IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD BENCH 'D' , AHMEDABAD

[Coram: Justice P P Bhatt, President, and Pramod Kumar, Vice President]

ITA Nos.1253, 1254, 1255 & 1256/Ahd/2013
Assessment years: 2004-05, 2005-06, 2006-07 & 2007-08 respectively

Gujarat Cricket Association **……...……..Appellant**
Motera, Ahmedabad – 380 005.
[PAN: AAAAG 1205 C]

Vs

Assistant Director of Income Tax (Exemption),
Ahmedabad. **……..….....Respondent**

ITA Nos.1270, 1271, 1272 & 1273/Ahd/2013
Assessment years: 2004-05, 2005-06, 2006-07 & 2007-08 respectively

Dy. Director of Income Tax (Exemption),
Ahmedabad. **……...……..Appellant**

Vs

Gujarat Cricket Association **……..….....Respondent**
2nd Floor, Akshar Complex,
Opp. Fire Station, Vanik Gnyati Commerce Cross Road,
Ahmedabad – 380 009. [PAN: AAAAG 1205 C]

Appearances by
Mehul Patel *alongwith* **Jayesh C Sharedalal** *for the assessee*
O P Vaishnav, Commissioner (DR) *for the respondent*

Date of concluding the hearing	:	December 4 and 5, 2018
Date of pronouncement	:	January 24, 2019

O R D E R

Per Pramod Kumar, Vice President:

1. These eight appeals pertain to the same assessee, involve some common issues and challenge a consolidated order dated 4th March 2013, in the matter of assessment

under section 143(3) r.w.s. 147 of the Income Tax Act, 1961, for the assessment years 2004-05, 2005-06, 2006-07 and 2007-08. As a matter of convenience, therefore, these eight appeals are being disposed of by way of this consolidated order.

2. We will first take up the assessment year 2004-05.

3. Ground no. 1, which challenges reopening the assessments, was not pressed before us. It is, accordingly, dismissed for want of prosecution.

4. Grievance raised by the assessee, in ground no. 2, is as follows:

> **The learned CIT(A) has erred in law and on facts in holding that the Section 11 of the I.T. Act is not applicable to the assessee's case and denying the various reliefs as per the law.**

5. As far as this grievance of the assessee is concerned, it is sufficient to take note of the fact that section 11 was held to be inapplicable as registration under section 12AA was cancelled. There was no other reason for denial of benefit under section 11. Learned representatives, therefore, fairly agree that since the registration has been restored, vide order dated 31st March 2012 passed by a coordinate bench of this Tribunal, the applicability of Section 11 will follow. We, therefore, uphold the plea of the assessee, and direct the Assessing Officer to grant the consequential relief.

6. Ground no. 2 is thus allowed.

7. In ground no. 3, the assessee has raised the following grievance:

The learned A.O. and Hon'ble CIT(A) has erred in law and on facts in not granting deduction of capital expenditure of Rs.93,20,615/- as claimed in the statement of income attached to the return of income.

8. Learned counsel for the assessee points out that this claim was made by way of a note on the statement of income and the matter but the Assessing Officer did not deal with the same. In appeal, the assessee pointed out this fact to the CIT(A) in paragraph 7.1 of the written submissions (@ page 28 of paper book before us) and prayed for adjudication on merits, even though, as it appears to us, there was no specific ground of appeal on this issue. There was, however, no adjudication on this aspect. Learned counsel now urges us to admit the specific ground of appeal, as above, in terms of Hon'ble Supreme Court's judgment in the case of National Thermal Power Corp Ltd Vs CIT (229 ITR 383) and remit the matter to the file of the Assessing Officer for adjudication on merits.

9. Having heard the rival contentions and having perused the material on record, we see merits in the plea of the learned counsel. In the light of Hon'ble Supreme Court's judgment in the case of NTPC (supra), we admit this ground of appeal, and remit the matter to the file of the Assessing Officer for adjudication on merits.

10. Ground no. 3 is thus allowed for statistical purposes.

11. In ground no. 4, the assessee has raised the following grievance:

The learned CIT(A) has erred in law and on facts in holding that amount of Rs.1,58,00,000/- received as donation to corpus from BCCI is not exempt, since the provisions of section 11(1)(d) were not complied by the appellant.

12. So far as this grievance of the assessee is concerned, the relevant material facts are like this. The assessee before us is a cricket association, registered under the Societies Registration Act 1860, and is engaged in promotion of cricket in specified areas of Gujarat State. In the course of the reassessment proceedings, the Assessing Officer noted that assessee has received a sum of Rs 1,58,00,000 from the Board of Cricket Control of India (BCCI, in short) as towards the TV rights. When he probed the matter further, it was explained by the assessee that nomenclature of the receipt apart, what has been received by the assessee is a corpus donation and the assessee did not have any right to get the said money from the BCCI, under a contract or otherwise. It was also explained that similar amounts received in the earlier years have been treated all along as corpus donations, and, therefore, the corpus donation received by the assessee, though termed as TV Rights, is not taxable. The Assessing Officer noted this contention as also the fact that under section 11(1)(d), what cannot be included as total income of the assessee is "income by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution". The Assessing Officer was of the view that what has been paid to the assessee is a share out of earnings by the BCCI, out of proceeds of sale of TV rights,

and is, as such, taxable as income of the assessee. It was observed that it cannot be said to be voluntary contribution by the BCCI. The Assessing Officer also shows that as accepted by the auditor of the company the amount is relatable to the TV rights and it cannot, therefore, be treated as voluntary contribution in the nature of corpus donations. He also noted that as registration of the assessee, under section 12AA, stands cancelled, the assessee is anyway not eligible for the benefit of Section 11(1)(d). On the basis of this line of reasoning, the Assessing Officer treated the said amount of Rs 1,58,00,000 as income of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. It was pointed out to the CIT(A) that the BCCI has passed a specific resolution that the amount computed as TV subsidy is given to the Member associations as corpus donation. The CIT(A), identified the core issue for adjudication as follows: "the fundamental question which now arises is whether the specific direction once issued is sufficient for the purpose of section 11(1)(d) or specific direction is required for each year individually". He then proceeded to answer this question by observing as follows:

> As per section 11(1)(d), a written specific direction is necessary to claim it as corpus donation. For a donation as a corpus donation, a written document with specific direction from the donor should be obtained and should accompany the donation from the donor. In absence of written direction, for a donation in a given assessment year, a donation would not be considered as a corpus donation and the organization (in this case, GCA) would not be entitled to claim full exemption. To add, donation covered by a written document but without any specific direction cannot be claimed as corpus donation

13. The assessee is not satisfied and is in further appeal before us.

14. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

15. We find that, at pages 46 and 47 of the paperbook, the assessee has filed specific confirmations to the effect that these amounts were corpus donations. We have also perused the BCCI resolution no 5 dated 29th September 2001 which specifically states that the TV subsidies should henceforth be sent to the Member Associations towards "corpus funds". There is no dispute that the TV subsidy in question is sent under this resolution. On these facts, and in the light of the provisions of Section 11(1)(d) which only require the income to be "by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution", we are of the considered view that any payments made by the BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund- as admittedly the present receipt is, is required to be treated as corpus donation not includible in total income. We are unable to find any legal support for learned CIT(A)'s stand that each donation must be accompanied by a separate written document. The contribution has to be voluntary and it has to be with specific direction that it will form corpus of the trust'. These conditions are clearly satisfied. Any payment which the assessee is not under an obligation to make, whatever be the mode of its computation, is a voluntary payment, and, any payment which is with a specific

direction that it for corpus fund is a corpus donation. In our considered view, even without the two specific confirmations filed by the assessee, in the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under section 11(1)(d) are satisfied. We, therefore, uphold the plea of the assessee. The Assessing Officer is accordingly directed to delete this addition of Rs 1,58,00,000.

16. Ground no. 4 is thus allowed.

17. In ground no. 5, the assessee has raised the following grievance:

> **The learned CIT(A) has erred in law and on facts in not granting deduction of 15% of income being Rs.32,38,724/- as computed after making the additions.**

18. As regards this grievance, all that learned counsel prays is that a direction may be given to compute the income as per provisions of section 11 of the Act, after giving deduction of 15%. Learned Departmental Representative does not oppose the prayer. We, therefore, direct the Assessing Officer accordingly.

19. Ground no. 5 is allowed in the terms indicated above.

20. In the result, the appeal of the assessee is partly allowed in the terms indicated above.

21. We will now take up the appeal of the Assessing Officer for the assessment year 2004-05.

22. In ground nos. (i) to (iv), which we will take up together, the Assessing Officer has raised the following grievances:

i) The Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in deleting the addition of depreciation of Rs. 2,10,10,680/- made by the AO.

ii) The Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in ignoring the stand of the Revenue that allowance of depreciation on the assets, the cost of which has already been allowed as a deduction on account of application of income, would amount to double deduction in view of the decision of the Hon'ble Supreme Court in the case of Escorts Ltd., 199 ITR 43.

iii) Whether, on the facts and in the circumstances of the case, deduction of depreciation u/s. 32 which falls under the head "Profit and Gains from business and profession" of the Income Tax Act, 1961, would be available to a charitable trust whose income is otherwise not assessable under the above head.

iv) **The Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in allowing the set off of unabsorbed depreciation as the capital expenditure has already been allowed as application of income in the earlier years**.

23. Learned representatives fairly agree that this issue now stands concluded by Hon'ble Supreme Court's judgment in the case of CIT Vs Rajasthani & Gujarati Charitable Foundation [(2018) 402 ITR 441 (SC)] wherein Their Lordships have, inter alia, observed as follows:

…… It is a matter of record that all the assessees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assessees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee. Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'CIT v. Institute of Banking Personnel Selection (IBPS)'[2003] 131 Taxman

386. In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:

> *"3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @ 2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income-tax Act makes provision in respect of computation of income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income-tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on*

behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income-tax Act and not under general principles. The Court rejected this argument. It was held that normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income-tax Act. The Court rejected the argument on behalf of the revenue that section 32 of the Income-tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in normal commercial manner although the Trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Income-tax Act providing for depreciation for computation of income derived from business or profession is not applicable. However, the income of the Trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from gross income of the Trust. In view of the aforesatated judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee

went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No. 2 is answered in the Affirmative i.e., in favour of the assessee and against the Department."

2. After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.

3. It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. CIT [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344'.

4. It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income-tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.

5. It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

24. Respectfully following the esteemed views of Hon'ble Supreme Court, we approve the conclusions arrived at by the CIT(A), which are in consonance with the aforesaid decision, and decline to interfere in the matter.

25. Ground nos. (i) to (iv) are thus dismissed.

26. In ground no. (v) the Assessing Officer has raised the following grievance:

Although the issue of T.V. Rights received from BCCI has been decided by the CIT(A) in favour of the Department and has been held as the income of the Assessee, however, the letter of the BCCI dated 21/01/2013, filed before its Assessing Officer, ACIT, Central Circle-32, Mumbai, clearly states that the said payment of TV Rights to the GCA and the various State cricket associations is part of the revenue sharing arrangement between BCCI and the State Cricket Associations on sale of media rights, was not considered which makes department stand even stronger. The relevant portion of the above-referred letter is as under:-

"PAYMENT TO STATE ASSOCIATIONS

During the year, BCCI has paid amounts to the state associations under the head "T.V. Subventions to Associations". This represents payment of 70%

of the revenue from sale of media rights to the state associations. (emphasis supplied)

Whenever a foreign team visits India, the international matches such as Test and ODI are allotted by BCCI to the state cricket associations by a rotation policy. The matches are conducted and managed by the respective state associations. It is not possible for BCCI to conduct all these matches with its own limited personnel. It is dependent on the state associations, their office bearers, their employees and their network and resources at the local centre to conduct the matches.

The association manage the entire match right from provision of security to players, spectators in coordination with respective state police personnel, taking other security measures like fire prevention etc. The association incurs a good chunk of expenditure in conducting an International Test/ODI/T20/IPL/CLT20 Matches.

In order to have fair and equitable sharing of the revenues, arrangements have evolved over time, about the respective responsibilities, rights, shares of revenue etc. of BCCI and the state associations. The state association is entitled to the ticket revenue and ground sponsorship revenues. (emphasis supplied)

For a Test series or ODI series conducted in multiple centres and organised by BCCI and multiple state associations, it was found that if each state association were negotiate the sale of rights to events in its centre, it negotiating strength would be low. It was, therefore, agreed that BCCI

would negotiate the sale of media rights for the entire country to optimize the income under this head. (emphasis supplied) It was further decided that out of the receipts from the sale of media rights 70% of the gross revenue less production cost would belong to the state associations. Every year, BCCI has paid out exactly 70% of its receipts from media rights (less production cost) to the state associations. This amount has been utilized by the respective associations to build infrastructure and promote cricket, making the game more popular, nurturing and encouraging cricket talent, and leading to higher revenues from media rights.

Therefore, from the above letter of the BCCI, it is evident that the said payment of TV Rights is income of the Assessee as the sale of media rights was negotiated by the BCCI on behalf of all the State Cricket Associations and is not a corpus donation as claimed by the Assessee.

Therefore, the above-referred letter should also be considered to decide the issue of TV Rights received from BCCI.

27. This issue was decided by the CIT(A) in favour of the Assessing Officer and this ground of appeal does not, therefore, call for any adjudication. As regards the argument raised therein, suffice to say, as we have said in so many words while dealing with the grievance of the assessee on this point, that mechanism of computing voluntary contribution is irrelevant and as long as the contribution is not under any legal obligation, it is required to be treated as voluntary contribution. This letter, even though it makes out a case for higher contribution,

does not create a legal obligation. We, therefore, even on merits, reject the plea of the appellant Assessing Officer.

28. Ground no. v is thus dismissed as infructuous.

29. Ground nos vi and vii are general in nature and donot call for any adjudication.

30. In the result, the appeal of the Assessing Officer for the assessment year 2004-05 is dismissed.

31. To sum up, while the appeal of the assessee for the assessment year 2004-05 is partly allowed in the terms indicated above, the appeal of the Assessing Officer for the assessment year 2004-05 is dismissed.

32. We now take up the cross appeals for the assessment year 2005-06.

33. We will first take up the appeal of the assessee for the assessment year 2005-06.

34. Ground no. 1, which challenges reopening the assessments, was not pressed before us. It is, accordingly, dismissed for want of prosecution.

35. Grievance raised by the assessee, in ground no. 2, is as follows:

> **The learned CIT(A) has erred in law and on facts in holding that the Section 11 of the I.T. Act is not applicable to the assessee's case and denying the various reliefs as per the law.**

36. As far as this grievance of the assessee is concerned, it is sufficient to take note of the fact that section 11 was held to be inapplicable as registration under section 12AA was cancelled. There was no other reason for denial of benefit under section 11. Learned representatives, therefore, fairly agree that since the registration has been restored, vide order dated 31st March 2012 passed by a coordinate bench of this Tribunal, the applicability of Section 11 will follow. We, therefore, uphold the plea of the assessee, and direct the Assessing Officer to grant the consequential relief.

37. Ground no. 2 is thus allowed.

38. In ground no. 3, the assessee has raised the following grievance:

> **The learned A.O. and Hon'ble CIT(A) has erred in law and on facts in not granting deduction of capital expenditure of Rs.4,57,01,624 as claimed in the statement of income attached to the return of income.**

39. Learned counsel for the assessee points out that this claim was made by way of a note on the statement of income and the matter but the Assessing Officer did not deal with the same. In appeal, the assessee pointed out this fact to the CIT(A) in the written submissions and prayed for adjudication on merits, even though, as it appears to us, there was no specific ground of appeal on this issue. There was, however, no adjudication on this aspect. Learned counsel now urges us to admit the specific ground of appeal, as above, in terms of Hon'ble Supreme Court's judgment in the case of

National Thermal Power Corp Ltd Vs CIT (229 ITR 383) and remit the matter to the file of the Assessing Officer for adjudication on merits.

40. Having heard the rival contentions and having perused the material on record, we see merits in the plea of the learned counsel. In the light of Hon'ble Supreme Court's judgment in the case of NTPC (supra), we admit this ground of appeal, and remit the matter to the file of the Assessing Officer for adjudication on merits.

41. Ground no. 3 is thus allowed for statistical purposes.

42. In ground no. 4, the assessee has raised the following grievance:

> **The learned CIT(A) has erred in law and on facts in holding that amount of Rs 1,60,00,000 received as donation to corpus from BCCI is not exempt, since the provisions of section 11(1)(d) were not complied by the appellant.**

43. An identical grievance also came up for our adjudication in the assessment year 2004-05 earlier in this consolidated order. We have upheld the plea of the assessee and observed as follows:

> *12. So far as this grievance of the assessee is concerned, the relevant material facts are like this. The assessee before us is a cricket association, registered under the Societies Registration Act 1860, and is engaged in*

promotion of cricket in specified areas of Gujarat State. In the course of the reassessment proceedings, the Assessing Officer noted that assessee has received a sum of Rs 1,58,00,000 from the Board of Cricket Control of India (BCCI, in short) as towards the TV rights. When he probed the matter further, it was explained by the assessee that nomenclature of the receipt apart, what has been received by the assessee is a corpus donation and the assessee did not have any right to get the said money from the BCCI, under a contract or otherwise. It was also explained that similar amounts received in the earlier years have been treated all along as corpus donations, and, therefore, the corpus donation received by the assessee, though termed as TV Rights, is not taxable. The Assessing Officer noted this contention as also the fact that under section 11(1)(d), what cannot be included as total income of the assessee is "income by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution". The Assessing Officer was of the view that what has been paid to the assessee is a share out of earnings by the BCCI, out of proceeds of sale of TV rights, and is, as such, taxable as income of the assessee. It was observed that it cannot be said to be voluntary contribution by the BCCI. The Assessing Officer also shows that as accepted by the auditor of the company the amount is relatable to the TV rights and it cannot, therefore, be treated as voluntary contribution in the nature of corpus donations. He also noted that as registration of the assessee, under section 12AA, stands cancelled, the assessee is anyway not eligible for the benefit of Section 11(1)(d). On the basis of this line of reasoning, the Assessing Officer treated the said amount of Rs 1,58,00,000 as income of the assessee.

Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. It was pointed out to the CIT(A) that the BCCI has passed a specific resolution that the amount computed as TV subsidy is given to the Member associations as corpus donation. The CIT(A), identified the core issue for adjudication as follows: "the fundamental question which now arises is whether the specific direction once issued is sufficient for the purpose of section 11(1)(d) or specific direction is required for each year individually". He then proceeded to answer this question by observing as follows:

> *As per section 11(1)(d), a written specific direction is necessary to claim it as corpus donation. For a donation as a corpus donation, a written document with specific direction from the donor should be obtained and should accompany the donation from the donor. In absence of written direction, for a donation in a given assessment year, a donation would not be considered as a corpus donation and the organization (in this case, GCA) would not be entitled to claim full exemption. To add, donation covered by a written document but without any specific direction cannot be claimed as corpus donation*

13. The assessee is not satisfied and is in further appeal before us.

14. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

15. We find that, at pages 46 and 47 of the paperbook, the assessee has filed specific confirmations to the effect that these amounts were corpus donations. We have also perused the BCCI resolution no 5 dated 29th September 2001 which specifically states that the TV subsidies should henceforth be sent to the Member Associations towards "corpus funds". There is no dispute that the TV subsidy in question is sent under this resolution. On these facts, and in the light of the provisions of Section 11(1)(d) which only require the income to be "by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution", we are of the considered view that any payments made by the BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund- as admittedly the present receipt is, is required to be treated as corpus donation not includible in total income. We are unable to find any legal support for learned CIT(A)'s stand that each donation must be accompanied by a separate written document. The contribution has to be voluntary and it has to be with specific direction that it will form corpus of the trust'. These conditions are clearly satisfied. Any payment which the assessee is not under an obligation to make, whatever be the mode of its computation, is a voluntary payment, and, any payment which is with a specific direction that it for corpus fund is a corpus donation. In our considered view, even without the two specific confirmations filed by the assessee, in the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under section 11(1)(d) are satisfied. We, therefore, uphold the plea

of the assessee. The Assessing Officer is accordingly directed to delete this addition of Rs 1,58,00,000.

44. Consistent with our stand on the same issue for the earlier assessment year, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned addition of Rs 1,60,00,000. The assessee gets the relief accordingly.

45. Ground no. 4 is thus allowed.

46. In ground no. 5, the assessee has raised the following grievance:

The learned CIT(A) has erred in law and on facts in not granting deduction of 15% of income being Rs. 28,00,683 as computed after making the additions.

47. As regards this grievance, all that learned counsel prays is that a direction may be given to compute the income as per provisions of section 11 of the Act, after giving deduction of 15%. Learned Departmental Representative does not oppose the prayer. We, therefore, direct the Assessing Officer accordingly.

48. Ground no. 5 is allowed in the terms indicated above.

49. The appeal of the assessee for the assessment year 2005-06 is thus partly allowed in the terms indicated above.

50. We now take up the appeal of the Assessing Officer for the assessment year 2005-06.

51. We find the grievances raised in this appeal are exactly the same as in the assessment year 2004-05. Learned representatives fairly agree that whatever we decide for the assessment year 2004-05 will apply *mutatis mutandis* here as well.

52. While dealing with these grievances for the assessment year 2004-05, and for the detailed reasons set out earlier in this order, we have rejected the appeal of the assessee. The grievances of the appellant being verbatim the same, we see no reasons to take any other view of the matter for this assessment year as well. Respectfully following our views above, we reject the grievances of the appellant and confirm the relief granted by the CIT(A). No interference is called for.

53. In the result, the appeal of the Assessing Officer for the assessment year 2005-06 is dismissed.

54. To sum up, while appeal of the assessee for the assessment year 2005-06 is partly allowed in the terms indicated above, the appeal of the Assessing Officer for the assessment year 2005-06 is dismissed.

55. We now take up the cross appeals for the assessment year 2006-07

56. We will first take up the appeal of the assessee for the assessment year 2006-07.

57. Ground no. 1, which challenges reopening the assessments, was not pressed before us. It is, accordingly, dismissed for want of prosecution.

58. Grievance raised by the assessee, in ground no. 2, is as follows:

> **The learned CIT(A) has erred in law and on facts in holding that the Section 11 of the I.T. Act is not applicable to the assessee's case and denying the various reliefs as per the law.**

59. As far as this grievance of the assessee is concerned, it is sufficient to take note of the fact that section 11 was held to be inapplicable as registration under section 12AA was cancelled. There was no other reason for denial of benefit under section 11. Learned representatives, therefore, fairly agree that since the registration has been restored, vide order dated 31st March 2012 passed by a coordinate bench of this Tribunal, the applicability of Section 11 will follow. We, therefore, uphold the plea of the assessee, and direct the Assessing Officer to grant the consequential relief.

60. Ground no. 2 is thus allowed.

61. In ground no. 3, the assessee has raised the following grievance:

The learned A.O. and Hon'ble CIT(A) has erred in law and on facts in not granting deduction of capital expenditure of Rs.1,97,51,723 as claimed in the statement of income attached to the return of income.

62. Learned counsel for the assessee points out that this claim was made by way of a note on the statement of income and the matter but the Assessing Officer did not deal with the same. In appeal, the assessee pointed out this fact to the CIT(A) in the written submissions and prayed for adjudication on merits, even though, as it appears to us, there was no specific ground of appeal on this issue. There was, however, no adjudication on this aspect. Learned counsel now urges us to admit the specific ground of appeal, as above, in terms of Hon'ble Supreme Court's judgment in the case of National Thermal Power Corp Ltd Vs CIT (229 ITR 383) and remit the matter to the file of the Assessing Officer for adjudication on merits.

63. Having heard the rival contentions and having perused the material on record, we see merits in the plea of the learned counsel. In the light of Hon'ble Supreme Court's judgment in the case of NTPC (supra), we admit this ground of appeal, and remit the matter to the file of the Assessing Officer for adjudication on merits.

64. Ground no. 3 is thus allowed for statistical purposes.

65. In ground no. 4, the assessee has raised the following grievance:

The learned CIT(A) has erred in law and on facts in holding that amount of Rs 3,45,00,000 received as donation to corpus from BCCI is not exempt, since the provisions of section 11(1)(d) were not complied by the appellant.

66. An identical grievance also came up for our adjudication in the assessment year 2004-05 earlier in this consolidated order. We have upheld the plea of the assessee and observed as follows:

12. So far as this grievance of the assessee is concerned, the relevant material facts are like this. The assessee before us is a cricket association, registered under the Societies Registration Act 1860, and is engaged in promotion of cricket in specified areas of Gujarat State. In the course of the reassessment proceedings, the Assessing Officer noted that assessee has received a sum of Rs 1,58,00,000 from the Board of Cricket Control of India (BCCI, in short) as towards the TV rights. When he probed the matter further, it was explained by the assessee that nomenclature of the receipt apart, what has been received by the assessee is a corpus donation and the assessee did not have any right to get the said money from the BCCI, under a contract or otherwise. It was also explained that similar amounts received in the earlier years have been treated all along as corpus donations, and, therefore, the corpus donation received by the assessee, though termed as TV Rights, is not taxable. The Assessing Officer noted this contention as also the fact that under section 11(1)(d), what cannot be included as total income of the assessee is

"income by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution". The Assessing Officer was of the view that what has been paid to the assessee is a share out of earnings by the BCCI, out of proceeds of sale of TV rights, and is, as such, taxable as income of the assessee. It was observed that it cannot be said to be voluntary contribution by the BCCI. The Assessing Officer also shows that as accepted by the auditor of the company the amount is relatable to the TV rights and it cannot, therefore, be treated as voluntary contribution in the nature of corpus donations. He also noted that as registration of the assessee, under section 12AA, stands cancelled, the assessee is anyway not eligible for the benefit of Section 11(1)(d). On the basis of this line of reasoning, the Assessing Officer treated the said amount of Rs 1,58,00,000 as income of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. It was pointed out to the CIT(A) that the BCCI has passed a specific resolution that the amount computed as TV subsidy is given to the Member associations as corpus donation. The CIT(A), identified the core issue for adjudication as follows: "the fundamental question which now arises is whether the specific direction once issued is sufficient for the purpose of section 11(1)(d) or specific direction is required for each year individually". He then proceeded to answer this question by observing as follows:

> *As per section 11(1)(d), a written specific direction is necessary to claim it as corpus donation. For a donation as a corpus donation, a written document with specific direction from the donor should be obtained and*

should accompany the donation from the donor. In absence of written direction, for a donation in a given assessment year, a donation would not be considered as a corpus donation and the organization (in this case, GCA) would not be entitled to claim full exemption. To add, donation covered by a written document but without any specific direction cannot be claimed as corpus donation

13. The assessee is not satisfied and is in further appeal before us.

14. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

15. We find that, at pages 46 and 47 of the paperbook, the assessee has filed specific confirmations to the effect that these amounts were corpus donations. We have also perused the BCCI resolution no 5 dated 29th September 2001 which specifically states that the TV subsidies should henceforth be sent to the Member Associations towards "corpus funds". There is no dispute that the TV subsidy in question is sent under this resolution. On these facts, and in the light of the provisions of Section 11(1)(d) which only require the income to be "by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution", we are of the considered view that any payments made by the BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund- as admittedly the present receipt is, is required to be treated as corpus donation not includible in total

income. We are unable to find any legal support for learned CIT(A)'s stand that each donation must be accompanied by a separate written document. The contribution has to be voluntary and it has to be with specific direction that it will form corpus of the trust'. These conditions are clearly satisfied. Any payment which the assessee is not under an obligation to make, whatever be the mode of its computation, is a voluntary payment, and, any payment which is with a specific direction that it for corpus fund is a corpus donation. In our considered view, even without the two specific confirmations filed by the assessee, in the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under section 11(1)(d) are satisfied. We, therefore, uphold the plea of the assessee. The Assessing Officer is accordingly directed to delete this addition of Rs 1,58,00,000.

67. Consistent with our stand on the same issue for the earlier assessment year, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned addition of Rs 1,97,51,723. The assessee gets the relief accordingly.

68. Ground no. 4 is thus allowed.

69. In ground no. 5, the assessee has raised the following grievance:

The learned CIT(A) has erred in law and on facts in not granting deduction of 15% of income being Rs. 1,37,66,116 as computed after making the additions.

70. As regards this grievance, all that learned counsel prays is that a direction may be given to compute the income as per provisions of section 11 of the Act, after giving deduction of 15%. Learned Departmental Representative does not oppose the prayer. We, therefore, direct the Assessing Officer accordingly.

71. Ground no. 5 is allowed in the terms indicated above.

72. The appeal of the assessee for the assessment year 2006-07 is thus partly allowed in the terms indicated above.

73. We now take up the appeal of the Assessing Officer for the assessment year 2006-07.

74. We find the grievances raised in this appeal are exactly the same as in the assessment year 2004-05. Learned representatives fairly agree that whatever we decide for the assessment year 2004-05 will apply *mutatis mutandis* here as well.

75. While dealing with these grievances for the assessment year 2004-05, and for the detailed reasons set out earlier in this order, we have rejected the appeal of the assessee. The grievances of the appellant being verbatim the same, we see no reasons

to take any other view of the matter for this assessment year as well. Respectfully following our views above, we reject the grievances of the appellant and confirm the relief granted by the CIT(A). No interference is called for.

76. In the result, the appeal of the Assessing Officer for the assessment year 2006-07 is dismissed.

77. To sum up, while appeal of the assessee for the assessment 2006-07 is partly allowed in the terms indicated above, the appeal of the Assessing Officer for the assessment year 2006-07 is dismissed.

78. We now take up the cross appeals for the assessment year 2007-08.

79. We will first take up the appeal of the assessee for the assessment year 2007-08.

80. Ground no. 1, which challenges reopening the assessments, was not pressed before us. It is, accordingly, dismissed for want of prosecution.

81. Grievance raised by the assessee, in ground no. 2, is as follows:

> **The learned CIT(A) has erred in law and on facts in holding that the Section 11 of the I.T. Act is not applicable to the assessee's case and denying the various reliefs as per the law.**

82. As far as this grievance of the assessee is concerned, it is sufficient to take note of the fact that section 11 was held to be inapplicable as registration under section 12AA was cancelled. There was no other reason for denial of benefit under section 11. Learned representatives, therefore, fairly agree that since the registration has been restored, vide order dated 31st March 2012 passed by a coordinate bench of this Tribunal, the applicability of Section 11 will follow. We, therefore, uphold the plea of the assessee, and direct the Assessing Officer to grant the consequential relief.

83. Ground no. 2 is thus allowed.

84. In ground no. 3, the assessee has raised the following grievance:

> **The learned CIT(A) has erred in law and on facts in taking the figure as per return of income at Rs.NIL instead of loss Rs.(-)2,49,17,267/- as stated in first para of the original Assessment Order.**

85. All that the learned counsel seeks, as a relief on this ground, is that the Assessing Officer be directed to computed the income after giving appeal effect for this and earlier year. This grievance is too general to call for any adjudication and what it seeks as relief is something to which the assessee is lawfully entitled anyway. Grievance is thus dismissed as infructuous.

86. Ground no. 3 is dismissed as infructuous.

87. In ground no. 4, the assessee appellant has raised the following grievance:

The learned A.O. and Hon'ble CIT(A) has erred in law and on facts in not granting deduction of capital expenditure of Rs.13,63,23,403 as claimed in the statement of income attached to the return of income.

88. Learned counsel for the assessee points out that this claim was made by way of a note on the statement of income and the matter but the Assessing Officer did not deal with the same. In appeal, the assessee pointed out this fact to the CIT(A) in the written submissions and prayed for adjudication on merits, even though, as it appears to us, there was no specific ground of appeal on this issue. There was, however, no adjudication on this aspect. Learned counsel now urges us to admit the specific ground of appeal, as above, in terms of Hon'ble Supreme Court's judgment in the case of National Thermal Power Corp Ltd Vs CIT (229 ITR 383) and remit the matter to the file of the Assessing Officer for adjudication on merits.

89. Having heard the rival contentions and having perused the material on record, we see merits in the plea of the learned counsel. In the light of Hon'ble Supreme Court's judgment in the case of NTPC (supra), we admit this ground of appeal, and remit the matter to the file of the Assessing Officer for adjudication on merits.

90. Ground no. 4 is thus allowed for statistical purposes.

91. In ground no. 5, the assessee has raised the following grievance:

The learned CIT(A) has erred in law and on facts in holding that amount of Rs 17,58,00,000 received as donation to corpus from BCCI is not exempt, since the provisions of section 11(1)(d) were not complied by the appellant.

92. An identical grievance also came up for our adjudication in the assessment year 2004-05 earlier in this consolidated order. We have upheld the plea of the assessee and observed as follows:

12. So far as this grievance of the assessee is concerned, the relevant material facts are like this. The assessee before us is a cricket association, registered under the Societies Registration Act 1860, and is engaged in promotion of cricket in specified areas of Gujarat State. In the course of the reassessment proceedings, the Assessing Officer noted that assessee has received a sum of Rs 1,58,00,000 from the Board of Cricket Control of India (BCCI, in short) as towards the TV rights. When he probed the matter further, it was explained by the assessee that nomenclature of the receipt apart, what has been received by the assessee is a corpus donation and the assessee did not have any right to get the said money from the BCCI, under a contract or otherwise. It was also explained that similar amounts received in the earlier years have been treated all along as corpus donations, and, therefore, the corpus donation received by the assessee, though termed as TV Rights, is not

taxable. The Assessing Officer noted this contention as also the fact that under section 11(1)(d), what cannot be included as total income of the assessee is "income by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution". The Assessing Officer was of the view that what has been paid to the assessee is a share out of earnings by the BCCI, out of proceeds of sale of TV rights, and is, as such, taxable as income of the assessee. It was observed that it cannot be said to be voluntary contribution by the BCCI. The Assessing Officer also shows that as accepted by the auditor of the company the amount is relatable to the TV rights and it cannot, therefore, be treated as voluntary contribution in the nature of corpus donations. He also noted that as registration of the assessee, under section 12AA, stands cancelled, the assessee is anyway not eligible for the benefit of Section 11(1)(d). On the basis of this line of reasoning, the Assessing Officer treated the said amount of Rs 1,58,00,000 as income of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. It was pointed out to the CIT(A) that the BCCI has passed a specific resolution that the amount computed as TV subsidy is given to the Member associations as corpus donation. The CIT(A), identified the core issue for adjudication as follows: "the fundamental question which now arises is whether the specific direction once issued is sufficient for the purpose of section 11(1)(d) or specific direction is required for each year individually". He then proceeded to answer this question by observing as follows:

As per section 11(1)(d), a written specific direction is necessary to claim it as corpus donation. For a donation as a corpus donation, a written document with specific direction from the donor should be obtained and should accompany the donation from the donor. In absence of written direction, for a donation in a given assessment year, a donation would not be considered as a corpus donation and the organization (in this case, GCA) would not be entitled to claim full exemption. To add, donation covered by a written document but without any specific direction cannot be claimed as corpus donation

13. The assessee is not satisfied and is in further appeal before us.

14. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

15. We find that, at pages 46 and 47 of the paperbook, the assessee has filed specific confirmations to the effect that these amounts were corpus donations. We have also perused the BCCI resolution no 5 dated 29th September 2001 which specifically states that the TV subsidies should henceforth be sent to the Member Associations towards "corpus funds". There is no dispute that the TV subsidy in question is sent under this resolution. On these facts, and in the light of the provisions of Section 11(1)(d) which only require the income to be "by way of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or the institution", we are of the considered

view that any payments made by the BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund- as admittedly the present receipt is, is required to be treated as corpus donation not includible in total income. We are unable to find any legal support for learned CIT(A)'s stand that each donation must be accompanied by a separate written document. The contribution has to be voluntary and it has to be with specific direction that it will form corpus of the trust'. These conditions are clearly satisfied. Any payment which the assessee is not under an obligation to make, whatever be the mode of its computation, is a voluntary payment, and, any payment which is with a specific direction that it for corpus fund is a corpus donation. In our considered view, even without the two specific confirmations filed by the assessee, in the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under section 11(1)(d) are satisfied. We, therefore, uphold the plea of the assessee. The Assessing Officer is accordingly directed to delete this addition of Rs 1,58,00,000.

93. Consistent with our stand on the same issue for the earlier assessment year, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned addition of Rs 17,58,00,000. The assessee gets the relief accordingly.

94. Ground no. 5 is thus allowed.

95. In ground no. 6, the assessee has raised the following grievance:

The learned CIT(A) has erred in law and on facts in not granting deduction of 15% of income being Rs.3,01,64,525 as computed after making the additions.

96. As regards this grievance, all that learned counsel prays is that a direction may be given to compute the income as per provisions of section 11 of the Act, after giving deduction of 15%. Learned Departmental Representative does not oppose the prayer. We, therefore, direct the Assessing Officer accordingly.

97. Ground no. 6 is allowed in the terms indicated above.

98. The appeal of the assessee for the assessment year 2007-08 is thus partly allowed in the terms indicated above.

99. We now take up the appeal of the Assessing Officer for the assessment year 2007-08.

100. We find the grievances raised in this appeal are exactly the same as in the assessment year 2004-05. Learned representatives fairly agree that whatever we decide for the assessment year 2004-05 will apply *mutatis mutandis* here as well.

101. While dealing with these grievances for the assessment year 2004-05, and for the detailed reasons set out earlier in this order, we have rejected the appeal of the

assessee. The grievances of the appellant being verbatim the same, we see no reasons to take any other view of the matter for this assessment year as well. Respectfully following our views above, we reject the grievances of the appellant and confirm the relief granted by the CIT(A). No interference is called for.

102. In the result, the appeal of the Assessing Officer for the assessment year 2007-08 is dismissed.

103. To sum up, while appeal of the assessee for the assessment year 2007-08 is partly allowed in the terms indicated above, the appeal of the Assessing Officer for the assessment year 2007-08 is dismissed.

Pronounced in the open court today on the 24th day of January, 2019 at Ahmedabad.

Sd/xx **Sd/xx**
Justice P P Bhatt **Pramod Kumar**
(President) (Vice President)

Ahmedabad, dated the 24th day of January, 2019

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad