IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.83 of 2016

M/s Sukhmani Society for Citizen Services, Kapurthala

… Appellant

Versus

Assistant Commissioner of Income Tax and others

.....Respondent

1.	The date when the judgment is reserved	10.09.2026
2.	The date when the judgment is pronounced	15.10.2026
3.	The date when the judgment is uploaded on the website	16.10.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Operative
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE SUNISH BINDLISH

Argued by: Mr. Gaurav Dhall, representative of the appellant.

Mr. Varun Issar, Sr. Standing Counsel, Income Tax Department,
with Ms. Pridhi Sandhu, Advocate and
Ms. Nikita Garg, Jr. Standing Counsel
for the respondent-Income Tax Department.

SUNISH BINDLISH, J.

1. The present appeal has been preferred under Section 260A of the Income Tax Act, 1961 (for short, "the Act") assailing the order dated 27.01.2015 passed by the Income Tax Appellate Tribunal, Amritsar Bench ("the Tribunal") in ITA No. 45(Asr)/2014, whereby the appeal preferred by the appellant-assessee against the order of the Commissioner of Income Tax (Appeals), Jalandhar, insofar as it upheld the denial of exemption under Section 11 of the Act, came to be dismissed. The controversy pertains to Assessment

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Year 2010-11 (previous year 2009-10). Though the cause title of the order of the Tribunal refers to Assessment Year 2007-08, the body of that order, the orders of the authorities below and the record leave no manner of doubt that the assessment year in issue is 2010-11.

2. The appellant, M/s Sukhmani Society for Citizen Services, Kapurthala, is a society registered under the Societies Registration Act, 1860, as applicable to the State of Punjab, on 25.07.2005. As is borne out from its Memorandum of Association, the Society was constituted as a district-level body for the establishment, management, operation and maintenance of Sukhmani/SUWIDHA Centres, conceived as single-window centres for providing various citizen-oriented Government services under one roof. Its governing body comprises the Deputy Commissioner, Kapurthala as Chairman and other officers of the district administration as ex-officio members, besides nominees of the Government. The Memorandum records that the Society was to function within the framework of the Punjab State E-Governance Society, and that the service centres in the district were to be run on a self-sustaining revenue model.

3. The stated objects of the Society, inter alia, include establishment and operation of service centres for providing citizen services in an integrated, efficient, transparent and cost-effective manner; identification of services capable of being provided through such centres in coordination with Government departments; establishment of the centres “on a self-sustaining revenue model”; maintenance of prescribed standards of service; to “workout and recommend the service fee or user charges that could be charged from the end customers for the approval of the competent authority and concerned departments/organizations over and above the prescribed bill

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amount/fee/statutory fee" (clause (e)); collection and transfer of revenue/service charges on behalf of the Punjab State E-Governance Society and the concerned Government departments; and recruitment of operational and managerial staff on a self-sustaining and contract basis. The Memorandum also contains clauses enabling the Society to deal in IT resources, to lend, borrow and deposit moneys, to deal in negotiable instruments, to establish agencies and franchises "for the conduct of the business of the Society" and to create various funds.

4. The appellant applied for registration under Section 12A of the Act on 27.03.2007. By order dated 26.09.2007 passed under Section 12AA(1)(b)(i), the Commissioner of Income Tax, Jalandhar-II, after examining the Memorandum of Association and the income and expenditure statement for the financial year 2006-07, recorded that the objects of the Society were charitable in nature and that its activities appeared to be genuine. Registration was accordingly granted with effect from 01.04.2006. The order itself recorded that the grant of registration did not by itself confer any right or entitlement regarding the operation of Sections 11, 12 and 13 of the Act, which was to be decided by the Assessing Officer on the merits of the case for each year.

5. For Assessment Year 2010-11, the appellant filed its return of income on 24.09.2010 declaring nil income after claiming exemption under Section 11(1)(a) of the Act in respect of the excess of income over expenditure amounting to ₹3,76,761/-. The return was processed under Section 143(1) of the Act and the case was thereafter selected for scrutiny. Notice under Section 143(2) dated 13.09.2011 was issued.

6. During the relevant previous year, the Society had total receipts of ₹78,22,625/- and expenditure of ₹74,45,863/-, resulting in a surplus of

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₹3,76,761/-, being about 4.81% of its receipts. The assessment order also tabulates the receipts, expenditure and surplus of the Society for the preceding years, as under:

Financial Year	2006-07	2007-08	2008-09	2009-10
Receipts (₹)	84,83,787	85,11,918	76,14,717	78,22,625
Expenditure (₹)	53,80,114	56,37,090	78,82,234	74,45,863
Surplus / (Deficit) (₹)	31,03,672	28,74,827	(-) 2,67,517	3,76,761

7. During the course of scrutiny assessment, the Assessing Officer reproduced the objects of the Society and a chart of the charges levied by it for various categories of citizen services. The charges ranged from nil to ₹1,000/-. Several services, such as dependent certificates to wards of freedom fighters, bus passes to handicapped persons, applications under the Right to Information Act and pension-related services routed through the Child Development Project Officer, were rendered without charge. For others, charges such as ₹20/- for ration cards and attestation of affidavits, ₹50/- for birth and death certificates, ₹100/- for passports, ₹500/- for an application for a new arms licence or for registration of marriage under the Special Marriage Act and ₹1,000/- for a no-objection certificate for a petrol pump were levied. The Assessing Officer recorded that the Society was charging a "prescribed fee" and that these charges were in addition to the statutory fee payable to the concerned Government department.

8. On the said material, the Assessing Officer held, firstly, that the Society had a number of objects, not all of which were charitable, and that its income was therefore not derived from property held "wholly" for charitable purposes, relying upon ***East India Industries (Madras) (P) Ltd. v. CIT***, (1967) 65 ITR 611 (SC), ***Yogiraj Charity Trust v. CIT***, (1976) 103 ITR 777 (SC), ***CIT v. Jaipur Charitable Trust***, (1971) 81 ITR 1 (Delhi) and ***Kedia Jatia Sahayak***

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Sabha and Fund v. CIT, (1963) 49 ITR 74 (Cal). Secondly, the Assessing Officer described the charges as "exorbitant" and the surplus of 4.81% as "hefty", and, applying the predominant-object test laid down in ***Additional CIT v. Surat Art Silk Cloth Manufacturers' Association***, (1980) 121 ITR 1 (SC), concluded that the predominant object of the Society was to earn profit. Thirdly, he held that the activity of the Society was in the nature of trade, commerce or business for a fee and thus fell within the proviso to Section 2(15) of the Act. Reference was also made to the order dated 26.09.2012 of the Tribunal in ITA No. 551(Asr)/2011, ***Sukhmani Society for Citizen Services, Mansa v. CIT, Bathinda***, whereby the refusal of registration under Section 12AA to a similarly constituted society of another district had been upheld. The exemption claimed was accordingly denied and the surplus of ₹3,76,761/- was added to the income of the appellant.

9. The Assessing Officer further noticed that the appellant had paid salaries of ₹33,38,122/- to its staff during the relevant year without deduction of tax at source. Treating such payments as payments made in pursuance of contracts attracting Section 194C of the Act, he invoked Section 40(a)(ia) and made a further disallowance of ₹26,47,176/-. Consequently, by assessment order dated 03.01.2013 passed under Section 143(3) of the Act, the total income of the appellant was assessed at ₹30,23,937/- as against the returned income of nil. Penalty proceedings under Section 271(1)(c) were also initiated.

10. Aggrieved, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), Jalandhar. During the appellate proceedings, the appellant was asked to comment upon the decision of the Tribunal in the case of the Mansa Society. The CIT(A) has recorded that no further submissions were filed and that it was fairly conceded that the said

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decision was against the appellant on the issue. By order dated 12.11.2013, the CIT(A) upheld the denial of exemption under Section 11, observing that the issue stood squarely covered against the appellant by the said decision of the jurisdictional Tribunal, and sustained the addition of ₹3,76,761/-.

11. As regards the disallowance of ₹26,47,176/- under Section 40(a)(ia), the CIT(A), on the basis of the material produced, including a certificate from the bank regarding the salary accounts of the staff, deduction and deposit of provident fund and copies of Form 16, found that there was an employer-employee relationship and no oral or written contract between the Society and its staff so as to attract Section 194C. The said disallowance was deleted. The appeal before the CIT(A) was thus partly allowed. The Revenue is not shown to have assailed the deletion.

12. The appellant thereafter approached the Tribunal. Before the Tribunal, the authorised representative of the appellant submitted that the facts of the case were identical to those of the Mansa Society, but contended that the decision in that case was wrong and that the appellant did not carry on any business activity. Reliance was placed upon the decisions of the Gujarat High Court in ***Director of Income Tax (Exemption) v. Sabarmati Ashram Gaushala Trust*** (Tax Appeal No. 1162 of 2013, decided on 15.01.2014) and of the ***Delhi High Court in GSI India v. DGIT (Exemptions)***. The Departmental Representative, on the other hand, supported the orders of the authorities below and the decision in the case of the Mansa Society.

13. The Tribunal noticed that the first proviso to Section 2(15) had been inserted by the Finance Act, 2008 with effect from 01.04.2009 and that the second proviso was not attracted since the receipts of the appellant exceeded the threshold. It held that the charging of additional fees over and

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above the statutory fees, for services which the State Government was obliged to provide free of cost or at statutory rates, was an activity of a commercial nature with an intent to earn profit, involving the reciprocity which is the essence of business. On a perusal of the income and expenditure account, it observed that it did not find any expenditure of a charitable nature, and that the Society was free to take uncontrolled decisions to spend its funds, referring to the clause enabling the establishment of agencies and franchises. While acknowledging that surplus by itself cannot be an indicator of non-charitable character unless corroborated by non-charitable activities, the Tribunal referred to the surpluses of the earlier years and attributed them to the additional charges. It distinguished the decisions relied upon by the appellant and held that the facts of the case were "exactly similar" to those of the Mansa Society, although that case concerned registration under Section 12AA.

14. In view of the aforesaid findings and its decision in the case of the Mansa Society (supra), the Tribunal found no infirmity in the order of the CIT(A) and dismissed the appeal of the appellant by order dated 27.01.2015.

15. Following the change of jurisdiction to the Exemption charge, a show-cause notice dated 18.03.2015 was issued to the appellant in the penalty proceedings and, by order dated 27.03.2015, the Income Tax Officer (Exemptions), Jalandhar, levied a penalty of ₹1,16,420/- under Section 271(1)(c), being 100% of the tax stated to have been sought to be evaded on the addition of ₹3,76,761/- arising from the denial of the claim under Section 11.

16. It is in the aforesaid factual background that the present appeal has been preferred. The appellant has proposed the following questions:

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(a) Whether on the facts and circumstances of the case and in law the appellate Tribunal is right in confirming the order of CIT(A) denying exemption u/s 11 of the Income Tax Act, 1961 to the appellant?

(b) Whether on the facts and circumstances of the case and in law the Assessing Officer is right in denying exemption u/s 11 of the Income Tax Act, 1961 to the appellant?

(c) Whether on the facts and circumstances of the case and in law the ITO is right in levying penalty u/s 271(1)(c) on the bona fide appellant?

17. Learned representative for the appellant submits that the appellant-Society was constituted for providing citizen services to the public through Sukhmani/SUWIDHA Centres and was duly granted registration under Section 12AA of the Act after its objects and activities had been found to be charitable and genuine. It is contended that collection of prescribed service charges for running the centres on a self-sustaining basis, or the generation of a surplus of ₹3,76,761/-, would not by itself render the activities commercial. It is further contended that the registration is still in force and, therefore, the denial of exemption by the Assessing Officer is contrary to law.

18. It is further submitted that the appellant had disclosed all material particulars in its return and accounts and had merely claimed an exemption which, according to it, was legally admissible. The consequential levy of penalty under Section 271(1)(c) is, therefore, stated to be unsustainable.

19. Per contra, learned counsel for the Revenue supports the orders passed by the authorities below. It is submitted that the appellant was charging fees from citizens over and above the statutory charges payable to Government departments and had been generating surpluses, which in the financial years 2006-07 and 2007-08 were of the order of ₹31 lakh and ₹28.75 lakh

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respectively; that the appellant had itself conceded before the CIT(A) that the issue was covered against it by the decision in the case of the Mansa Society (supra); and that the nature and manner of the activities attracted the proviso to Section 2(15), disentitling the appellant from exemption under Section 11 notwithstanding its registration under Section 12AA.

20. We have heard learned counsel for the parties and perused the record.

ANALYSIS

21. Questions (a) and (b), in substance, raise one issue, namely, whether the Tribunal was justified in law in upholding the denial of exemption under Section 11 for Assessment Year 2010-11 on the footing that the activities of the appellant fell within the first proviso to Section 2(15) of the Act. That issue has two connected facets. The first is whether the activity of providing citizen-oriented Government services through a single-window mechanism assumes the character of trade, commerce or business, or of a service in relation thereto, because service/user charges are collected over and above the statutory fee and the receipts in the year exceeded the expenditure. The second concerns the application of income under Section 11, in view of the Tribunal's observation that the appellant failed to establish expenditure of a charitable nature. Question (c) relates to the penalty, and is dealt with separately.

22. Since the dispute centres around Section 2(15) of the Act, it would be apposite to notice the provision as applicable to the assessment year in question. The relevant part reads as under:

> *"(15) 'charitable purpose' includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments*

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> *or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:*
>
> *Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity*
>
> *Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;"*

23. The first proviso was inserted by the Finance Act, 2008 with effect from 01.04.2009, i.e., from Assessment Year 2009-10. The second proviso, prescribing a threshold of ₹10 lakh, was inserted by the Finance (No. 2) Act, 2009 with retrospective effect from the same date; the threshold was raised to ₹25 lakh with effect from 01.04.2012 and the provisos were later recast with effect from 01.04.2016 to prescribe a limit of twenty per cent of the total receipts. Assessment Year 2010-11 is thus only the second year of the amended regime, and the applicable threshold is ₹10 lakh (and not ₹25 lakh, as noticed by the Tribunal, though nothing turns on it at this stage).

It may also be noticed that Section 13(8), inserted by the Finance Act, 2012 with retrospective effect from 01.04.2009, provides that nothing contained in Sections 11 and 12 shall operate to exclude any income from the total income of the previous year of the person in receipt thereof if the first proviso to Section 2(15) becomes applicable in that previous year. The question whether the proviso is attracted has, therefore, to be examined for each year, and registration under Section 12AA does not foreclose that examination.

24. Section 11(1)(a), insofar as relevant, provides that income derived from property held under trust wholly for charitable or religious purposes, to

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the extent to which such income is applied to such purposes in India, and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property, shall not be included in the total income of the previous year of the person in receipt of the income. The enquiry into application of income under Section 11 is, therefore, distinct from the threshold enquiry under Section 2(15) into the character of the activity. An institution may pursue an object of general public utility and yet be required to establish that its income has been applied in accordance with Section 11; conversely, the ultimate application of receipts cannot by itself take an activity which otherwise falls within the proviso to Section 2(15) out of it, the proviso itself applying "irrespective of the nature of use or application, or retention, of the income from such activity".

25. The initial burden of establishing entitlement to exemption under Section 11 rests upon the assessee. Registration under Section 12AA does not dispense with that requirement. The assessee must place its books, accounts and other relevant material before the Assessing Officer so that the nature of the activity and the application of the income can be examined. Once such material is produced, the Assessing Officer is required to scrutinise it and, if an activity is to be treated as falling within the proviso to Section 2(15), or a particular application of funds is to be treated as non-charitable, the conclusion must rest on an examination of the relevant material and not on general observations.

26. The scope of the amended Section 2(15) has since been authoritatively explained by the Supreme Court in ***Assistant Commissioner of Income Tax (Exemptions) v. Ahmedabad Urban Development Authority***,

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(2023) 4 SCC 561 : (2022) 449 ITR 1, decided on 19.10.2022. The decision directly addresses the statutory regime introduced with effect from 01.04.2009 and, therefore, governs the assessment year under consideration. The principles summed up by the Supreme Court insofar as relevant for the present purpose, may be stated thus:

(i) An assessee advancing an object of general public utility cannot engage itself in trade, commerce or business, or render services in relation thereto, for a cess, fee or other consideration. It may, however, do so in the course of actually carrying out its object of general public utility, provided the receipts from such activity do not exceed the quantitative limit prescribed in the proviso to Section 2(15) as applicable to the relevant year.

(ii) The charging of an amount as consideration for an activity advancing general public utility, which is "on cost-basis or nominally above cost", cannot be regarded as trade, commerce or business or a service in relation thereto. It is only when the charges are "markedly or significantly above the cost incurred by the assessee in question" that they would fall within the mischief of "cess, or fee, or any other consideration" towards trade, commerce or business.

(iii) The assessing authorities must, on a yearly basis, scrutinise the record to determine whether the charges levied are markedly above cost, so as to be in the nature of business, and, if so, whether the quantified limit, as amended from time to time, in the proviso to Section 2(15) has been exceeded.

27. Two consequences follow. First, after the amendment, the enquiry is not confined to ascertaining the predominant object of the institution, which was the test under the unamended definition as explained in *Surat Art Silk* (supra). The focus is on the nature of the activity actually carried on during the year, whether it is undertaken in the course of carrying out the object of general

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public utility, and the relationship between the charges levied and the cost of rendering the service. Secondly, the levy of a fee or charge is not, by itself, decisive either way. The proviso does not say that an institution ceases to be charitable the moment it receives a fee; equally, the fact that a public utility is run on a self-sustaining basis does not by itself exclude the proviso. The answer lies in the basis and quantum of the charge, which is essentially a matter of factual determination on the record of the relevant year.

28. It is in this light that the earlier decisions relied upon by the parties and the authorities below have to be viewed. The order dated 26.09.2007 granting registration was rendered on the objects of the Society and its accounts for the financial year 2006-07, at a time when the proviso to Section 2(15) was not on the statute book. The Commissioner had, therefore, neither the occasion nor the statutory basis to consider whether the activities of the Society amounted to trade, commerce or business carried on for a fee within the meaning of the proviso. The finding then recorded, that the objects were charitable in nature, was a finding under the unamended definition. That order, though relevant to show that the registration of the appellant was in force during the year, cannot be treated as a determination of the question which arises under the amended provision for Assessment Year 2010-11. Nor does the subsistence of registration by itself entitle the appellant to exemption in that year, in view of Section 13(8) and the yearly examination contemplated by the Supreme Court. The contention of the appellant that the denial of exemption is illegal merely because its registration is still in force cannot, therefore, be accepted.

29. Similarly, the decisions in *Surat Art Silk* (supra) and ***Thiagarajar Charities v. Additional Commissioner of Income Tax***, (1997) 4 SCC 724 : (1997) 225 ITR 1010, on which the Assessing Officer relied for applying the

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predominant-object test, and on which the appellant relies for the proposition that incidental profit does not destroy charitable character, were rendered under the definition as it stood prior to 01.04.2009. Insofar as they lay down the predominant-object test for the advancement of an object of general public utility, they must now be read subject to the amended provision as explained in *Ahmedabad Urban Development Authority* (supra). Neither the conclusion of the Assessing Officer, who inferred a profit motive from the existence of a surplus, nor the contention of the appellant that the surplus was merely incidental, answers the question which the amended provision poses.

30. The decision of the Tribunal in the case of the Mansa Society (supra), which was followed by the CIT(A) and the Tribunal in the present case, arose from the refusal of registration under Section 12AA on an application made in the year 2011. It turned, to a significant extent, upon the failure of that society to produce its books of account for verification of the genuineness of its activities. It was rendered in a different context, on a different record and, like the impugned orders, before the law was explained by the Supreme Court in *Ahmedabad Urban Development Authority* (supra). The concession recorded before the CIT(A) was, in substance, an acknowledgement that the said decision of the Tribunal was against the appellant; it cannot preclude the appellant from contending that the decision does not reflect the correct legal position, a concession on a question of law not being binding on the party making it.

31. The orders of the Assessing Officer, the CIT(A) and the Tribunal were all rendered between January 2013 and January 2015, long before the decision in *Ahmedabad Urban Development Authority* (supra). Testing them against the principles since explained, the following infirmities are apparent.

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32. First, the Assessing Officer's conclusion that the Society had several objects, not all of them charitable, was reached by reading certain clauses of the Memorandum in isolation. Clauses enabling the Society to deal in IT resources, to deposit or borrow moneys, to deal in negotiable instruments, to establish agencies and franchises or to create funds are, on their face, powers conferred for running the Sukhmani Centres. The distinction between the objects of an institution and the powers conferred upon it for achieving those objects, recognised in *Thiagarajar Charities* (supra), is a matter of construing the governing instrument and is not affected by the amendment to Section 2(15). Whether any such clause constitutes an independent non-charitable object can be determined only by reading the Memorandum as a whole, together with the activities actually carried on during the year. No such exercise was undertaken, and no finding was recorded that any income was in fact applied to any purpose other than the running of the centres.

33. Secondly, the decisive consideration for the Assessing Officer and the Tribunal was that the Society levied a service/user charge in addition to the statutory fee payable to the concerned Government department, for services which, according to them, the State was obliged to render free of cost or at statutory rates. Clause (e) of the Memorandum does contemplate charges “over and above” the statutory fee, subject to the approval of the competent authority. But, under the law as explained by the Supreme Court, the mere levy of consideration for an activity advancing general public utility, even one additional to a statutory fee, does not render the activity a business. The relevant question was whether the service/user charge, in its basis and quantum, was on cost basis or nominally above cost, or was markedly or significantly above the cost incurred in rendering the service. The Assessing Officer

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described the charges as "exorbitant", but undertook no exercise to ascertain the cost of operating the centres or of rendering the various categories of services, or to compare the charges with such cost. Nor was it examined whether, and by whom, the charges were prescribed or approved. The Tribunal, likewise, treated the additional charge as commercial per se. The test applied by the authorities below thus does not accord with the law as since explained.

34. Thirdly, the existence of surplus was treated as indicative of a profit motive. The record shows a surplus of ₹3,76,761/-, about 4.81% of the receipts, in the year under consideration, a deficit of ₹2,67,517/- in the preceding year, and substantially larger surpluses of ₹31,03,672/- and ₹28,74,827/- in the financial years 2006-07 and 2007-08, which preceded the amendment. Neither the modest surplus of the relevant year relied upon by the appellant, nor the larger surpluses of the earlier years relied upon by the Revenue, is by itself conclusive. The aggregate surplus of a year reflects both the services rendered free and those for which charges were levied, and does not by itself disclose whether the charges for any category of service were markedly above the cost of rendering it. As the Supreme Court has emphasised, the examination has to be made on a yearly basis with reference to the charges and the cost. The surpluses of earlier years may furnish context, but they cannot substitute that examination for the year in question.

35. Fourthly, the observation of the Tribunal that it did not find any expenditure of a charitable nature, and that the appellant had not established expenditure for charitable purposes, is a general observation. The audited accounts on record disclose identifiable heads of expenditure, such as pay to staff, contribution to provident fund, computer and printing stationery, repairs and maintenance, telephone charges and other expenses relating to the running

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of the centres. None of the authorities identified any particular head of expenditure, transaction or payment as having been incurred for an independent trade, for private benefit or for an object unrelated to the stated purposes of the Society. The staff expenditure was questioned by the Assessing Officer only under Sections 194C and 40(a)(ia), and that disallowance was deleted by the CIT(A) on a finding of an employer-employee relationship. If the activity of the Society is ultimately found to be one of general public utility not hit by the proviso, expenditure incurred in running the very centres through which that object is pursued would ordinarily constitute application of income to that object. The Tribunal's general observation could not, therefore, by itself sustain the denial of exemption. The question of application, however, is consequential upon the determination under Section 2(15) and will have to be examined along with it.

36. Viewed cumulatively, the authorities below treated the levy of charges additional to the statutory fee, the generation of surplus and certain enabling clauses of the Memorandum as decisive, and the Tribunal followed its decision in the case of the Mansa Society (supra), without examining the relationship between the charges levied and the cost of rendering the services. That examination is now, in view of the law explained in *Ahmedabad Urban Development Authority* (supra), the central enquiry under the first proviso to Section 2(15). To that extent, the Tribunal erred in law in upholding the denial of exemption.

37. In view of the above, the next question, which would arise in the present case, is whether this Court should itself determine the claim or remit the matter. We have given our anxious consideration to this aspect, bearing in mind that the assessment year is 2010-11 and the dispute has been pending for

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a long time. We are, however, of the view that the matter must be remitted to the Assessing Officer, for the following reasons:

(i) The impugned orders were rendered before the decision in Ahmedabad Urban Development Authority (supra). The proceedings before the authorities below were not directed to the question which that decision has made central, namely, whether the charges levied by the appellant were on cost basis or nominally above cost, or markedly above cost. Neither party had the occasion to place material on that aspect, and no authority has recorded a finding on it.

(ii) That question is essentially one of fact. Its determination would require an examination of the cost of running the centres and of rendering the various categories of services, the manner in which the service/user charges were fixed and whether they were approved by the competent authority as contemplated by the Memorandum, the receipts attributable to the services for which charges were levied and, in the event that any activity is found to fall within the first proviso, whether the aggregate value of the receipts therefrom exceeds the limit prescribed in the second proviso for the relevant year. The Supreme Court has itself entrusted this scrutiny to the assessing authorities, to be undertaken on a yearly basis on the record.

(iii) The record before us contains the chart of charges reproduced in the assessment order and the aggregate figures of receipts and expenditure. It does not contain the cost of rendering the individual services, the basis on which the charges were fixed, or the approvals, if any, of the competent authority. Drawing a conclusion one way or the other from the overall surplus of a single year, or from the surpluses of earlier years, would amount to undertaking a factual determination which the authorities below never undertook and for which the material has not been tested.

(iv) The jurisdiction of this Court under Section 260A is confined to substantial questions of law. Although Section 260A(6) enables this Court to determine an issue which has not been determined, or

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has been wrongly determined, by the Tribunal by reason of a decision on such question of law, that power is ordinarily to be exercised where the necessary facts have been found or are undisputed. That is not the position here.

(v) The remand is not occasioned by any lapse on the part of either party, and is not intended to enable either side to fill gaps in its case. It is necessitated by the subsequent authoritative exposition of the law, which neither the authorities below nor the parties had the benefit of. Both parties must have a fair opportunity to place the relevant material on record. The length of the pendency is a reason to require the fresh determination to be completed within a fixed time, and not a reason to forgo it.

CONCLUSION

38. In view of the foregoing discussion, questions (a) and (b) are answered by holding that the Tribunal erred in law in upholding the denial of exemption under Section 11 of the Act for Assessment Year 2010-11 by treating the levy of charges over and above the statutory fee, the generation of surplus and certain enabling clauses of the Memorandum as decisive, and by following its decision in the case of the Mansa Society (supra), without examining whether the charges levied were on cost basis or nominally above cost or markedly above cost, as required by the first proviso to Section 2(15) as explained in Ahmedabad Urban Development Authority (supra). At the same time, the order of registration dated 26.09.2007, having been passed prior to the insertion of the proviso, is not determinative of that question. The entitlement of the appellant to exemption must be determined afresh.

39. The appeal is, accordingly, allowed in the following terms:

(a) The order dated 27.01.2015 passed by the Tribunal in ITA No. 45(Asr)/2014, the order dated 12.11.2013 of the CIT(A) to the extent it upholds the denial of exemption under Section 11 and the

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addition of ₹3,76,761/-, and the assessment order dated 03.01.2013 to the extent of the denial of exemption and the said addition, are set aside.

(b) The matter is remitted to the Assessing Officer having jurisdiction to decide afresh the claim of the appellant for exemption under Section 11 of the Act for Assessment Year 2010-11, in the light of the decision of the Supreme Court in *Ahmedabad Urban Development Authority* (supra) and in accordance with law.

(c) Both parties shall be at liberty to place on record such material as they may consider relevant.

(d) The Assessing Officer shall afford the appellant an adequate opportunity of hearing and pass a speaking order within three months from the date of receipt of a certified copy of this judgment.

(e) We clarify that we have expressed no opinion on the merits of the claim of the appellant. The Assessing Officer shall decide the matter independently, on the material placed before him, and uninfluenced by the orders set aside hereby.

40. The disallowance under Sections 194C and 40(a)(ia) was deleted by the CIT(A) and is not the subject matter of the present appeal. Nothing in this judgment shall affect the deletion of that disallowance.

41. As regards question (c), the penalty order dated 27.03.2015 was passed after the order of the Tribunal impugned in the present appeal and is not, strictly speaking, the subject matter of these proceedings. The question does not, therefore, arise from the order of the Tribunal and is not answered. However, the penalty is founded solely upon the addition of ₹3,76,761/- arising from the denial of exemption under Section 11, which addition stands set aside. A penalty under Section 271(1)(c) cannot survive independently of the addition on which it is founded: see ***K.C. Builders v. Assistant Commissioner of Income Tax***, (2004) 2 SCC 731. The penalty order shall, therefore, not be

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enforced, and the competent authority shall pass an appropriate consequential order in accordance with law in the light of the outcome of the proceedings on remand. If the exemption is allowed, the penalty shall not survive and any amount recovered towards it shall be refunded in accordance with law. All contentions of the appellant with regard to the penalty, including the plea of bona fides, are left open.

42. The appeal stands disposed of in the aforesaid terms. No order as to costs.

(DEEPAK SIBAL)
JUDGE

(SUNISH BINDLISH)
JUDGE

October 15, 2026
rps

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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