19. In the light of this discussion, let us see whether the levy here was a fee and if it was a fee at the inception, whether, by reason of the accumulation of surplus, it became a tax in any subsequent year. According to exhibit I, the total receipts from all sources from the year 1953 to the year 1970 came to Rs. 2,20,78,080/-. According to the statement given by the Attorney General during the course of argument the total contribution under Section 58 of the Act came to Rs. 1,73,56,874/- treating the figures of total receipts in the years 1953 to 1956 as receipts only under Section 58. There is a mistake in the figure of the chart given by the Attorney General for the years 1963, 1964 1965 and 1966. Substituting the correct fiacres for those years which tally with the earlier chart given by the Attorney General, also during the course of the argument, the amount of revenue receipts under Section 58 would come to Rs. 1,90,19,978 (instead of Rs. 1,73,56,-874/-. The total revenue expenditure from 1953 to 1970 according to exhibit I is Rs. 1,17,86,443/-. Although in exhibit I the total revenue expenditure is shown to be 53.33 per cent of the total of Rs. 2,20,78,080/- actually the percentage has to be calculated with reference to the figure of Rs. 1,90,19,978/-. Calculating on that basis, the percentage will come to about 62. On the basis of the decision of this Court in the Delhi Cloth and General Mills case (supra) the levy was in the nature of fee as the expenditure was 62 per cent of the contributions levied and as there was approximate correlation.

20. It was, however, argued on behalf of the respondent on the basis of the decisions in Corporation of Calcutta v. Liberty Cinema MANU/SC/0026/1964 and Nagar Mahapalika, Varanasi v. Durga Das Bhattacharya (supra) that the exercise of the power of supervision and control of public trusts under the provisions of the Act would not be special services, that performance of the statutory functions and duties under the Act is owed to the public and cannot be regarded as special benefits to the public trusts in the state for which a fee can be exacted as consideration.

21. The object of the Act as seen from its preamble is to regulate and make better provisions for the administration of public religious and charitable trusts in the State of Bombay. Chapter IV of the Act provides for registration of public trusts. Chapter V deals with submission of the budgets by the trustees of certain trusts and maintenance of accounts. Chapter V-A concerns the investment of public trust money and restrictions on alienations of trust property. Chapter VI deals with control. It makes provisions for supervision and control over public trusts, for issuing directions by the Commissioner, for suspension and removal of trustees and for protection of charities in general. A review of the relevant provisions in these chapters can only lead to the conclusion that the provisions are enacted with a view that public trusts are administered for the purpose intended by the authors of the trusts and for preserving the trust properties from waste and misappropriation by trustees. Taking precautionary measures to see that public trusts are administered for the purposes intended by the authors of the trusts and exercising control and supervision with a view to preserve the trust properties from being wasted or misappropriated by trustees are certainly special services for the benefit of the trust. Therefore, there is no substance in the argument that no special benefits were or are being conferred up on the public trusts in administering the provisions of the Act.

22. The question then is whether, by reason of the accumulation of surplus from 1953 onwards, the levy of contribution became a tax and if it became a tax, the point of time at which the levy assumed that character. It is not disputed that the collections by way of contribution exceeded the expenditure from 1953 onwards.

23. The respondent submitted that surplus must be taken into consideration in determining the character of the levy. Relying upon the decisions in Mukundaraya v. State of Mysore A.I.R. [1960] Mysore 18 and Dalpathbhai Hemchand v. Chandra Municipality MANU/GJ/0099/1968 the respondent contended that the benefit of the surplus should go to those who have to pay the contributions and that the rate of the levy should at any rate be reduced so as to maintain the just relation between the levy and the services. In other words, the argument was that if it is found that the fee imposed resulted in surplus, the rate of the subsequent imposition should correspondingly be reduced so that it may be commensurate with the expenses that are to be incurred in connection with the services.

24. As we said, the fee must, as far practically as possible, be commensurate with the services rendered. One should not seek for any mathematical accuracy in these matters but be content with rough approximations. The services are mostly rendered by the officers of the Charity Organisation. With the proliferation of public trusts in the State it became necessary to expand the Charity Organisation and to increase the staff for supervision and control. It also became necessary to have more regional offices for the more effective and immediate supervision and control. The expenditure in constructing buildings for locating the head office and regional offices and the increase in the allowances of other amenities to the staff have also to be included in the costs of the services. When there is surplus, it cannot immediately be said that the surplus must necessarily go in reduction of the rate of contribution to be levied thereafter. We think that it would neither be expedient nor prudent to lay down any abstract proposition that whenever there is surplus in a particular year or a number of years, that surplus must always be taken into consideration and the rate of the contribution should be reduced for the next year or subsequent years. An organisation like the one in question may have to incur capital expenditure for the better administration of the trusts and it might not be able to foresee all the contingencies in which such expenditure will have to be incurred for the more efficient working of the organisation. This Court has expressly stated in the Delhi Cloth and General Mills case (supra) that services worth 61 per cent of contribution would be sufficient quid pro quo to make a levy a fee. So, when we find that in this case the organisation has been rendering services worth 62 per cent of the contribution it cannot per se be said that there is no

(7)

correlation between the fee levied and the services rendered. But at the same time when it is seen that after taking into account the capital and other expenditure necessary for the efficient functioning of the organisation for the better administration of the trusts, a large surplus is still left, then the question will arise whether it is permissible for the organisation to continue the levy at the same rate which will only result in further surplus and to invest this surplus solely for earning income or to divert the surplus for other objects, though charitable in nature. We do not think any such levy for investment or diversion of the surplus would be consistent with the principle behind the levy of a fee. While we do not think it necessary that all available surplus in a year or for some years should always go in for reducing the rate of contribution for the subsequent year or years, we are of the view that the organisation cannot be allowed to accumulate an unreasonable amount unreasonable in the sense that the amount might not be reasonably required for the proper and efficient working of the organisation in a foreseeable future. No hard and fast rule applicable in all contingencies can be formulated. The Court will have to draw a line somewhere when the surplus must be taken into consideration for reducing the levy of contribution. In drawing the line, the Court will have to look into the nature of the organisation, the potentiality for its growth, the multiplication in its work consequent on its expansion for rendering the services visualized by the Act and the necessity for capital expenditure in the near future, as also the amount of levy collected or expected to be collected in a year. As already stated, the Division Bench was of the view that the stage when the surplus must be taken into account to determine the character of the levy was reached by the end of March, 31, 1958 when the available surplus came to Rs. 30,44,541/-. The Division Bench was alive to the desirability of locating the head office and regional offices in buildings to be owned by the organisation and incurring of capital expenditure in that behalf. The Charity Organisation has purchased a building worth about Rs. 30 lakhs. Even according to the Division Bench, investment of the surplus in buildings for locating the head and regional offices cannot be said to be diversion of the surplus for purposes alien to the object of the organisation, namely, the better administration of the trusts. Therefore, we do not think that the contribution had assumed the character of a tax at the end of March, 1958.

25. The surplus in the account of the Public Trusts Administration Fund at the end of March, 1970, was Rs. 84,49,473/- after meeting/ the capital expenditure of Rs. 17,46,794/- incurred during the years 1953 to 1970. In the figure of Rs. 84,49,473/- is included the figure of Rs. 7,06,016/-, the accumulated balances under the repealed enactments transferred to the Public Trusts Administration Fund, plus interest of Rs. 7,13,004/- on the said figure vide exhibit No. 3. Even deducting the Rs. 14 lakhs from Rs. 84 lakhs, the surplus in the account of the Public Trusts Administration Fund at the end of March, 1970, was Rs. 70 lakhs. Allowing the capital expenditure of Rs. 30 lakhs on the buildings said to have been purchased by the Charity Organisation, the surplus was Rs. 40 lakhs. As we said, as a matter of principle, expenses for service should be correlated to the contribution levied under Section 58 of the Act. And the capital expenses should be met from the surplus funds including the sum of Rs. 14 lakhs (receipt under Section 61 plus interest thereon: Total: Rs. 14 lakhs). The surplus at the end of March, 1970 being Rs. 40 lakhs or, to be more accurate, Rs. 54 lakhs, the rate of fee at 2 per cent cannot continue in any event after March, 1970 without taking into account the corpus of Rs. 54 lakhs and the income therefrom. We think that the contribution at the rate of 2 per cent on the gross income of the trusts after March 31, 1970 onwards undoubtedly assumed the character of a tax as that merely augmented the income of the Charity Organisation. If the Organisation is allowed to go on increasing its surplus year after year out of the amount of fee collected under Section 58 of the Act, it would demonstrate that the fee levied was unjustifiably disproportionate to the service rendered. We are, therefore, of the opinion that before levying any fee or determining its rate after March, 1970. the Charity Organisation has to balance its budget in the light of this judgment.

26. The respondent raised two contentions before the High Court with respect to its liability to pay contribution in respect of the three amounts in question. It was first contended that these amounts were not received by way of donations, and, second, that at the time when the respondent was sought to be made liable for contribution on these amounts, the levy had ceased to be fee and had assumed the character of tax. The respondent made a return of these amounts on 8-1-1960 on the basis that it was not liable to pay contribution on these amounts. No decision was taken on this return until 10-6-1963 and on that date a notice of demand was made for contribution in respect of these amounts.

27. The respondent has an independent legal personality as it was registered under the Companies Act and so the amounts which it received cannot but be regarded as donations coming within the purview of Section 58 of the Act and Rule 32. The Division Bench held that these amounts were donations made by the international organisation in London to the respondent. We think that the High Court was right.

28. As already stated, the Amending Act came into force on 17-8-1962. The Division Bench was of the view that the levy of contribution on these amounts was ultra vires for the reason that at the time the levy was made it had ceased to be a fee and become a tax. We do not think that the High Court was right. No doubt, the demand for contribution was made only after the Amending Act came into force. But by virtue of the retrospective operation of the amended Section 58 as provided in Section 4 of the Amending Act, the respondent became liable to pay contribution in respect of the three donations in the years in which they were received. It may be recalled that these three amounts were received by the respondent in the years 1954, 1955 and 1956. By virtue of the deeming provision in Section 58 as amended, these donations became exigible to pay the contribution in the relevant years. We do not understand how these amounts which became exigible to levy of contribution in

those years by virtue of the deeming provisions in Section 58 became exonerated for the liability even on the basis of the reasoning of the Division Bench that the levy assumed the character of a tax after 31st March, 1958. The fact that the actual levy was made after 1962 would not make any difference in the liability of the respondent to pay the contribution in respect of these amounts as the liability was incurred when the levy had not assumed the character of tax even according to the Division Bench.

29. We, therefore, hold that the respondent is liable to pay contributions in respect of the three sums and that the Division Bench went wrong in quashing the orders passed by appellants 3 and 4 upholding the levy of contribution on these sums. We also hold that after 31st March, 1970, the levy at the rate of 2 per cent of the gross income of the trust cannot be justified as a fee. This does not mean that no levy of contribution was permissible thereafter. We only say that any levy thereafter should have correlation with the services, taking into consideration the existence of the surplus fund which was not immediately required for further expenditure by way of services including capital expenditure. We declare that levy of contribution at the rate of 2 per cent of the annual gross income of the trusts became levy of tax after 31st March, 1970 and was without the authority of law. Since there was a prayer in the writ petition to declare Rule 32 as ultra vires, we think that the respondent is entitled to this relief.

30. We allow the appeal to the extent indicated but make no order as to costs.

II. Civil Appeal No. 488 of 1973

31. In this appeal, the points for consideration are practically the same. For the reasons we have given in our judgment in Civil Appeal No. 487 of 1973, we do not think that the Division Bench was justified in holding that the respondent was not liable to pay contribution in respect of the donations in question here and in quashing the order dated 30th March, 1965. We, therefore, allow the appeal subject to the declaration of the nature of the levy after 31st March, 1970, made in the judgment in Civil Appeal No. 487 of 1973. We make no order as to costs.