Gist of Important Supreme Court/High Court Rulings on Charitable or Religious Trusts & Institutions

Section	Held
11	A competent Civil Court has jurisdiction u/s 26, Specific Relief Act, 1963 (earlier s. 31, Specific Relief Act, 1877) to rectify a deed of trust when through fraud or a mutual mistake of the parties, the instrument does not express their real intention. A trust deed is almost a tripartite transaction between the settlor, the trustees and the beneficiaries and it cannot be said that there are no two parties to the deed so as to oust the rectification jurisdiction of Civil Court. After rectification by the settlor by way of supplementary deed or by the Civil Court, the IT authorities in assessment proceedings have to interpret the deed as rectified and not as originally executed. Though rectification decree of Civil Court is not judgment in rem, it has to be given effect by the ITO **[CIT Vs. Kamala Town Trust 217 ITR 699 (SC)(1996)]**
12	Basic difference between the corpus of the trust, the objects of the trust and the powers of the turstees must be borne in mind while interpreting and understanding a trust deed. Thus, trust doing business in exercise of powers conferred on it by the deed of trust, the business was corpus of the trust and its income having been applied to charities, it is entitled to exemption u/s 11 **[Thiagarajar Charities Vs. ACIT 225 ITR 1010 (SC) (1997)]**
12	For purposes of exemption u/s 11, there must be an obligation for spending the income for charitable purposes. So long as there was no prohibition on the assessee-stock exchange under its articles of association from distributing the whole or part of its income by way of dividends amongst its shareholders, it was not entitled to exemption u/s 11 r/w s. 2(15) **[Delhi Stock Exchange Association Ltd Vs. CIT 225 ITR 235 (SC) (1997)]**
11(1)(a)	If the entire income is not applied by a charitable trust for its charitable or religious purpose but some income is accumulated, such accumulated income to the extent of 25 per cent of total income or Rs. 10,000, whichever is higher, would be exempt under s. 11(1)(a) even if it has filed no declaration under s. 11(2) **[S.R.M.M.CT.M. Tiruppani Trust Vs. CIT 230 ITR 636 (SC)(1998)]**
11	Where an amount was set apart as provision in the accounts of the assessee and that amount was not actually applied for charitable or religious purposes, assessee was not entitled to exemption u/s 11 of the IT Act, 1961. **[Nachi Mutha Industrial Association Vs. CIT 235 ITR 190 (SC)(1999)]**
11	Even assuming that there is no valid limitation prescribed under the Act and the Rules, it is reasonable to presume that the intimation required u/s 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income the assessing authority cannot entertain the claim of the assessee under section 11 of the Act. Therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings. **[CIT Vs. Nagpur Hotel Owners' Association 247 ITR 201 (SC) (2001)]**
11(1)(a)	Charitable trust is entitled to accumulate 25% of its income derived from property held under the trust & not 25% of the income remaining after application of income for charitable purpose. Therefore, assessee trust was entitled to accumulate 25% of donations received by it & not merely 25% of unspent balance. **[CIT Vs. Programme for Community Organization 248 ITR 1 (SC)(2001)]**
13	The expression 'founder of the institution' in section 13(3)(a) means that the person concerned should be the originator of the institution or at least one of the person responsible for the coming into existence of the institution. Contribution of money is not an inexorable test of a person being 'founder', though it might happen often that the person who originates an institution may often also fund it. **[Director of IT Vs. Bharat Diamond House 259 ITR 280 (SC) (2003)]**
2(15)	Assessee, a diamond bourse, was set up at the behest of the Government with the object to promote exports of diamond so as to make international trade more competitive. It is also meant to provide variety of services to exporters & importers including custom clearance facility, warehousing etc. Having regard to the aforesaid predominant objectives, assessee was rightly treated as an institution established fro charitable purposes within the meaning of section 2(15).

	[DIT v. Bharat Diamond Bourse 259 ITR 280 (SC) (2003)]
2(15)/12A	Gujarat Maritime Board has been established for the predominant purpose of development of minor ports within the State of Gujarat with no profit motive. The management and control of the Board was essentially with the State Government. It was under a legal obligation to apply the income which arises directly & substantially from teh business held under the trust for the development of minor ports. The Board was therefore, entitled to registration u/s 12A. **[CIT Vs. Gujarat Maritime Board 295 ITR 561 (SC) (2007)]**
11(1)(a)/ 12/ 12A	For a trust or an institution to claim benefit under section 11(1)(a) of the Income-tax Act, 1961, registration of the trust or institution under section 12A is a condition precedent. **[U.P. Forest Corporation and another Vs. DCIT 297 ITR 1 (SC) (2008)]**
2(15)	Section 2(15) defines the term "charitable purpose". Therefore, while constructing the term business for that section, object & purpose of the said section has to be kept in mind. A very broad and extended definition of the term 'business' as per sec. 2(13) is not intended for the purpose of interpreting and applying the first proviso to s. 2(15) to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not be determinative; in such cases, there should be evidence and material to show that activity has continued on sound and recognized business principles and pursued with reasonable continuity. The main or predominant object of the assessee institute is to regulate the profession of and conduct of Chartered Accountants enrolled with it. It is a statutory authority & its fundamental or dominant function is to exercise overall control & regulate the activities of the members/enrolled chartered accountants. There is a clear distinction between the coaching classes conducted by the private coaching institutions and courses and examinations held by the assessee institute and these activities undertaken by assessee institute satisfy the requirement of the term 'education'. However, since holding of classes and giving diploma/degrees by ICAI to its members is only an ancillary part of activities or functions performed by it, it is not an educational institute but is covered by the last limb of s. 2(15) i.e. advancement of any other object of general public utility. The narrow and myopic view taken by DGIT by holding that assessee institute is holding coaching classes and that this amount to business is without examining and considering the legal concept of the term "business" & therefore he was directed to consider the application of the assessee institute u/s 10(23C)(iv). **[ICAI Vs. DGIT(Exemptions) 202 Taxman 1 (Del.) (HC) (2011)]**
11(1)(a)	Under sec. 11(1)(a), expenditure incurred in earlier year, can be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of earlier year would amount to such income being applied for charitable or religious purpose. Therefore, assessee is entitled for carry forward & set off excess of expenditure incurred during the year over its income. **[CIT Vs. Shri Gujrati Samaj (Regd) 64 DTR 76 (MP) (HC) (2011)]**
13	Assessee, a registered society u/s 12A, advanced certain sum without any security to its treasurer. It could not furnish any details about the rate of interest and mode of recovery of loan and same was also not reflected in its books as well as audit report except resolution. It was held that the resolution could not be relied upon and it was a clear case of violation of sec. 13 and thus exemption had been rightly denied to it. **[CIT Vs. Audh Educational Society 203 Taxman 166 (All.) (HC) (2011)]**
12AA	While examining the application seeking registration u/s 12AA, manner of application of funds of the trust do not fall within the purview of the Commissioner. The Commissioner should only satisfy himself about the genuineness of aims and objects of the trust/institution and genuineness of its activities as enumerated u/s Sec. 12AA(1)(b). **[CIT Vs. Spring Dale Education Society 204 Taxman 11 (P&H)(HC) (Mag.)(2012)]**

11	The word 'Corpus' is to be understood in the context of capital of an assessee, capital of an estate, capital of a trust, capital of an institution. The intention of the donor & the treatment of income by the recipient has to be seen for determining whether the amount is contribution to the corpus of the trust. Therefore, even if voluntary contribution is not made with a specific direction to treat is as corpus but the intention of the donor is to give money to the trust which will keep it in the trust account in deposit and income from the same is utilized for carrying on charitable and religious activities, it satisfies the definition part of corpus and, in such a situation assessee would be entitled to benefit of exemption from payment of tax u/s 11(1)(d). **[DIT vs. Sri Ramakrishna Seva Ashrama 205 Taxman 26 (Kar.) (HC) (2012)]**
12AA	Trustees of assessee trust purchased certain land & a part of the said land was allotted to assessee trust for the purpose of establishing an educational institution as set out in the trust deed. Assessee trust filed an application seeking registration u/s 12A. Commissioner was of the view that the main purpose of creation of trust was to save and protect the property of the authors of the trust from various enactments such as Urban Land Ceiling Act, Wealth tax Act, IT Act, etc. He further opined that even though incidentally some schools were run, it was apparently a mere façade to get various benefits under the said enactments. Accordingly, Commissioner rejected the assessee's application. It was held that once it is admitted that in pursuance of the trust deed and in terms of the objects set out therein, schools, colleges, and educational institutions were being run, nothing more is required to be established to show that trust in question was a genuine trust and, therefore, assessee was entitled to registration u/s 12AA. Further, CIT u/s 12AA has to satisfy himself about the objects of the trust or institution and the genuineness of its activities before passing an order either granting registration or refusing to grant registration. Fact that there is misapplication of property and/or funds is relevant only for granting exemption u/s 11 & 12 & not at the time of registration. **[CIT vs. A.S. Kupparaju Brothers Charitable Foundation Trust 205 Taxman 9 (Kar.)(HC)(2012)]**
2(15) & 11(1)(a)	Assessee club's aims and objects are to provide for general public utility, grounds and buildings, convenient, desirable or necessary for games and sports both indoor and outdoor and to promote, manage or assist in the promotion or management of all forms of social intercourse of athletic sports, pastimes and/or cultural and educational activities for its members. The fact that assessee provides services to its members doesn't detract from the position that it advances a general public utility. Advancement of any object of benefit to the public or a section of the public as distinguished from a benefit to an individual or a group of individuals would be a charitable purpose. **[DIT (Exemptions) Vs. Chembur Gymkhana 70 DTR 163 (Bom.)(HC) (2012)]**
12AA	Assessee society running a polytechnic college, applied for registration u/s 12AA. Said application was rejected by CIT inter alia on the ground that society was charging building fund, development fund, sport fund and transportation cost, etc. and same could not be termed as charitable activity. Tribunal directed CIT to grant registration u/s 12AA to assessee. It was held that since activities of assessee were interwoven for furthering projects and activities pertaining to education, Tribunal rightly held that registration should be granted to assessee. **[CIT Vs. Baba Deep Singh Educational Society 206 Taxman 131 (P&H) (HC) (Mag.)(2012)]**
12A & 12AA(3)	CIT having granted registration u/s 12A(a) to assessee society by accepting the activities of publication & sale of Sarvodaya literature & propagation of Gandhian ideologies carried on by the assessee society as charitable activities, such registration could not be cancelled by treating the same objects as non charitable & holding that assessee is not entitled to exemption u/s 11. Whether the income would be assessed for tax & also whether the trust would be entitled to exemption u/s 11 are entirely the matters left to the AO. Therefore, the action of CIT was not justified **[CIT Vs. Sarvodaya Llakkiya Pannai 72 DTR 36 (Mad.)(HC)(2012)]**

Gist of Important Supreme Court/ High Court Rulings on Co-operative Societies

80P(2)	Before considering the matter of deduction u/s 80P(2), the Income-tax Officer had rightly set off the carried forward losses of the earlier years in accordance with section 72 of the Act and, finding that the said losses exceeded the income, had rightly not allowed any deduction under section 80P(2). **[CIT Vs. Kotagiri Industrial Co-operative Tea Factory Ltd. 224 ITR 604 (SC) (1997)]**
80P(2)(a)(i)	The Tribunal found that the interest income is attributable to the business of the assessee. That finding has not been challenged on factual basis by the Revenue. Thus, interest on government securities & dividends earned by co-operative society engaged in banking business is eligible for deduction u/s 80P(2)(a)(i). **[CIT Vs. Bangalore Distt. Co-op. Central Bank Ltd. 233 ITR 282 (SC) (1998)]**
80P(2)(a)(i)	In section 80P(2)(a)(i) when Parliament has used the expression ‘‘members’’, it has used it in the normal sense of a member of a co-operative society. The intention was to extend the exemption to co-operative societies directly extending credit facilities to its members. There is nothing in the said provisions to show that the intention was to grant exemption to co-operative societies which were extending credit facilities to persons, who, though not the members of the said society, were members of another co-operative society which was a member of the co-operative society seeking exemption. The meaning of the expression ‘‘members’’ cannot, therefore, be extended to include the members of a primary co-operative society which is a member of the federated co-operative society seeking exemption. The principle of lifting the corporate veil cannot have any application in the context of the provisions contained in section 80P(2)(a)(i) **[U.P. Co-op. Cane Union Federation Ltd. V. CIT 237 ITR 574 (SC) (1999)]**
80P(2)(a)(i)	Where the assessee-society was engaged in the business of purchasing auto rickshaws and reselling them to its members on hire purchase terms, said activity cannot be treated as providing ‘credit facilities’ to its members. Thus, 80P(2)(a)(i) of the Act was not applicable. **[Madras Auto Rickshaw Drivers Vs. CIT 249 ITR 330 (SC)(2001)]**
80P(2)(a)(i)	Providing self deposit vaults is part of the ordinary banking business of a bank as shown by section 6(1)(a) of the Banking Regulation Act, 1949 and therefore, income derived by the assessee from the hiring out of safe deposit vaults was income from the business of banking and deductible u/s 80P(2)(a)(i). Assessee was entitled to deduction under section 80P(2)(a)(i) of the Income-tax Act, 1961, in respect of the interest earned from funds utilized for the statutory reserves **[Mehsana District Central Cooperative Bank Ltd. Vs. ITO 251 ITR 522 (SC)(2001)]**
80P(2)(a)(i)	Where the assessee, a co-operative bank, was required to place a part of its fund with the State Bank of India or Reserve Bank of India to enable it to carry on its banking business, any income derived from the fund so placed arose from the business carried on by it for the purpose of section 80P(2)(a)(i). It could not be accepted that only income derived from circulating or working capital would fall within s. 80P(2)(a)(i). There is nothing in the phraseology of that provision which makes it applicable only to income derived from working or circulating capital. Thus, deduction was allowable in respect of income derived from the funds placed with the State Bank or the Reserve Bank. **[CIT Vs. Karnataka State cooperative Apex Bank 251 ITR 194 (SC) (2001)]**
80P(2)(a)(i)	Where a co-operative bank carrying on business of banking is statutorily required to place a part of its funds in approved securities, the income attributable thereto is deductible u/s 80P(2)(a)(i) of the Income Tax Act, 1961. **[CIT *vs.* Nawanshahar Central Co-operative Bank Ltd. 289 ITR 6 (SC) (2007)]**

80P(2)(e)	Exemption u/s 80P(2)(e) was available in respect of income derived from the letting of godown or warehouses, only where the purpose of letting was storage, processing or facilitating the marketing of commodities. Any income derived by the society unconnected with such letting or use of the godown would not fall under clause (e). Therefore, when the assessee was storing the commodities in question in its godowns as part of its own trading stock, it was not entitled to claim deduction u/s 80P(2)(e) **[Udaipur Sahkari Upbhokta Thok Bhandar Ltd. 315 ITR 21 (SC) (2009)]**
80P(2)/56/ 57	The words "the whole of the amount of profits and gains of business" in section 80P(2) of the ITA, 1961, emphasize that the income in respect of which deduction is sought by a co-operative society must constitute the operational income and not the other income which accrues to the society. The interest income arising to a co-operative society carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members, on the surplus, which is not required immediately for business purposes, from investment in short-term deposits and securities, has to be taxed as income from other sources u/s 56 of the I.T. Act, 1961. Interest income of such society from amounts retained by it cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) or section 80P(2)(a)(iii) of the Act. **[Totgar's Co-operative Sale Society Ltd. Vs. ITO 322 ITR 283 (SC) (2010)]**
80P(2)(a)(i)	The scheme for advancing loans to the employees showed that the object of the scheme was to provide cash credit limit to the officers and employees of the bank in accordance with requirements and stipulating the limit up to which the loans could be sanctioned depending on pay and other factors applicable to permanent employees of the bank. This advancing of loan could not be said to be any part of the banking activity of the assessee as a bank. Firstly, this type of activity was not comprehended by section 6(j) of the 1949 Act. Secondly, it was not a part of the scheme of the bank as the facility was available only to the confirmed permanent employees of the assessee. Thirdly, the Registrar, was not concerned with any banking activity of the assessee-society. The Registrar had control over the assessee being a co-operative society under the provisions of the Rajasthan Co-operative Societies Act only, and the Registrar had not given any directions to the assessee-society in the matter of undertaking banking activity. The scheme had been approved only for providing facilities to the employees by the employer, the assessee, which happened to be the bank. In other words, the activity of the bank in advancing house building loans or provident fund loans was not the advancement to the customers of the bank but to employees only. The amount of interest earned by the assessee on various loans extended to its employees on provident fund and house building loans was not eligible for special deduction under section 80P(2)(a)(i). **[CIT Vs. Sirohi S. B. V. Bank Ltd. 321 ITR 0533 (Raj.)(HC)(2010)]**
80P(2)(a)(i)	Assessee, a co-operative society, engaged in the business of banking invested statutory reserves in short term and long term deposits and interest earned thereon was claimed as deduction u/s 80P(2)(a)(i). AO disallowed certain amount on the ground that the assessee did not obtain prior approval in respect of investments against statutory reserves. He also held that the income on the investment in securities against reserve fund not utilized for Statutory Liquidity Ratio purposes is not attributable to banking business and, consequently, will not qualify for exemption. It was held that section 80P(2)(a) does not make a distinction between income received by a co-operative bank from statutory deposits and income from non-statutory deposit of surplus funds. The income earned by the co-operative bank either by deposit of the prescribed percentage of its reserves or by deposit of its surplus funds is exempted since the income from either category of the deposits is certainly

	attributable to the business of banking. Further, the fact that there is no sanction of Registrar of Co-operative Societies (RCS) for utilization of reserve fund in business of society would not make any difference insofar as deduction allowed by section 80P(2)(a)(i) is concerned. **[CIT Vs. Andhra Pradesh State Cooperative Bank Ltd. 336 ITR 516 (AP) (HC) (2011)]**