Sikshana Trust* case (supra) as well as *Indian Chamber of Commerce* case. It was said by Khanna, J. in Sole Trustee Lok Sikshana Trust cases; ".....

> .....if the activity of a trust consists of carrying on a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit."

And to the same effect, observed Krishna Iyer, J. in the Indian Chamber of Commerce case when he said :

> "An undertaking for a business organisation is ordinarily assumed for profit unless expressly or by necessary implication or by development surrounding circumstances the making of profit stands loudly negatived..... a pragmatic condition, written or unwritten proved by a prescription of profits or by long years of invariable practices or spirit from some strong surrounding circumstances indicative of anti-profit motivation such a condition will nullify for charitable purpose."

Now we entirely agree with the learned Judges who decided these two cases that activity involved in carrying out the charitable purpose must not be motivated by a profit objective but it must be undertaken for the purpose of advancement or carrying out of the charitable purpose.

A But we find it difficult to accept their thesis that whenever an activity is carried on which yields profit, the inference must necessarily be drawn, in the absence of some indication to the contrary, that the activity is *for* profit and the charitable purpose involves the carrying on of an activity for profit. We do not think the Court would be justified in drawing any such inference merely because the activity B results in profit. It is in our opinion not at all necessary that there must be a provision in the constitution of the trust or institution that the activity shall be carried on on no profit no loss basis or that profit shall be prescribed. Even if there is no such express provision, the nature of the charitable purpose, the manner in which the activity for advancing the charitable purpose is being carried on and the C surrounding circumstances may clearly indicate that the activity is not propelled by a dominant profit motive. What is necessary to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is profit-making or carrying out a charitable purpose. If it is the former, the purpose D would not be a charitable purpose, but, if it is the latter, the charitable character of the purpose would not be lost.

If we apply this test in the present case, it is clear that the activity of obtaining licences for import of foreign yarn and quotas for purchase of indigenous yarn, which was carried on by the assessee, was E not an activity for profit. The predominant object of this activity was promotion of commerce and trade in Art Silk Yarn, Raw Silk, Cotton Yarn, Art Silk Cloth, Silk Coth and Cotton Cloth, which was clearly an object of general public utility and profit was merely a bye-product which resulted incidentally in the process of carrying out F the charitable purpose. It is significant to note that the assessee was a Company recognised by the Central Government under Section 25 of the Companies Act, 1956 and under its Memorandum of Association, the profit arising from any activity carried on by the assessee was liable to be applied solely and exclusively for the promotion of trade and commerce in various commodities which we have mentioned G above and no part of such profit could be distributed amongst the members in any form or under any guise. The profit of the assessee could be utilised only for the purpose of feeding this charitable purpose and the dominant and real object of the activity of the assessee being the advancement of the charitable purpose, the mere fact that the activity yielded profit did not alter the charitable character of the H assessee. We are of the view that the Tribunal was right in taking the view that the purpose for which the assessee was established was a charitable purpose within the meaning of section 2 clause (15) and

the income of the assessee was exempt from tax under sec. 11. The question referred to us in each of these references must, therefore, be answered in favour of the assessee and against the Revenue. A

The Revenue will pay the costs of the assessee in two sets; one in Reference Case No. 1A/73 and the other in Reference Cases Nos. 10—14 of 1975. B

PATHAK, J.—To the judgment prepared by my learned brother Bhagwati, I propose to add a separate judgment, persuaded by the considerable importance of the question which arises and because of a somewhat different perspective in which the point appears to me.

The controversy in these references centres on the true interpretation of the words "not involving the carrying on of any activity for profit" in the definition of the expression "charitable purpose" by s. 2(15) of the Income Tax Act, 1961. C

The preceding enactment, the Indian Income Tax Act, 1922 provided, by s. 4(3)(i), for the exclusion from the total income of an assessee of any income derived from property held under trust or other legal obligation wholly for charitable purposes. The words "charitable purpose" were defined as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility." D

E

The terms in which the benefit was conferred were not sufficient, it appears, to provide against its misuse by a certain class of tax payer. Advantage was taken of the judicial construction given by the courts to the content of the provision. As long ago as 1939, the Privy Council had in *The Trustees of the 'Tribune'*(1) held that the object of a trust of supplying the public with an organ of educated public opinion constituted an object of general public utility and was a charitable object. It was found that the newspaper and press had not been established for the private profit of the testator or any other individual. The circumstance that the purpose of the trust envisaged a commercial activity, the newspaper charging its readers and advertises at ordinary commercial rates, was held not to detract from the conclusion that it was an object of general public utility. While enacting the Income Tax Act, 1961, Parliament added a new dimension to the definition of "charitable purpose". A restrictive clause has been inserted, and s. 2(15) of the Act defines "charitable purpose" as including "relief of the poor, education, medical relief, and the advancement of any other object of general public utility not F G H

(1) (1939) 7 I.T.R. 115

A involving the carrying on of any activity for profit." The Finance Minister explained in Parliament :—

> "The other objective of the Select Committee, limiting the exemption only to trusts and institutions whose object is a genuine charitable purpose has been achieved by amending
B the definition in clause 2(15). The definition of 'charitable purpose' in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly serving a public purpose, get fully paid for the benefits provided by them, namely, the news-
C paper industry, which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the words 'not involving the carrying on of any activity for profit' should be added to the definition."

D

The new scheme, besides redefining "charitable purpose", added a second safeguard directed to protecting the grant of the tax benefit at another point. A new set of provisions controlled the utilisation of the accumulated income derived from the charitable trust or institution.

E

Section 11 of the Act, in its material provisions, as originally framed declared :

> "(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—
F
> (a) income derived from property held under trust wholly for charitable.....purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so
G accumulated is not in excess of twenty-five per cent of the income from the property or rupees ten thousand, whichever is higher;
> (b) income derived from property held under trust in part only for such purposes, the trust having been created before the comencement of this Act, to the extent to which
H such income is applied to such purposes in India; and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set

apart is not in excess of twenty-five per cent, of the income from the property held under trust in part;

(c) .....

(2) Where the persons in receipt of the income have complied with the following conditions, the restriction specified in clause (a) or clause (b) of sub-section (1) as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with—

(a) such persons have, by notice in writing given to the Income-tax Officer in the prescribed manner, specified the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested in any Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944 (XVIII of 1944), or in any other security which may be approved by the Central Government in this behalf.

(3) Any income referred to in sub-section (1) or sub-section (2) as is applied to purposes other than charitable ..... as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so accumulated or so set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid."

Further restrictions were imposed by s. 12A and s. 13. Section 13 barred the exemption in the case of a trust for charitable purposes or a charitable institution, created or established after the commencement of the Act, if the trust or institution was created or established for the benefit of any particular religious community or caste. The exemption was also barred, subject to certain modifications, if any part of the income, or any property of such trust or institution, was used or applied for the benefit of the author of the trust or founder of the institution or of a person who had made a substantial contribu-

A tion to such trust or institution or of a relative of such author, founder or contributor.

The net of restrictive provisions in relations to the utilisation of the income of the trust or institution was tightened still further by successive amendments to the Act. It was relaxed in one particular, that to earn the exemption the money accumulated or set apart could alternatively be deposited in a Post Office Savings Bank account or a banking company to which the Banking Regulation Act, 1949 applies, or a banking co-operative society, or was deposited with a financial corporation providing long, term finance for industrial development in India and approved by the Central Government for the purposes of s. 36(1)(viii).

A notable amendment, inserted as cl. (bb) in s. 13(1), provided that the exclusion of the income derived from any business carried on by a charitable trust or institution for the relief of the poor, education or medical relief, was not permissible unless "the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution." This amendment, brought in with effect from April 1, 1977, was pertinent to the first three heads set forth in the definition of "charitable purpose" and affected the operation of s. 11 with reference to that part of the definition. Simultaneously, cl. (d) was also inserted in s. 13 (1) which, operating subject to cl. (bb), insisted that to earn the exemption on income the funds of the charitable trust or institution should be invested or deposited in the forms or modes specified in s. 13(5).

The scheme embodied in the statute protected the tax benefit from misuse by reference to two principle vantage points, (a) a cautiously worded definition of "charitable purpose", which intended that trusts created and institutions established for purposes not "charitable within that definition should not be entitled to the benefit, and (b) provisions which carefully control the application of the accumulated income flowing from the property held under trust or owned by the institution. The first relates to the very purpose of the trust or institution, the second to the manner in which the resulting income is employed. We are concerned in these references with the former, and it is therefore necessary to avoid resting the construction of section 2(15) on considerations pertinent to the latter.

While construing the definition of "charitable purpose" in s. 2(15), it is imperative to remember that what we are considering is a definition. It is a definition and nothing more. The operative provision is enacted elsewhere in the Act. Viewed in that light, the meaning of the definition is capable of clearer resolution.

Section 2(15) says that "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. The first three heads of "charitable purpose" are defined in specific and clearly disclosed terms. Relief of the poor, education and medical relief. The fourth head is described generally as a residuary head (although that description appears inapt to what finds place in an "inclusive" definition). Now, it is important to note that the *purpose* described is "the advancement of any other object of general public utility.....". The object is not the purpose. The advancement of the object is the purpose. Harking back to the first three heads of charitable purpose, the definition defines purpose in terms of an activity. When Sir Samuel Romilly, in the course of his argument in *Morice* v. *Bishop of Durham*(1) summarised the main heads of charity, they included "relief of the indigent, the advancement of learning, the advancement of religion, and the advancement of objects of general public utility." Note the sense of action, of something to be done in relation to an object. When Lord Macnaghten adopted the classification of charitable purposes in *Special Comrs.* v. *Pemsel*(2), he spoke of "trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads." In the Indian law, the relief of poverty and the advancement of education were embodied as "relief of the poor" and "education". Medical relief was added. And for the fourth head, with which we are concerned, the language, an echo of Sir Samuel Romilly's classification, referred to "the advancement of any other object of general public utility....". It will be at once evident that the word "object" cannot by itself connote an activity. It represents a goal towards which, or in relation to which, an activity is propelled. The element of activity is embodied in the word "advancement". If "charitable purpose" is defined in terms of an activity, that is to say, the advancement of an object, the restrictive clause "not involving the carrying on of any activity for profit", which is also descriptive of an activity, must necessarily relate to "the advancement of an object.....". I am of opinion, therefore, that the restrictive clause must be read with "the advancement of any other object of general public utility" and not with "the object of general public utility. *En passant*, it may be observed that much confusion can be avoided if in the context of the fourth head the purpose of the trust or institution is referred to as the "purpose" and

A B C D E F G H

(1) (1805) 10 Ves. 522, 532.

(2 3 T.C. 53, 96 (H.L.).

A not as the "object" of the trust or institution, because the purpose there is defined as "the advancement of an object".

It being clear then that the charitable purpose is the advancement of the object, and that the advancement must not involve carrying on
B of an activity for profit, I proceed to the next step. The words "activity for profit" should, I think, be taken as descriptive of the nature of the activity. It is an activity of a kind intended to yield profit. It is a profit-making activity. That it may not actually yield profit during any period does not deny its true nature. Conversely, if profit has resulted from an activity, that does not, without anything
C more, classify it as an "activity for profit".

Therefore, for a purpose to fall under the fourth head of "charitable purpose", it must constitute the advancement of an object of general public utility in which the activity of advancement must not involve a profit making activity. The word "involving" in the restric-
D tive clause is not without significance. An activity is involved in the advancement of an object when it is enwrapped or enveloped in the activity of advancement. In another case, it may be interwoven into the activity of advancement, so that the resulting activity has a dual nature or is twin faceted. Since we are concerned with the definition
E of "charitable purpose", and the definition defines in its entirety a "purpose" only it will be more appropriate to speak of the purpose of profit making being enwrapped or enveloped in the purpose of the advancement of an object of general public utility or, in the other kind of case, the purpose of profit making being interwoven into the purpose of the advancement of that object giving rise to a purpose
F possessing a dual nature or twin facets. Now, s. 2(15) clearly says that to constitute a "charitable purpose", the purpose of profit making must be excluded. In my opinion, the requirement is satisfied where there is either a total absence of the purpose of profit making or it is so insignificant compared to the purpose of advancement of the object of general public utility that the dominating role of the
G latter renders the former unworthy of account. If the profit making purpose holds a dominating role or even constitutes an equal component with the purpose of advancement of the object of general public utility, then clearly the definition in s. 2(15) is not satisfied. When applying s. 11, it is open to the tax authority in an appropriate case to pierce the veil of what is proclaimed on the surface by the docu-
H ment constituting the trust or establishing the institution, and enter into an ascertainment of the true purpose of the trust or institution. The true purpose must be genuinely and essentially charitable.

Now, the definition of a purpose is a thing apart from the mode or method employed for carrying out the purpose. Yet the nature of the purpose controls in some degree the mode which is open for carrying it out. If the purpose is charitable in reality, the mode adopted must be one which is directed to carrying out the charitable purpose. It would include, in my opinion, a business engaged in for carrying out the charitable purpose of the trust or institution. The carrying on of such a business does not detract from the purpose which permeates it, the end result of the business activity being the effectuation of the charitable purpose. A business activity carried on not with a view to carrying out the charitable purpose of the trust but which is related to a non-charitable purpose or constitutes an end in itself falls outside the scope of the trust, and indeed may betray the fact that the real purpose of the trust is not essentially charitable. If it is a business entered into for working out the purpose of the trust or institution, that is to say, in the course of, and with a view to, the realisation of the charitable purpose, the income therefrom will be entitled to exemption under section 11. In this connection, it is appropriate to note that s. 11(4) specifically defines "property held under trust" as including a business undertaking. Moreover, when it was found that judicial decisions had held the restrictive clause in s. 2(15) to control the fourth head only, and not also the first three heads in the definition, Parliament attempted to secure its original intent by enacting cl. (bb) in s. 13(1). The two provisions represent the mode of finding finance for working out the purpose of the trust or institution, by deriving income from the corpus of the trust property and also from an activity carried on in the course of the actual carrying out of the purpose of the trust or institution.

At this stage, it will be appropriate to point out that the question whether a trust is created or an institution is established for a charitable purpose falls to be determined by reference to the real purpose of the trust or the institution and not by the circumstance that the income derived can be measured by standards usually applicable to a commercial activity. The quantum of income is no test in itself. It may be the result of an activity permissible under a truly charitable purpose for, as has been observed, a profitable activity in working out the charitable purpose is not excluded. I am unable to agree, with respect, with all that has fallen from H. R. Khanna and A. C. Gupta, JJ. in *Sole Trustee, Loka Shikshana Trust* v. *Commissioner of Income-tax, Mysore*(1) that the terms of the trust must impose restrictions on making profits otherwise the purpose of the trust must be regarded

(1) (1975) 101 I.T.R. 234

A as involving the carrying on of a profit making activity. On the contrary, I find myself in agreement with Beg, J. to the extent that he says, in the same case, that it is the genuineness of the purpose, that it is truly charitable, which determines the issue. It seems necessary to me that a distinction must constantly be maintained between what is merely a definition of "charitable purpose" and the powers con-
B ferred for working out or fulfilling that purpose. While the purpose and the powers must correlate, they cannot be identified with each other. Reference may, of course, be made to the nature and width of the powers as evidence of the charitable or non-charitable nature of the purpose. For the same reason, I am compelled, with respect, to hold that the observations of Krishna Iyer, J. speaking for the
C Court in *Indian Chamber of Commerce* v. *Commissioner of Income-tax, West Bengal-II*(1) do not accord with what I believe to be a true construction of s. 2(15). If that decision can be justified, it can be only on the basis that in the opinion of the court the true purpose of the trust or institution was not essentially charitable. I am unable
D to accept the proposition that if the purpose is truly charitable, the attainment of the purpose must rigorously exclude any activity for profit. I am also unable to endorse the position that by permitting the trust or institution to carry on an activity which brings in profit, although that activity is carried on in the course of the working out of the purpose of the trust or institution, "business men have a high-
E road to tax avoidance". It was apparently not brought to the notice of the learned judges that a carefully enacted scheme has been incorporated in the Act which closely controls the utilisation of the trust income, and that the tax exemption is conditional on the observance of the statutory conditions stipulated in that scheme.

F On the facts of the present references which are set out in the judgment prepared by my brother Bhagwati, I have no hesitation in holding that the purpose of the respondent company falls within the definition of s. 2(15) of the Income Tax Act, 1961. Sub-clause (a) of clause 3 of the Memorandum of Association declares that the purpose for which the company has been established is "to promote commerce
G and trade in Art Silk Yarn, Raw Silk, Cotton Yarn, Art Silk Cloth, Silk Cloth and Cotton Cloth." The promotion of commerce and trade has been held by this Court in *Commissioner of Income Tax* v. *Andhra Chamber of Commerce*(2) to be an object of general public utility, and there is nothing to show that, viewed as the "purpose" for which the company was incorporated, the sub-clause involves the
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(1) [1975] 101 I.T.R. 796
(2) [1965] 55 I.T.R. 722

carrying on of any activity for profit. The remaining sub-clauses enumerate the powers for which it has been constituted.

Having regard to the interpretation placed by me on the words defining the Fourth head of "charitable purpose" in s. 2(15) of the Act, I answer the question referred in each of the references in the affirmative, in favour of the assessee and against the Revenue. The Revenue will pay the costs of the assessee in two sets, one in Tax Reference Case No. 1A of 1973 and the other in Tax Reference Case Nos. 10 to 14 of 1975.

SEN J. I have had the advantage of reading the judgment prepared by my learned brother Bhagwati J. I regret my inability to share the views expressed by him as to the construction of the expression "charitable purpose" as defined in s. 2(15) of the Income-tax Act, 1961. I am of the opinion that the two decisions in *Sole Trustee, Loka Shikshana Trust* v. *C.I.T.*(1) and *Indian Chamber of Commerce* v. *C.I.T.*(2) lay down the correct law and still hold good.

In the definition of "charitable purpose", contained in s. 2(15) of the Act of 1961, the words "not involving the carrying on of any activity for profit", which did not find place in the Act of 1922, qualify only the fourth head of charitable purpose *viz.*, "any other object of general public utility", and not any of the first three heads. The definition of "charitable purpose" in s. 2(15) is in these terms :

> "2(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit;"

It has brought about radical changes 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. After the experience gained in the 39 years that followed the enactment of the Act of 1922, it came to be realised that many activities for profit were not subject to tax on income merely because they could be regarded as objects of general public utility. What was amiss under the Act of 1922 was not the idea of giving income-tax relief in respect of charity, but undue width of the range of what ranks as a charity for that purpose. It is the vagueness of the expression "any other object of general public utility

(1) (1975) 101 I.T.R. 234.
(2) (1975) 101 I.T.R. 796.

A "that impelled Parliament to insert the restrictive words "not involving the carrying on of any activity for profit".

It is not permissible for the Court to whittle down the plain language of the section. "It would be contrary to all rules of construction", in the words of Khanna J., speaking for himself and Gupta J. B in *Loka Shikshana Trust* "to ignore the impact of the newly added words 'not involving the carrying on of any activity for profit' and to construe the definition as if the newly added words were either not there or were intended to be otiose and redundant, i.e., as qualifying and affirming the position under the Act of 1922". Such a construction would, I am afraid, frustrate the very object of the legislation. C The section is self-explanatory. The relative simplicity of the language brings out the necessary legislative intent to counter-act tax advantages resulting from so-called 'charities in camouflage'.

No distinction had been made by the Act of 1922 between the well-known charities of relief to the poor, education and medical relief D on the one hand and charities resulting from the advancement of any other object of general public utility, on the other hand. But such a distinction has been introduced by the definition of the term "charitable purpose" in s. 2(15) though the definition is an inclusive one. The restriction is that the advancement of objects of general public utility should not involve the carrying on of any activity for profit. E If it involved any such activity, the charity will fall outside the definition of charitable purpose in s. 2(15). This change has radically altered the law and whenever the advancement of an object of general public utility involved an activity for profit that object will cease to be a charitable purpose. So, in such cases, the income from the F activity for profit cannot be exempted from tax under s. 11 of the Act. The object of this addition of the restrictive words "not involving the carrying on of any activity for profit" was to clearly overcome the decision in *In re The Trustees of the Tribune*(1), *All India Spinners' Association* v. *C.I.T.*(2), and *J. K. Trust* v. *C.I.T.*(3) All these cases arose under s. 4(3) (i) of the Act of 1922, which did not G include the words "not involving the carrying on of any activity for profit", and they are no longer good law.

There is a distinction between "a business held under trust" and "a business carried on by or on behalf of the trust". Section 11(1) exempts income derived from property held under trust wholly for

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(1) (1939) 101 7 I.T.R. 415.
(2) (1944) 12 I.T.R. 402.
(3) (1957) 32 I.T.R. 535.

charitable or religious purposes, to the extent to which such income is applied to such purposes in India. Section 11(4) includes within the "property held under trust" a business undertaking so held. Therefore, income from a business undertaking held under a trust for a charitable purpose is exempt under s. 11(1). There is, therefore, no statutory bar or restriction to earn exemption in respect of income derived from a business undertaking, if such business undertaking is held under a trust for a charitable purpose. That 'property' in s. 11(1) includes business has been well established not only by the decisions of the Privy Council dealing with the corresponding provision in s. 4(3)(i) of the Act of 1922 in *Tribune's Trustees* (supra) and *Spinners' Association* (supra) but also by the two decisions of this Court in *C.I.T.* v. *Radhaswami Satsang Sabha*(1) and *C.I.T.* v. *P. Krishna Warrier*(2). The first essential condition for exemption under s. 11(1) is that the 'property' from which the income is derived must be held under trust or other legal obligation. Section 11(4) gives a statutory recognition of the law laid down by this Court in *Radhaswami Satsang Sabha* namely that business is property and if a business is held in trust wholly for a charitable purpose, the income therefrom will be exempt under s. 11(1).

A B C D

As already stated above, the Act of 1961 now defines 'charitable purpose' to include 'relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit'. It is accepted that the words 'not involving the carrying on of any activity for profit' qualify only the fourth head of charitable purpose stated in the definition viz. 'any other object of general public utility'. Consequently, it is clear that in cases falling under the first three heads of charitable purpose, the definition imposes no ban on the carring on of any activity for profit. The restrictive words 'not involving the carrying on of any activity for profit' were deliberately introduced in the definition of charitable purpose in s. 2(15) to cut down the wide ambit of the fourth head viz. 'any other object of general public utility' as a measure to check avoidance of tax. Indubitably, engagement in activity for profit by religious or charitable trusts provides scope for manipulation for tax avoidance. The Parliament, however, thought that it will not be desirable to ban an activity for profit which arises in the pursuit of the primary object of the trust created with the object of relief the poor, education or medical relief.

E F G H

(1) (1954) 25 I.T.R. 472.
(2) (1964) 53 I.T.R. 176.

A study made by the Department of Company Affairs of 75 trusts, of which 62 were charitable, showed that the business houses creating the trusts had mostly appropriated the trust funds for their own businesses. Considering the problem of tax avoidance through formation of charitable and religious trusts, the Public Accounts Committee in a recent report(1) observed that 'while trusts fulfil a laudable social objective, they have also been used as a device to avoid tax'. The Committee also took note of the fact that out of 45 trusts connected with industrial houses and having a corpus of Rs. 24.11 crores, the investments by 32 trusts in concerns connected with the industrial houses were 50 per cent or more of their funds. In some cases, it was noticed that the investment in such concerns amounted to as much as 90 per cent of the funds of the trusts. In other words, the big business houses established their own 'charitable trusts' because they find it financially advantageous to filter money through them. In the United States of America, despite several provisions for preventing misuse of funds of public trusts, taxpayers still find ways and means to use charity as a cover for tax avoidance. In his revealing study 'The Rich and the Super Rich' Ferdinand Lundberg(2) observes :

> "....foundations can do anything that is financially possible, without any sort of public supervision or regulation. In the sphere of finance, name it and they can do it, tax free."

He goes on to add :

> "It is mainly because of the Protean utility of the foundation, particularly in the evasion of taxes, that nearly everyone in the community of wealth has come now to share the original insight of only a few such as the pioneering Carnegie and Rockfeller."

Avoidance of tax through the media of charitable trusts is a malady prevalent in other countries as well. The British Royal Commission on Taxation of Profits and Income observed that the vagueness of defintiion of 'charity', or more precisely the absence of a definition, has enabled very substantial benefits of exemptions to be claimed by activities which, in extreme cases, had no real connection with the idea of charity at all(3). The Royal Commission on Taxation for Canada also took note of this problem in its report and

(1) Public Accounts Committee (1969-70)—Fourth Lok Sabha—Hundred and Twenty-First Report—(paras 1·32 and 1.33) pp. at 6-17.

(2) Ferdinand Lundberg—The Rich and the Super Rich—p. 253

(3) Final Report of the Royal Commission on the Taxation of Profits and Income (1955)—para. 1970

recommended that charity should pay income-tax on business income(1). A

There has been a sharp conflict of opinion upon the construction of the crucial words 'not involving the carrying on of any activity for profit', qualifying the fourth head of charity, 'advancement of any other object of general public utility'. According to the Kerala High Court in *C.I.T.* v. *Indian Chamber of Commerce,*(2) *C.I.T.* v. *Cochin Chamber of Commerce* (3) and *C.I.T.* v. *Charmodayan & Co.,*(4) it was observed that in order to take an object of general public utility outside the scope of the definition, that object must involve carrying on of any activity for profit. The Calcutta High Court in *C.I.T.* v. *Indian Chamber of Commerce*(5) took a view different from that of the Kerala High Court observing that the fourth head of charity 'the advancement of any other object of general public utility not involving the carrying on of any activity for profit' plainly indicates that it is not the object of general public utility which would involve the carrying on of any activity for profit, but the advancement of that object. Otherwise, the Calcutta High Court held that 'it would lead to a contradictory situation and be destructive of the limitation which the Parliament in its wisdom thought it necessary to impose. It further observed that that was the only way to avoid a conflict between ss. 11 and 2(15), specially with the provisions of s. 11(1)(a) and 11(4). This Court resolved the conflict in *Loka Shikshana Trust* (supra) and *Indian Chamber of Commerce* (supra) by holding that the words 'not involving the carrying on of any activity for profit' govern the word 'advancement' and not the words 'object of general public utility' and observed that if the advancement or attainment of the object involves an activity for profit, tax exemption would not be available. B C D E F

The words 'charity' and 'charitable purpose' must be construed in their legal or technical sense which is different from their popular meaning. Charity is a word of art, of precise and technical meaning and an exhaustive definition of charity in the legal sense has never been attempted. The cases in which the question of charity has come before the Courts are legion, and not all the decisions, even of the highest authority, are easy to reconcile. G

(1) Report of the Royal Commission on Taxation for Canada—Vol. 4, p. 144.
(2) (1971) 80 I.T.R. 645.
(3) (1973) 87 I.T.R. 83.
(4) (1974) 94 I.T.R. 113.
(5) (1971) 81 I.T.R. 147. H

A In England, the *locus classicus* on the subject is the decision of Lord Macnaghten in *Commissioner for Special Purposes of Income-tax* v. *Pemsel*(1) decided in the House of Lords. In that case Lord Macnaghten, after explaining that no doubt the popular meanings of the words 'charity' and 'charitable' do not coincide with their legal meaning, but when used in such expressions as 'charitable uses', B 'charitable trust' or 'charitable purposes', the word has a well-settled technical meaning, observed :

> " 'Charity' in its legal sense comprises four principal divisions : trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; C and trusts for other purposes beneficial to the community not falling under any of the preceding heads."

The fourth head of this classification has been the subject of much discussion in cases in England. In some of them it has been held to be synonymous with 'philanthropic', while in others it has been given a narrower meaning. In *Re. Macduff*(2) it was held that while a D charitable purpose may well be a purpose of general utility, all purposes of general utility cannot be deemed to be charitable. It was observed that the words 'public utility' are so large that they comprehend purposes which are not charitable. This view was affirmed on appeal, and with regard to *Pemsel's case* Lord Justice Lindley E observed :

> "I am certain that Lord Macnaghten did not mean to say that every object of public general utility must necessarily be charitable. Some may be and some may not be."

The fourth head of Lord Macnaghten's four-fold classification is F vague because of its generality, I do not think much useful purpose would be served by referring to the other English cases dealing with the subject, or in attempting to reconcile the *dicta* of eminent Judges contained in some of them.

It will be sufficient for our present purposes to say that the Indian G Legislature while enacting the Act of 1922 appears to have steered clear of these difficulties by using phraseology which is much wider and more comprehensive than that of Lord Macnaghten's fourth head of classification. It was in 1896 that Lord Lindley and other Law Lords held in *Macduff's case* that the words "general public utility were very wide in their scope, that every object of public utility was not H necessarily a charitable purpose', and yet 22 years later in 1918,

(1) (1891) 3 T.C. 53 (HL) : [1891] AC 531.
(2) (1896) L.R. 2 Ch. 451.

when the Explanation to s. 4 (3) of the Income-tax Act, 1922 was placed on the statute book, the Indian Legislature while practically adopting Lord Macnaghten's phraseology in enumerating the first three heads of the definition, described the fourth as 'advancement of other objects of general public utility, without any restriction or qualification whatever. The Courts, therefore, felt it their duty to give full effect to the plain meaning of the words used in s. 4(3) of the Act of 1922.

In s. 4(3) the Legislature deliberately refrained from qualifying in any way the words "any other object of general public utility", and there was nothing in the context which indicated that it was intended to give them a restricted meaning. It was, therefore, not open to the Courts or other authorities whose duty it was to interpret the section, to cut down the plain and comprehensive meaning of the words used, simply because they would give to the expression "charitable purpose" a meaning which is not in accord with popular notions.

In *re. The Trustees of the Tribune* (supra) the Privy Council held that the object of supplying State with an organ of educated public opinion was an object of public utility, and it was a charitable object, in the absence of a motive of private profit, even though the newspaper charged its readers and advertisers at ordinary commercial rates. The case established that under the Act of 1922, the charitable institutions which carried on trade at a profit was exempt in respect of the profits, provided the institution was held on a charitable trust and the profits were and could be applied only to the charitable purposes of the institution.

The result of this and other similar decisions was that a charitable institution could escape the payment of tax on income earned from business provided it could be shown that the money was spent for an "object of general public utility". Exemption from income-tax of the income of charitable trusts provides opportunities for tax avoidance. The fact that some of charitable trusts are created for the purpose of evasion or avoidance of tax is virtually endemic, an unmitigated well-known evil.

The question of tax avoidance through formation of charitable and religious trusts has been engaging the attention of the Government for quite some time. Before coming into force of the Income-tax Act, 1961, s. 4(3) (i) of the Act of 1922 governed exemption of income of charitable trusts.

The definition of the expression "charitable purpose" in s. 2 (15) of the Act is different from the definition of that expression in s.4

A (3) (i) of the Act of 1922. The words "not involving the carrying on of any activity for profit" were inserted in the Act of 1961 at the Select Committee stage. The Committee was of the opinion that the definition of "charitable purpose" needed a change to eliminate the tax avoidance device in-built in it. It first considered the insertion of the words "other than the furtherance of an undertaking for commer-
B cial profit", after the sentence "any other object of general public utility", but subsequently this was changed to "not involving the carrying on of any activity for profit" and thus the changed definition of "charitable purpose" in s. 2 (15) of the present Act was brought in. The main object was to take away the element of 'business' from
C 'charity'.

The then Finance Minister while introducing the Bill had said :

> "The definition of 'charitable purpose', in that clause is at present so widely worded that it can be taken advantage of even by commercial concerns which, while ostensibly
D serving a public purpose, get fully paid from the benefits provided by them, namely, the newspaper industry which while running its concern on commercial lines can claim that by circulating newspapers it was improving the general knowledge of the public. In order to prevent the misuse of this definition in such cases, the Select Committee felt that the
E words 'not involving the carrying on of any activity for profit' should be added to the definition."

The words "not involving the carrying on of any activity for profit" have changed the picture completely, and the decision of the Privy Council in *Trustees of the Tribune* (supra) and *Spinners' Associa-*
F *tion* (supra) as well as that of this Court in Radhaswami Satsang *Sabha* (supra), *J. K. Trust* v. *C.I.T.*(1) and *C.I.T.* v. *Andhra Chamber of Commerce*(2) are now of academic interest only. Parliament by introducing these words have not only curtailed the scope of the fourth head of charity, 'advancement of any other object of general public utility', but also left little room for the tax-payers to manoeuvre
G the diversion of their business profits to charity.

Even assuming that the dominant object is the promotion or 'advancement of any other object of general public utility', if it involves any activity for profit, i.e., any business or commercial activity, then it ceases to be a "charitable purpose" within the meaning
H of s. 2 (15). In that event, the profits derived from such business

(1) (1957) 32 I.T.R. 535.
(2) (1965) 55 I.T.R. 722.

are not liable to exemption under s. 11 (1) read with s. 2 (15). The concept of 'profits to feed the charity' is also of no avail. That is because the concept of 'profits to feed the charity' can only arise under the first three heads of 'charitable purpose' as defined in s. 2 (15) of the Act, i.e., "relief of the poor ", "education" and "medical relief", but they are not germane insofar as the fourth head is concerned, viz., "the advancement of any other object of general public utility". If the fulfilment of an object of general public utility is dependent upon any activity for profit, it ceases to be a charitable purpose.

This Court in *Loka Shikshana Trust* (supra) and *Indian Chamber of Commerce* (supra) has had occasion to deal with the legal significance of the words "not involving the carrying on of any activity for profit" added to the definition of "charitable purpose as contained in s. 2 (15) of the Act. After referring to the Finance Minister's speech it observed that the amended provision was directed at a change of law as it was declared by the Privy Council in *Trustees of the Tribune* (supra).

The case of Loka Shikshana Trust first brought out the legislative intent. This was a typical case of an abuse of the tax exemption given to charitable institutions that brought about a change in the law. It was a case of a trust constituted by a person who appointed himself the sole trustee with absolute discretion and the entire activity of the trust was in fact that of running a wide circulation newspaper. It was claimed that the mere act of printing and publishing and circulating a newspaper was tantamount to carrying out the charitable object of education. By claiming exemption of tax, the trust funds had over the years, swelled from about Rs. 4,000/- to nearly Rs. 2 lakhs. During the assessment year in question, the total receipts of the trust were of the tune of Rs. 22 lakhs. It was entirely a commercial activity and there was not even a semblance of spending any part of the income on the object of aducation by way of granting scholarships or providing means of education and so on.

The Court laid down that if the object of the charitable trust is advancement of any object of general public utility, any income derived by it from any activity for profit, will not be entitled to exemption under s. 11 of the Act, having regard to the words "not involving the carrying on of any activity for profit", introduced in the definition of the term 'charitable purpose' as contained in s. 2 (15).

Khanna J., speaking for the Court, pointed out that as a result of the addition of the words "not involving the carrying on of any activity for profit", at the end of the definition in s. 2(15) of the

A Act, even if the purpose of the trust is "advancement of any other object of general public utility", it would not be considered to be "charitable purpose" unless it is shown that the advancement of such object does not involve the carrying on of any activity for profit, saying :

B "It is also difficult to subscribe to the view that the newly added words "not involving the carrying on of any activity for profit" merely qualify and affirm what was the position as it obtained under the definition given in the Act of 1922. If the legislature intended that the concept of charitable purpose should be the same under the Act of C 1961, as it was in the Act of 1922, there was no necessity for it to add the new words in the definition. The earlier definition did not involve any ambiguity and the position in law was clear and admitted of no doubt after the pronouncement of the Judicial Committee in the cases of Tribune and *All India Spinners' Association.* If despite that fact the D legislature added new words in the definition of charitable purpose, it would be contrary to all rules of construction to ignore the impact of the newly added words and to so construe the definition as if the newly added words were either not there or were intended to be otiose and redundant."

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Beg J., who delivered a separate but concurring judgment, while discussing the scope of s. 2 (15), observed :

"As a rule, if the terms of the trust permit its operation 'for profit', they became, prima facie, evidence of a purpose F falling outside charity. They would indicate the object of profit making unless and until it is shown that the terms of the trust compel the trustee to utilise the profits of business also for charity. This means that the test introduced by the amendment is : Does the purpose of a trust restrict spending the income of a profitable activity exclusively or primarily G upon what is "charity" in law ? If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly then in the past, the genuineness of the purpose tested by the obligation created to spend the money exclu- H sively or essentially on 'charity'. If that obligation is there, the income becomes entitled to exemption. That in our opinion, is the most reliable test."

These observations of Beg J. were in the nature of an *obiter dictum,* as on facts he held the trust in that case to be actually engaged in activity for profit. I shall, however, deal with the observations later as they create some difficulty.

The matter was put beyond the pale of controversy by the Court in *Indian Chamber of Commerce* (supra). The assessee was a Chamber of Commerce. Its objects were to promote and protect trade interests and other allied service operations falling within the expression "the advancement of any other object of general public utility". The Chamber derived income from (i) arbitration fees levied by it, (ii) fees collected for issuing certificates of origin, and (iii) share in the profits made by issuing certificates of weighment and measurement. The question was whether the activites of the Chamber being activities carried on for profit, in the absence of any restriction in its memorandum and articles of association against the making of profit from such activities the income of the Chamber from those activities was liable to income-tax or was exempt from income-tax under s. 11 read with s. 2(15).

Krishna Iyer, J., speaking on behalf of himself, Gupta and Fazal Ali JJ., referred to the legislative history, the evil sought to be remedied, and the speech of the Finance Minister, which gave the "true reason for the remedy", said :

> "The obvious change as between the old and the new definitions is the exclusionary provision introduced in the last few words. The history which compelled this definitional modification was the abuse to which the charitable disposition of the statute to charitable purposes was subjected by exploiting businessmen. *You create a charity, earn exemption from the taxing provision and run big industries virtually enjoying the profits with a seeming veneer of charity,* a situation which exsuscitated Parliament and constrained it to engraft a clause deprivatory of the exemption if the institution fulfilling charitable purposes undertook activities for profit and thus sought to hoodwink the statute. The Finance Minister's speech in the House explicates the reason for the restrictive condition."
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> (Emphasis supplied)

He lamented the legislative obscurity in the definition of charitable purpose in s. 2(15) of the Act but observed that the Court must adopt a construction which advances the legislative intent, stating :

> "The evil sought to be abolished is thus clear. The interpretation of the provision must naturally fall in line with the advancement of the object."

A The whole object of adding the words "not involving the carrying on of any activity for profit" at the end of the definition of 'charitable purpose' in s. 2(15), in the words of Krishna Iyer J., was :

> "This expression, defined in section 2(15), is a term of art and embraces objects of general public utility. But, under cover of charitable purposes, a crop of camouflaged organisations sprung up. The mask was charitable, but the heart was hunger for tax-free profit. When Parliament found this dubious growth of charitable chemelsons, the definition in section 2(15) was altered to suppress the mischief by qualifying the broad object of "general public utility" with the additive "not involving the carrying on of any activity for profit. The core of the dispute before us is whether this intentional addition of a "cut back" clause expels the chamber from the tax exemption zone in respect of the triune profit-fetching sub-enterprises undertaken by way of service or facility for the trading community."

D A realistic line of reasoning, according to him, is to interpret 'charitable purpose" in such a manner that 'we do not burke any word', 'treat any expression as redundant' or 'miss the accent of the amandatory phrase'. He struck a note of warning regarding the 'possibility of obscurity' and 'dual meanings' by shifting of emphasis from 'advancement' to 'object' used in s. 2(15). The emphasis is not on the object of public utility and the carrying on of related activity for profit. On the other hand, if in the advancement of these objects, the trust resorts to carrying on of activities for profit, then necessarily s. 2(15) cannot confer cover. The advancement of charitable objects must not involve profit-making activities. That according to him, is the mandate of the new law. In reaching that conclusion he observes :

> "In our view, the ingredients essential to earn freedom from tax are discernible from the definition, if insightfully, actually read against the brooding presence of the evil to be suppressed and the beneficial object to be served. The policy of the statute is to give tax relief for charitable purpose, but what falls outside the pale of charitable purpose ? The institution must confine itself to the carrying on of activities which are not for profit. It is not enough if the object be one of general public utility. The attainment of that object shall not involve activities for profit."

H In conclusion, he sums up the legislative intent, saying :

> "To sum up, section 2(15) excludes from exemption the carrying on of activities for profit even if they are linked with

the objectives of general public utility, because the statute interdicts, for purpose of tax relief, the advancement of such objects by involvement in the carrying on of activities for profit."

The dictionary meaning of the word "involve" is "to envelop, to entangle, to include, to contain, to imply" : Shorter Oxford Dictionary, 3rd ed., p. 1042. The word "involve" thus contemplates the advancement of the object of general public utility being sought to be achieved by carrying on of an activity for profit. That conclusion is inevitable on a proper analysis of the two decisions. In *Loka Shikshana Trust,* the object of the trust could not be achieved without carrying on the business of publication of newspapers. In *Indian Chamber of Commerce,* the income from fees from arbitration or fees for issuing certificates of weighment and measurement, might have been conceived as part of its objects of assisting trade and commerce. If the profit-making activity is thus the appointed means of achieving a charitable object of general public utility, then, the profit would be taxable. At p. 803 of the Report, Krishna Iyer J., speaking for the Bench, held that "by the new definition, the benefit of exclusion from the total income is taken away where in accomplishing a charitable purpose the institution engaged itself in activities for profit". A reading of s. 2(15) and s. 11 together shows that what is frowned upon is an activity for profit by a charity established for advancement of an object of general public utility in the course of accomplishing its objects.

These being the principles upon which exemption of income derived from property held under trust by an object of general public utility under s. 11(1) read with s. 2(15) can be claimed, it is clearly inconsistent with them to hold that if the dominant or primary purpose was 'charity', it was permissible for such an object of general public utility, to augment its income by engaging in trading or commercial activity. That would be clearly against the whole scheme of the Act. I need hardly say that, if the altered definition of 'charitable purpose' in s. 2(15) were to be applied, according to the well-known canons of construction, no such point would for a moment be arguable. There can be no doubt that Parliament wanted to bring about a change in the law to prevent tax avoidance by diversion of business profits to pseudo charities. Surely, it cannot be said that Parliament did not mean, what it intended to achieve, by introducing the restrictive words "not involving the carrying on of any activity for profit". It clearly meant to prevent tax-free profits from being ploughed back in business. But it is said that the law is different; and the point upon which the case

must turn cannot be more distinctly put than was put by Beg J. in his judgment in *Loka Shikshana Trust.*

The observations of Beg J. have given rise to a controversy that the condition that the purpose should not involve the carrying on of any activity for profit would be satisfied if profit-making is not the real object; and that if the terms of the trust permit the carrying on of business activity for profit it would *prima facie* indicate the object of profit-making unless those terms indicate the real object to be charitable by compelling the trustees to utilize the business profit for charity. This is contrary to what Khanna and Gupta JJ. stated. While they observed that 'if the terms of the trust do not impose restrictions on profit-making, the court would be well justified in assuming. In the absence of some indication to the contrary, that the object of the trust involved the carrying on of an activity for profit. To quote again, Beg J. observed : "If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust". On the basis of the observations of Beg J. it is asserted that the test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on 'charity'. It is stated that despite the addition of the words "not involving the carrying on of any activity for profit" in s. 2(15) of the Art, there is a distinction between (a) a business being held under trust where profits feed a charity in which case the income of such trust would be wholly exempt, and (b) the carrying on of a business in carrying out what is conceived as a charitable purpose in which case the income may be taxable. It is said that the distinction is fine, but must be kept in view. The so-called distinction, in my opinion, is without any basis whatever. It runs counter to the very object and purpose of the legislation.

Under the existing provisions, if the object or purpose of a trust is relief of the poor, education or medical relief, the trust can carry on an activity for profit provided it is in the course of carrying out the primary object of the trust. However, if the object of the trust is advancement of an object of general public utility and it carried on any activity for profit, it is excluded from the ambit of charitable purpose defined in s. 2(15). The distinction is clearly brought out by the provision contained in s. 13(1)(bb) inserted by Tax Laws (Amendment) Act. 1975, which provides that in case of a charitable trust or institution for the relief of the poor, education or medical relief, which carries on any business, any income derived from such business, unless the business is carried on in the course of the actual carrying out of a

primary purpose of the trust or institution shall not be excluded from the total income of the previous year.

It seems that the attention of Beg J. in *Loka Shikshana Trust* (supra) was not drawn to the fact that he was dealing with a case falling under the fourth head of charity "advancement of any other object of general public utility", the ambit of which was restricted by the qualifying clause "not involving the carrying on of any activity for profit", and, therefore, there was no occasion for him to observe, "if the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust". These considerations can only arise under the first three heads of charity viz., 'relief of the poor', 'education' and 'medical relief'.

In *C.I.T. Kerala* v. *Dharmoddyam Co.*,(1) *Dharmaposhanam Co.* v. *C.I.T., Kerala*(2) and *Dharmadipti* v. *C.I.T., Kerala*(3) the Court had occasion to deal with the definition of 'charitable purpose' in s. 2(15). In *Dharmodayam,* the finding of the Kerala High Court was that the *kuri* business was itself held under trust for religious or charitable purpose, and, therefore, the Court observed :

> "It is a necessary implication of this finding that the business activity was not undertaken by the respondent in order to advance any object of general public utility. It, therefore, did not become necessary to enquire whether conducting the kuri business involved the carrying on of any activity for profit, in as much as the income derived by the assessee from the kuries was exempt from tax under s. 11(1)(a)."

In *Dharmaposhanam,* it was held that the income from the business of conducting *kuries* and money lending fell under the residual general head 'any other object of general public utility' and being carried on for profit could not be regarded as charitable purpose under s. 2(15). In *Dharmadipti,* the Court came to a contrary conclusion because the income from the *kuri* business was derived from a business held under trust for charitable purposes. In all these cases, there was non-fulfilment of one condition or the other, i.e., either the business was not held under trust or being an object of general public utility was engaged in an activity for profit.

With respect, I venture to say that if an object of general public utility is engaged in an activity for profit, it ceases

(1) [1977] 107 I.T.R. 527.
(2) [1978] 3 S.C.C. 414.
(3) [1978] 3 S.C.C. 499.

A to be a charitable purpose and, therefore, the income is not exempt under s. 11(i) (a). In case of a trust falling under any of the first three heads of charity, viz., 'relief of the poor', 'education' and 'medical relief' it may engage in any activity for profit, and the profits would not be taxable if they were utilized for the primary object of the trust. In other words, the business carried B on by them is incidental or ancillary to the primary object viz., relief of the poor, education and medical relief. To illustrate, a charitable hospital holding buildings on trust may run a nursing home. The profits of the nursing home owned and run by the trust will be exempt under s. 11(4), because the business is carried on by the C trust in the course of the actual carrying out of the primary purpose of the trust. The concept of 'profits to feed the charity', therefore, is applicable only to the first three heads of charity and not the fourth. It would be illogical and, indeed, difficult to apply the same consideration to institutions which are established for charitable purposes of any object of general public utility. Any profit-D making activity linked with an object of general public utility would be taxable. The theory of the dominant or primary object of the trust cannot, therefore, be projected into the fourth head of charity, viz., 'advancement of any other object of general public utility', so as to make the carrying on of a business activity merely ancillary or incidental to the main object.

E

In fact, if any other view to prevail, it would lead to an alarming result detrimental to the revenue. The whole object of inserting the restrictive words 'not involving the carrying on of any activity for profit' in the stricter definition of 'charitable purpose' in s. 2(15) to make the range of favoured activity less flexible than it had been F hitherto before i.e., to prevent big business houses from siphoning of a substantial portion of their income in the name of charity, would be defeated. The danger of permitting diversion of business profits, which was sought to be prevented by Parliament is but apparent. In my opinion, the restrictive words 'not involving the carrying on of any activity for profit' in the definition of 'charitable G purpose' in s. 2(15) of the Income-tax Act, 1961 must be given their due weight. Otherwise, it would have the effect of admitting to the benefits of exemption the fourth indeterminate class viz., objects of general public utility engaged in activity for profit contrary to the plain words of s. 2(15).

H Modern legislation has changed in pattern towards re-casting taxes and provisions with very wide language, while at the same time dealing in much more detail with some crees of law. Judges,

in part, responding to general trends of law, but also reacting to the farm of modern tax legislation, must be prepared to take account of the context and purposes of the change brought about.(1) Most Judges, in dealing with tax legislation, have refused to engage in what Megarry J. calls "a bout of speculative judicial legislation" to cut down the wide words of the statute : *Inland Revenue Commissioner* v. *Brown.*(2) In *Harrison* v. *Nairn Williamson*(3) Goulding J. observes :

> "The way I have to approach this pure question of verbal interpretation is, I think, to give the words used by Parliament their ordinary meaning in the English language, and if, consistently with ordinary meaning, there is a choice between two alternative interpretations, then to prefer the construction that maintains a reasonable and consistent scheme of taxation without distorting the language."

Both the Judge's conclusion, and his reasoning, were adopted expressly in the Court of Appeal, where the Court was exercised by the fact that the taxpayer's interpretation of the section in question might lead to a most obvious way of tax evasion. This attitude was reflected earlier by Megarry J. in the following comment : 'There is high authority for saying that it scarcely lies in the mouth of the taxpayer who plays with fire to complain of burnt fingers' *Reeves* v. *Evans Boyce and Northcott Syndicate*(4) Lord Justice Sellers in *F. S. Securities* v. *I.R.C.*(5) also found that "enrichment without any service to the community and without taxation is hard to countenance". Lord Reid in *Greeberg* v. *I.R.C.*(6) voices the same concern about the prevailing attitude to tax statutes, saying :

> "Parliament is very properly determined to prevent this kind of tax evasion, and if the courts find it impossible to give very wide meanings to general phrases the only alternative may be for Parliament to do as some other countries have done and introduce legislation of a more sweeping character."

(1) David W. Williams; "Taxing Statutes are taxing Statutes: The Interpretation of Revenue Legislation", Modern Law Review: Vol. 41, pp. 464—72.

(2) [1971] 2 All E.R. 33 at p. 46

(3) [1976] 3 All E.R. 367.

(4) [1971] 48 T.C. 495 at p. 513.

(5) [1963] 41 T.C. 666 at p. 680.

(6) [1972] A.C. 109.

A It is legitimate to look at the state of law prevailing leading to the legislation so as to see what was the mischief at which the Act was directed. This Court has on many occasions taken judicial notice of such matters as the reports of parliamentary committees, and of such other facts as must be assumed to have been within the contemplation of the legislature when the Acts in question were B passed. In *C.I.T., M.P. & Bhopal* v. *Sodre Devi*(1) the question before the Court was as to the construction of s. 16(3) of the Income-tax Act, 1922. After finding that the word 'individual' occurring in the aforesaid sub-section was ambiguous, Bhagwati J. observed : "In order to resolve this ambiguity therefore we must of necessity have resort to the state of law before the enactment of the C provisions, the mischief and the defect for which the law did not provide; the remedy which the legislature resolved and appointed to cure the defect; and, the true reason for the remedy."

The then prevailing law relating to exemption of income of charitable trusts contained several loopholes. The Law Commission D in its Twelfth Report felt the need to eliminate the tax avoidance device in-built in the definition of **'charitable purpose'** in s. 4(3) of the Act of 1922, by insertion of an Explanation to the effect :

> "Explanation : In this sub-section 'property' does not include 'business'."

E

The Direct Taxes Administration Enquiry Committee in their report (1958-59) observed as follows :

> "The existing provisions relating to exemption of the income of charitable trusts under Section 4(3)(i) of the F Income-tax Act contain certain loopholes which help the formation of pseudo charitable trusts."

> "Another wide loophole rests in the interpretation of the word 'property', whereunder a trust could carry on business which had nothing to do with the primary object of the trust itself and still yet exemption in respect of the G income from this business. Courts have held that business can also be 'property', held under trust. Certain amendments in Section 4(3)(i) of the Income-tax Act were made through the Indian Income-tax (Amendment) Act, 1953 to try to ensure that income of a 'charitable' business got exemption only if the business was carried on on behalf of H a religious and charitable institution and was carried on in

(1) [1958] S.C.R. 1.

the course of implementing a primary purpose of the institution or the work of the business was mainly done by the beneficiaries of the institution. This was done by adding proviso (b) to Section 4(3)(i) of the Indian Income-tax Act. That proviso says that the income derived from property held under trust for religious or charitable shall not be exempt and shall consequently be included in the total income."

"Courts have, however, taken the view that the above two conditions (in the proviso) for getting exemption apply only where business is carried on on behalf of a religious or charitable institution and not where the business itself is held upon trust, and that as such the income of such a business would still be entitled to exemption under the substantive part of Section 4(3)(i) despite non-fulfilment of the conditions set out in the proviso."

Adopting the recommendation of the Select Committee, Parliament inserted the words "not involving the carrying on of any activity for profit" in the definition of the expression 'charitable purpose' in s. 2(15) of the Act.

The report of the Public Accounts Committee made a comprehensive study of the problem and indicated the magnitude of avoidance of tax through formation of charitable trusts, and considered whether the words 'not involving the carrying on of any activity for profit' should be deleted, but recommended against its deletion.

The Direct Taxes Enquiry Committee (otherwise known as the Wanchoo Committee) considered the question whether the restriction of trusts in the matter of engaging in activities for profit should be removed and made the following recommendations :

"It is in this background that we address ourselves to the question as to whether religious or charitable trusts enjoying tax exemption should be permitted to carry on any activity for profit. Indubitably, engagement in activity for profit by such trusts provides scope for manipulations for tax avoidance. We, however, consider that it will not be desirable to ban an activity for profit which arises in the pursuit of the primary purpose of a trust created with the object of relief of the poor, education or medical relief. For instance,

A in the case of a trust for vocational training, it would be essential for the trust to carry on its vocation. We, therefore, recommend that law should be suitably amended to provide that where a trust for the religion of the poor, education or medical relief derives income from any activity for profit, its income would be exempt from income-tax only if B the said activity for profit is carried on in the course of the actual carrying out of a primary purpose of the institution. We wish to make it abundantly clear that even where a business is settled in trust, the trust should fulfil this condition if it is to enjoy tax exemption in respect of the income from such business. So far as trusts for any other object of general public utility are concerned, pursuit of any activity for C profit should continue to render them ineligible for tax exemption."

D The Direct Taxes Laws Committee in Chapter 2 (Interim Report, December 1977) on charitable trusts considered the question whether the above expression in the definition should be deleted and recommended the deletion of the above expression stating :

E "We have received a large number of representations on the hardship caused as a result of the total banning of activity for profit so far as trusts having the fourth category objects are concerned. It has been pointed out that activities for profit are essentially fund-raising in nature, without which charities cannot exist. We find considerable substance in F these representations. We are aware that some trusts have abused the provisions enabling them to carry on business and that, sometimes, expansion or consolidation of business is by itself, sought to be justified as furtherance of charity. such abuses would particularly arise where a business is merely held by a charitable trust as property unconnected G with the objects of charity. The remedy, in our opinion, lies in the direction of proper enforcement of the provisions relating to application of trust funds for charitable purposes and not of totally banning all activities for profit. Moreover, it is noticed that charitable trusts generally have objects falling under all the four categories. Very often, a trust H has come into difficulties on account of a single object under the fourth category, even though all the important objects fall under the first three categories. We, therefore,

recommend deletion of the words "not involving the carrying on of any activity for profit" occurring in section 2(15)."

The Government, however, has not accepted the recommendation. I fail to comprehend when the recommendation has not been acted upon by the Government by suitable legislation, how can this Court by a process of judicial construction achieve the same result.

Fears expressed at the Bar that this harsh measure enacted by Parliament has shrivelled and dried up many genuine charities, does not take into account that it had to step in when the tax exemptions available to charitable and religious trusts started being misused for the unworthy purposes of tax avoidance. The law has been so restructured to prevent allergy to taxation masquerading as charity. It cannot be disputed that many business houses have abused the provision relating to exemption from tax by carrying on activities for profit as a means for expansion and consolidation of business, which was sought to be justified as in furtherance of charity, i.e., charity became a big business. Now, the law is designed to prevent this misuse of tax exemption in the name of charity. It is not the function of a court of law to give the words a strained and unnatural meaning. It may be that many genuine charitable trusts promoting objects of general public utility are severely affected and are caught in-between the two extremes. But this call for a change in the law. I am only reiterating what has been said over and over again in deal with taxing Acts. In *Cape Brandy Syndicate* v. *Inland Revenue Commissioner*(1) the principle was formulated and stated by Rowlat J. in his own terse language :

> "In a taxing Act one has merely to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

In *Inland Revenue Commissioner* v. *Ross & Coulter*(2) Lord Thanketro in describing 'the harsh consequences of a taxing provision' said :

> "..If the meaning of the provision is reasonably clear, the courts have no jurisdiction to mitigate such harshness."

(1) [1921] 1 K.B. 64 at p. 71.

(2) [1945] 1 All E.R. 616 at p. 625.

A The judicial attitudes cannot be formed in isolation from Legislative processes, particularly in connection with Tax avoidance provisions.

I would, accordingly, answer the references in favour of the Revenue and against the assessee. The Commissioner will be entitled to his costs.

B

P.B.R.