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

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

ITA No. 2680/Ahd/2011
Assessment year: 2008-09

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 5, 2018
Date of pronouncement	:	March 04, 2019

O R D E R

Per Pramod Kumar, VP:

1. This appeal, filed by the Assessing Officer, is directed against the order dated 16th August 20111 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2008-09.

2. In the first ground of appeal, the Assessing Officer has raised the following grievance:

> "*1. The ld. CIT(A) has erred in law and on fact in deleting the addition of Rs.6,83,46,038/- without considering the applicability of section 11(1)(d) of the I.T. Act.*"

3. The corpus donation of Rs 6,83,46,038 is received from the Board of Cricket Control of India (BCCI) with respect of TV advertisements. Learned representatives fairly agree that an identical issue has come up for our consideration in the appeal for the assessment year 2004-05, which was heard alongwith this appeal, and whatever we decide for the said year will apply *mutatis mutandis* this year as well.

4. Vide our order dated 24th January, 2019, while dealing with the assessment year 2004-05 in assessee's own case, we have upheld the stand 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:*
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> > *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.

5. Consistent with our stand on the same issue for the earlier assessment year, we uphold the stand of the assessee. Accordingly, we confirm the relief granted by the CIT(A) and decline to interfere in the matter.

6. Ground no. 1 is thus dismissed.

7. In ground no. 2, the Assessing Officer has raised the following grievance:

"*The ld. CIT (A) has erred in law and on fact in deleting the addition of Rs.1,78,05,654/- without considering the provision of section 199.*"

8. So far as this grievance of the Assessing Officer is concerned, the relevant material facts are like this. During the course of the assessment proceedings, the Assessing Officer noticed that the assessee had certain advertisement receipts in the present year which have not been accounted in this year, but in the subsequent year. These receipts included RS 12,9,21,400 from Frontier Group India Ltd, Rs 20,00,000 from Prerna International, Rs 24,00,000 from Prerna International and Rs 4,84,254 from Bhagwati Banquets and Hotels. While it was noted that these receipts were included in the income of the subsequent assessment year, the Assessing Officer was of the view that as the assessee was following mercantile method of accounting, and as the assessee had claimed the TDS credit in this year, it was not open to the assessee to show the related income in the subsequent assessment year. He thus made an addition of Rs 1,78,05,654. Aggrieved, assessee carried the matter in appeal before the CIT(A) who deleted the addition by observing as follows:

> *"During the course of proceedings before A.O. it was noticed by A.O. that certain TDS certificates for which TDS amount was claimed does not pertain to the current year and the income of which was shown in subsequent year. The A.O. therefore made an addition of above amount.*
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> *The learned AR has drawn my attention to the provisions of section 199 which deals with the treatment of income of the person from whose income the deduction was made and credit to be granted. The income for which certificates are submitted pertains to subsequent year. The credit is to be granted in the subsequent year, because the credit of TDS is to be granted in the year in which income is shown.*
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> *It is submitted that the said income is shown in the next year.*
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> *After considering the above, when the income is shown in next year, I hold that there is no warrant in treating the income as current year's income and hence the addition of Rs.1,78,05,654/- is deleted. The A.O. has not controverted the fact that assessee has shown the amount of Rs. 1,78,05,654/- as income in I.T.A.Y. 2009-10. Hence there is no dispute so far as showing of income in I.T.A.Y. 2009-10 is concerned. However credit of the certificates pertaining to the said income shall be granted in the next year and not in current year as per section 199."*

9. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

10. Having heard the rival contentions and having perused the material on record, we see no reasons to interfere in the matter, as we have noted that the CIT(A) has directed the Assessing Officer to grant the related TDS credit in the subsequent assessment year and the income is duly shown in that assessment year for the reason that the amount was actually received later. In any event, the issue is completely tax neutral, the amount is shown in the year in which it is received and the credit is also

given in the year in which income is offered to tax. We see no infirmity in the conclusions arrived at by the CIT(A). No interference is called for.

11. Ground no. 2 is thus dismissed

12. In ground no. 3, the Assessing Officer has raised the following grievance:

> "*The Ld. CIT(A) has erred in law and on fact in allowing the claim of set off of brought forward deficit and unabsorbed depreciation.*"

13. As far as this grievance of the Assessing Officer is concerned, it is sufficient to take note of the fact that the Assessing Officer disallowed the claim only because the registration under section 12AA was cancelled. In appeal, CIT(A) held that the registration, in the light of law laid down by this Tribunal, could not be cancelled with retrospective effect. Accordingly, the claim was allowed. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

14. Having heard the rival contentions and having perused the material on record, we confirm the conclusion arrived at by the CIT(A) for the simple reason that the cancellation of registration under section 12AA, which was raison d'etre of the impugned disallowance of claim, has been revoked by the Tribunal. The registration under section 12AA thus stands restored and all natural corollaries follow. There is no justification for disallowance of the claim of set off. We confirm the conclusion arrived at by the CIT(A) and decline to interfere in the matter.

15. Ground no. 3 is thus dismissed.

16. In ground no. 4, the Assessing Officer has raised the following grievance:

> "*The Ld. CIT(A) has erred in law and on facts in allowing capital expenditure as deduction.*"

17. During the course of appellate proceedings, the assessee pointed out to the CT(A) as that as per note no. 11 attached to the statement of income, the assessee had incurred capital expenditure of Rs 8,76,56,542 which should be allowed as deduction. The judicial precedents in support were also cited. However, the CIT(A) observed that the total income will be in negative, after taking into account relief granted by him, there is no need to deal with this plea. The Assessing Officer is on appeal on this observation as well.

18. Having heard the rival contentions and having perused the material on record, we see no need to revisit the conclusions at the instance of the Assessing Officer. There is no adjudication or direction in favour of the assessee, and there is thus no reason for any grievance on the issue. No interference is called for.

19. Ground no. 4 is dismissed.

20. The only other grievance, as raised in ground of appeal no. 5, is against allowing applicability of Section 11 but what it overlooks is that the only reason for denying the benefit of section 11 was cancellation of registration under section 12AA which stands vacated, and the registration at such stands restored. In the light of this factual position, this grievance of the Assessing Officer is clearly devoid of legally sustainable merits. We, therefore, reject Ground no. 5 as well.

21. In the result, the appeal is dismissed. Pronounced in the open court today on the 4th day of March, 2019.

Sd/- Sd/-

Pramod Kumar **Justice P P Bhatt**
(Vice President) (President)

Ahmedabad, dated the 4th day of March, 2019

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

By order

True Copy

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad