

1. **Penalty for concealment of income is leviable, where against basic principle of accountancy, assessee claimed capital loss on sale of fixed assets in profit and loss account and had not revised return voluntarily.** In the facts of the present case, it is noticeable that the assessee had claimed loss on account of sale of plant and machinery, i.e., the fixed assets, in the profit and loss account. This should not have been obviously claimed. It was without any debate and discussion a capital loss. The claim cannot be explained and justified by any argument and reasoning. The claim was positively and meaningfully incorrect and contrary to the principles of straight forward and primary accountancy. It is true and correct that an assessee would normally rely upon the legal opinion of a chartered accountant, who is required to audit accounts of the company and also submit an audit report but penalty cannot be deleted on guise or pretence of legal opinion as a smokescreen and facade. The claim or the entry in the present case was contrary to the elementary and well-known the basic principles of accountancy. The present case is not a case of a debatable issue relating to legal or accountancy principle which could have been interpreted differently. **Commissioner of Income-tax v. NG Technologies Ltd [2015] 370 ITR 7 (Delhi).**
2. **The expression 'charitable purpose', as defined in section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of section 10(23C)(iv).** It is also clear that if the literal interpretation is given to the proviso to section 2(15), then the proviso would be at risk of running fowl of the principle of equality enshrined in article 14 of the Constitution of India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of section 10(23C)(iv) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to section 2(15) would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities 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. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes. **India Trade Promotion Organization v. Director General of Income-tax (Exemptions) [2015] 274 CTR 305 (Delhi).**